Agenda of Regular Meeting

The Board of Trustees
Lone Oak Independent School District

A Regular Meeting of the Board of Trustees of Lone Oak Independent School District will be held August 1, 2022, beginning at 6:00 PM in the Lone Oak ISD Administration Building
8162 Highway 69 South
Lone Oak, TX 75453.

The subjects to be discussed or considered or upon which any formal action may be taken are listed below. Items do not have to be taken in the same order as shown on this meeting notice. Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

1. Establish a quorum and call meeting to order
2. Opening Prayer & Pledges
3. Forum for community input
4. Consent Agenda
    1. Monthly Check Register 3
    2. Finance/Investment Report 14
    3. Budget Amendments/Reallocation 16
    4. Minutes from previous meeting 18
5. Administrative Team Reports
6. 2022-2023 Handbooks & Student Code of Conduct
    1. Employee 24
    2. Student 85
    3. Athletic, Band, Cheer
    4. Student Code of Conduct 191
7. Deliberation and possible approval of the COVID-19 re-entry plan for staff and students. 236
8. Discuss and possibly approve upgrading perimeter fencing
9. Discuss and possibly approve changes to the coaching stipends' structures and compensation plan
10. Discuss and possibly approve adding a new high school class: Practicum in Entrepreneurship.
11. Discuss and possibly take action on an increase in student and adult lunch prices.
12. Discuss and possibly change meal allowances for student and adult travel. 256
13. Discuss and possibly approve changing CH (LOCAL) policy. 258
14. Review Localized Policy Manual Update 119 631
15. Discuss and possibly take action on creating a LOISD police department.

16. Discuss and possibly take action on TASB Worker's Comp Renewal and Property and Casualty Insurance
17. Lone Oak Independent School District Resolution Regarding Special Education Shared Services Agreement With The Tri-County Shared Services Arrangement.
18. Claycomb presentation of updated schematic design documents for board approval
19. Executive Session
    1. 551.074 Discuss personnel or to hear complaints against personnel
    2. 551.071 Private Consultation with the board's attorney
    3. 551.072 Discussing purchase, exchange, lease, or value of real property
20. Discuss and possibly take legal action in regards the City of Lone Oak's recent adoption of a new Ordinance and amendment of minutes from May 2021 due to the impact on LOISD bond projects
21. Adjournment

If, during the course of the meeting, discussion of any item on the agenda should be held in a closed meeting, the board will conduct a closed meeting in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, Subchapters D and E or Texas Government Code section 418.183(f). Before any closed meeting is convened, the presiding officer will publicly identify the section or sections of the Act authorizing the closed meeting. All final votes, actions, or decisions will be taken in open meeting. [*See* BEC(LEGAL)]

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on:

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For the Board of Trustees

Check Nbr	Check Date	Vend Nbr	Payee	Organization	PO Nbr / Invoice Nbr / Fnd-Fnc-Obj.So-Org-Prog	Typ Cd	Reason	Amount	EFT
056651	06-29-2022	00005	ATMOS ENERGY	UNDIST. ORGAN.UN	191266 199-51-6259.74-999-299000	C	GAS S ERVICES	567.65	N
056575	06-09-2022	00011	INTOUCH BY CUMBYT	UNDIST. ORGAN.UN	191158 199-51-6259.72-999-299000	C	PHONE SERVICES	2,818.90	N
056653	06-29-2022	00012	CITY OF LONE OAK	UNDIST. ORGAN.UN	191261 199-51-6259.71-999-299000	C	WATER SERVICES	1,263.11	N
056660	06-29-2022	00019	KONA ICE	HIGH SCHOOL	191275 7732 865-00-2190.52-001-200000	C	SENIOR TREAT	23.36	N
				HIGH SCHOOL	191275 7732 865-00-2190.63-001-200000	C	SENIOR TREAT	156.64	N
							Check 056660 Total:	**180.00**	
							Vendor 00019 Total:	**180.00**	
022017	06-09-2022	00020	DEALERS ELECTRICAL	UNDIST. ORGAN.UN	190844 100078773.001 699-81-6639.00-999-299000	C	CONDUIT/CPLG/PVC CEM	1,155.07	N
056655	06-29-2022	00020	DEALERS ELECTRICAL	UNDIST. ORGAN.UN	191259 1001779656 199-51-6319.00-999-299000	C	BULBS/BALLAST	1,803.24	N
							Vendor 00020 Total:	**2,958.31**	
056565	06-09-2022	00025	EDUCATION SERVICE	UNDIST. ORGAN.UN	191203 006622 199-11-6219.20-999-211000	C	JUNE FIBER NETWORK SE	1,000.00	N
056570	06-09-2022	00038	GREENVILLE HERALD	SUPERINTENDENT	191156 199-41-6499.00-701-299000	C	GRADUATION AD	898.00	N
				SUPERINTENDENT	191155 199-41-6499.00-701-299000	C	GROUND BREAK/CERM/A	321.54	N
							Check 056570 Total:	**1,219.54**	
							Vendor 00038 Total:	**1,219.54**	
056571	06-09-2022	00040	GREENVILLE SUPPLY	UNDIST. ORGAN.UN	190987 537208 199-51-6319.00-999-299000	C	FLUSH VALVE/INSULATIO	411.00	N
056576	06-09-2022	00063	J & R DISCOUNT AUTO	UNDIST. ORGAN.UN	191073 137498 199-34-6319.00-999-299000	C	COILS/BLACK CAR/COLLE	53.30	N
				UNDIST. ORGAN.UN	191095 137553 199-34-6319.00-999-299000	C	CABLE/BATTERY	179.18	N
				UNDIST. ORGAN.UN	191054 137397 199-34-6319.00-999-299000	C	BATTERIES/BUS	506.21	N
				UNDIST. ORGAN.UN	191123 137602 199-34-6319.00-999-299000	C	OXYGEN SENSOR/BULBS/	108.23	N
				UNDIST. ORGAN.UN	191145 138041 199-34-6319.00-999-299000	C	PARTS/BUS/MINI VAN/CA	184.23	N
							Check 056576 Total:	**1,031.15**	
056627	06-23-2022	00063	J & R DISCOUNT AUTO	UNDIST. ORGAN.UN	191227 138667 199-34-6319.00-999-299000	C	BRAKE PAD SET/CREDIT	16.49	N
				UNDIST. ORGAN.UN	191228 138692 199-34-6319.00-999-299000	C	BRAKE PAD SET	43.79	N
							Check 056627 Total:	**60.28**	
							Vendor 00063 Total:	**1,091.43**	
056578	06-09-2022	00069	KIRBY RESTAURANT S	UNDIST. ORGAN.UN	210487 669545 240-35-6342.00-999-299000	C	DISHMACHINE CHEMICAL/	62.00	N
				UNDIST. ORGAN.UN	210487 669544 240-35-6342.00-999-299000	C	DISHMACHINE CHEMICAL/	87.00	N
				UNDIST. ORGAN.UN	210487 669543 240-35-6342.00-999-299000	C	DISHMACHINE CHEMICAL/	104.00	N
							Check 056578 Total:	**253.00**	

Check Nbr	Check Date	Vend Nbr	Payee	Organization	PO Nbr / Invoice Nbr / Fnd-Fnc-Obj.So-Org-Prog	Typ Cd	Reason	Amount	EFT
							Vendor 00069 Total:	**253.00**	
056637	06-23-2022	00094	PITNEY BOWES	BUSINESS OFFICE	191224 1020889375 199-41-6399.PS-750-299000	C	POSTAGE MACHINE RENT	105.00	N
056605	06-09-2022	00123	TRI-COUNTRY PLUMBI	UNDIST. ORGAN.UN	191179 45126 199-51-6249.00-999-299000	C	UNSTOP DAYCARE SEWE	195.00	N
				UNDIST. ORGAN.UN	191180 45222 199-51-6249.00-999-299000	C	INSTALL FAUCET/CUTOFF	5,081.57	N
							Check 056605 Total:	**5,276.57**	
056671	06-29-2022	00123	TRI-COUNTRY PLUMBI	UNDIST. ORGAN.UN	191265 45231 199-51-6249.00-999-299000	C	REPLACE CUTOFF VALVE	350.00	N
							Vendor 00123 Total:	**5,626.57**	
061422	06-14-2022	00141	CLAIMS ADMINISTRATI	UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	1.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	1.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	1.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	2.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	2.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	2.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	2.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	3.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	8.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	21.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	44.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	86.00	N
				UNDIST. ORGAN.UN	210490 753-41-6499.00-999-299000	D	WORKER COMP	138.00	N
							Check 061422 Total:	**311.00**	
							Vendor 00141 Total:	**311.00**	
056560	06-09-2022	00144	ALERT SERVICES INC	HIGH SCHOOL	190733 5078900 199-36-6399.00-001-291080	C	TRAINING SUPPLIES	62.00	N
056590	06-09-2022	00160	QUILL CORPORATION	ELEMENTARY SCH	191162 199-11-6397.00-101-211000	C	ELEM FURNITURE	1,061.23	N
				HIGH SCHOOL	191163 199-11-6399.00-001-211000	C	COPY PAPER	410.72	N
				HIGH SCHOOL	191152 199-11-6399.00-001-211000	C	CAMPUS COPY PAPER	505.90	N
				MIDDLE SCHOOL	191163 199-11-6399.00-041-211000	C	COPY PAPER	410.72	N
				MIDDLE SCHOOL	191152 199-11-6399.00-041-211000	C	CAMPUS COPY PAPER	505.90	N
				ELEMENTARY SCH	191163 199-11-6399.00-101-211000	C	COPY PAPER	410.72	N

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				ELEMENTARY SCH	191152 199-11-6399.00-101-211000	C	CAMPUS COPY PAPER	505.90	N
				ELEMENTARY SCH	191162 199-23-6397.00-101-299000	C	ELEM FURNITURE	1,074.73	N
				UNDIST. ORGAN.UN	191138 199-34-6319.00-999-299000	C	TRASH CAN/DOLLY/CART	337.96	N
				SUPERINTENDENT	191163 199-41-6399.00-701-299000	C	COPY PAPER	410.72	N
				SUPERINTENDENT	191152 199-41-6399.00-701-299000	C	CAMPUS COPY PAPER	252.95	N
				BUSINESS OFFICE	191163 199-41-6399.00-750-299000	C	COPY PAPER	409.92	N
				BUSINESS OFFICE	191152 199-41-6399.00-750-299000	C	CAMPUS COPY PAPER	252.95	N
				BUSINESS OFFICE	191086 25246773 199-41-6399.PS-750-299000	C	POSTAGE MACHINE INK	138.98	N
				UNDIST. ORGAN.UN	191138 199-51-6319.00-999-299000	C	TRASH CAN/DOLLY/CART	90.99	N
							Check 056590 Total:	**6,780.29**	
							Vendor 00160 Total:	**6,780.29**	
056646	06-23-2022	00178	WAYNE'S LAWNMOWE	UNDIST. ORGAN.UN	191236 284662 199-51-6249.00-999-299000	C	WELDING FRAME/MOWER	75.00	N
056574	06-09-2022	00206	HUNT COUNTY APPRA	TAX OFFICE	191195 3RD QTR PYMT 199-99-6213.00-703-299000	C	3RD QTR PYMT	21,143.37	N
056581	06-09-2022	00247	LANA'S HOUSE OF FL	HIGH SCHOOL	190005 9232 199-11-6499.41-001-211000	C	GRADUATION FLOWERS	20.00	N
				MIDDLE SCHOOL	190985 9229 199-23-6499.00-041-299000	C	8th grade	132.00	N
							Check 056581 Total:	**152.00**	
							Vendor 00247 Total:	**152.00**	
056674	06-29-2022	00262	WAL-MART INC.	HIGH SCHOOL	191204 199-11-6399.00-001-211000	C	ENRICHMENT CAMP	53.35	N
				HIGH SCHOOL	191081 199-11-6399.00-001-222000	C	ENRICHMENT CAMP	250.19	N
				ELEMENTARY SCH	191148 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SUPP	43.06	N
				ELEMENTARY SCH	191149 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SUPP	43.22	N
				ELEMENTARY SCH	191105 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SICE	192.01	N
				ELEMENTARY SCH	191085 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SUPP	169.17	N
				HIGH SCHOOL	190788 199-11-6499.00-001-211000	C	SPED FAREWELL GATHER	169.48	N
				HIGH SCHOOL	191144 199-36-6399.00-001-291080	C	SUMMER CAMP WRKOUT	169.16	N
				SUPERINTENDENT	191122 199-41-6399.00-701-299000	C	COPY PAPER	49.34	N
				BUSINESS OFFICE	191122 199-41-6399.00-750-299000	C	COPY PAPER	49.34	N
				ELEMENTARY SCH	191071 484-36-6399.00-101-299000	C	READING ACADEMY AWA	77.54	N
				MIDDLE SCHOOL	191016 865-00-2190.59-041-200000	C	Retirement Party	258.30	N

Check Nbr	Check Date	Vend Nbr	Payee	Organization	PO Nbr / Invoice Nbr / Fnd-Fnc-Obj.So-Org-Prog	Typ Cd	Reason	Amount	EFT
							Check 056674 Total:	**1,524.16**	
							Vendor 00262 Total:	**1,524.16**	
056643	06-23-2022	00282	TRI-COUNTY COOPER	UNDIST. ORGAN.UN	191239 MAY SERVICES 199-93-6492.00-999-223000	C	MAY VI/OM SERVICES	1,000.00	N
056673	06-29-2022	00308	VARSITY SPIRIT FASHI	HIGH SCHOOL	190942 75204320 199-36-6399.85-001-291000	C	HS CHEER ITEMS	1,668.70	N
				MIDDLE SCHOOL	190912 75204266 199-36-6399.85-041-291000	C	MS CHEER UNIFORM/CLO	1,580.85	N
							Check 056673 Total:	**3,249.55**	
							Vendor 00308 Total:	**3,249.55**	
056598	06-09-2022	00330	TASB	SUPERINTENDENT	191201 626468 199-41-6499.00-701-299000	C	LOCAL DISTR UPDATE	166.00	N
056668	06-29-2022	00366	SEAN TREDWAY	HIGH SCHOOL	191271 MEALS 199-36-6411.39-001-299000	C	SAN ANTONIO/SHOOT ME	108.00	N
056622	06-23-2022	00464	GREENVILLE BEARING	UNDIST. ORGAN.UN	191215 77255 199-51-6319.00-999-299000	C	BEARINGS	31.70	N
056610	06-23-2022	00469	AIRGAS USA	HIGH SCHOOL	191218 9988985348 199-11-6399.39-001-222000	C	OXYGEN BOTTLE RENTAL	246.64	N
056564	06-09-2022	00517	ECHO PUBLISHING CO	HIGH SCHOOL	190004 8736 199-11-6499.41-001-211000	C	GRADUATION PROGRAMS	231.00	N
056573	06-09-2022	00542	HOOTEN'S	UNDIST. ORGAN.UN	191044 182309 199-34-6319.00-999-299000	C	DEGREASER/BOTLS/NUTS	40.77	N
				UNDIST. ORGAN.UN	191052 182963 199-51-6319.00-999-299000	C	BITS/NUT SET/TOILET WE	89.82	N
				UNDIST. ORGAN.UN	190981 174790 199-51-6319.00-999-299000	C	HARDWARE/HANG TV/MAI	141.51	N
				UNDIST. ORGAN.UN	191128 193146 199-51-6319.00-999-299000	C	HOSE/EXT. CORD/SHUT O	266.93	N
				HIGH SCHOOL	191175 197492 865-00-2190.42-001-200000	C	SKEET SHOOT AMMO	259.80	N
							Check 056573 Total:	**798.83**	
							Vendor 00542 Total:	**798.83**	
056618	06-23-2022	00558	DEPARTMENT OF PUB	SUPERINTENDENT	191246 202205-238737 199-41-6499.00-701-299000	C	HISTORY INQUIRES	16.00	N
056606	06-09-2022	00671	TRIPLE B AUTOMOTIV	UNDIST. ORGAN.UN	191174 147195 199-34-6319.00-999-299000	C	SUMMER MAINTE BUS SU	3,658.02	N
056644	06-23-2022	00671	TRIPLE B AUTOMOTIV	UNDIST. ORGAN.UN	191217 148893 199-34-6319.00-999-299000	C	FUEL FILTER	84.99	N
056672	06-29-2022	00671	TRIPLE B AUTOMOTIV	UNDIST. ORGAN.UN	191173 147335 199-34-6319.00-999-299000	C	OIL FILTER WRENCH	44.49	N
							Vendor 00671 Total:	**3,787.50**	
056567	06-09-2022	00672	FEC ELECTRIC	UNDIST. ORGAN.UN	191178 199-51-6259.73-999-299000	C	ELECTRIC SERVICES	19,514.71	N
056586	06-09-2022	00673	MCKAY MUSIC	HIGH SCHOOL	191047 485535/485024 199-36-6249.75-001-299000	C	INSTRUMENT REPAIRS	109.00	N
056563	06-09-2022	00676	CASH SPECIAL UTILIT	UNDIST. ORGAN.UN	191181 199-51-6259.71-999-299000	C	WATER SERVICES	1,251.83	N

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056619	06-23-2022	00746	DISCOUNT WHEEL AN	UNDIST. ORGAN.UN	191233 1-155395 199-34-6249.00-999-299000	C	DODGE TRUCK/OIL HANG	158.98	N
056625	06-23-2022	00833	HORTON SALES	HIGH SCHOOL	191248 22-3539 199-36-6249.00-001-291000	C	ATHLETIC/IC MACHINE RE	471.78	N
056665	06-29-2022	00852	RON'S MOBILE DRUG	UNDIST. ORGAN.UN	191256 1248 199-34-6499.00-999-299000	C	DOT PHYSICALS	1,395.00	N
056666	06-29-2022	00922	SCHOLASTIC	ELEMENTARY SCH	190426 M7233890 199-11-6399.00-101-211000	C	READING SUPPLEMENTAL	1,961.19	N
056616	06-23-2022	00943	CHALK'S TRUCK PART	UNDIST. ORGAN.UN	191234 168968/1 199-34-6319.00-999-299000	C	BUS PARTS/11-1	1,193.92	N
056652	06-29-2022	00943	CHALK'S TRUCK PART	UNDIST. ORGAN.UN	191255 178589 199-34-6319.00-999-299000	C	BUS PARTS	494.86	N
				UNDIST. ORGAN.UN	191268 177967 199-34-6319.00-999-299000	C	EMERGENCY DOOR SWIT	124.88	N
							Check 056652 Total:	**619.74**	
							Vendor 00943 Total:	**1,813.66**	
056568	06-09-2022	00969	FLIPPEN GROUP	MIDDLE SCHOOL	191063 67579 199-11-6411.00-041-211000	C	CAPTURING KIDS HEARTS	2,200.00	N
				MIDDLE SCHOOL	191135 67579 199-13-6411.00-041-211000	C	CAPTURING KIDS HEARTS	550.00	N
				MIDDLE SCHOOL	191143 67579 199-13-6411.00-041-211000	C	CAPTURING KIDS HEARTS	498.00	N
				MIDDLE SCHOOL	191143 67579 199-23-6499.00-041-299000	C	CAPTURING KIDS HEARTS	52.00	N
							Check 056568 Total:	**3,300.00**	
							Vendor 00969 Total:	**3,300.00**	
056626	06-23-2022	00971	HUNT COUNTY ELECTI	DIRECT COST	191237 FINAL 199-41-6439.00-720-299000	C	ELECTION INVOICE	3,592.34	N
056659	06-29-2022	00972	J BRANDT RECOGINITI	SUPERINTENDENT	190602 61004 199-41-6499.00-701-299000	C	SERVICE AWARD PINS	486.15	N
056641	06-23-2022	01061	TEAM EXPRESS	HIGH SCHOOL	190894 550168/545025 199-36-6399.07-001-291000	C	FLIGHT BALLS/ARM BAND	418.40	N
056572	06-09-2022	01082	GRIFFIN COMMUNICA	UNDIST. ORGAN.UN	191151 2097 199-51-6249.00-999-299000	C	ALARM SERVICES	1,484.85	N
056623	06-23-2022	01082	GRIFFIN COMMUNICA	UNDIST. ORGAN.UN	191243 2625/26/27/28 199-51-6249.00-999-299000	C	ANNUAL FIRE INSPECTIO	970.00	N
056658	06-29-2022	01082	GRIFFIN COMMUNICA	UNDIST. ORGAN.UN	191263 2629 199-51-6319.00-999-299000	C	FIRE ALARM SERVICED	225.00	N
							Vendor 01082 Total:	**2,679.85**	
056603	06-09-2022	01094	THE COLLEGE BOARD	HIGH SCHOOL	191169 ES00119062 289-11-6299.00-001-211000	C	SAT EXAMS	1,476.00	N
056648	06-29-2022	01183	ACT	HIGH SCHOOL	191278 20066 199-31-6339.00-001-221000	C	STATE TESTING/ACT	1,296.00	N
056594	06-09-2022	01185	RESERVE ACCOUNT	BUSINESS OFFICE	191183 # 15256464 199-41-6399.PS-750-299000	C	POSTAGE/POSTAGE MAC	1,000.00	N

Check Nbr	Check Date	Vend Nbr	Payee	Organization	PO Nbr / Invoice Nbr / Fnd-Fnc-Obj.So-Org-Prog	Typ Cd	Reason	Amount	EFT
056647	06-28-2022	01251	CARD SERVICE CENT	ELEMENTARY SCH	191084 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SUPP	33.68	N
				ELEMENTARY SCH	191030 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SUPP	77.77	N
				UNDIST. ORGAN.UN	191190 199-11-6399.20-999-299000	C	WEBSITE RENEWAL	38.38	N
				HIGH SCHOOL	190833 199-11-6412.00-001-223000	C	PIZZA FOR SPED STUDEN	50.95	N
				HIGH SCHOOL	191038 199-11-6499.88-001-223000	C	STUDENT CLASS CREDIT	141.00	N
				ELEMENTARY SCH	190947 199-23-6399.00-101-299000	C	POPCORN FOR STAAR TE	20.00	N
				UNDIST. ORGAN.UN	191053 199-34-6411.00-999-299000	C	BUS PHYSICAL/D JONES	89.00	N
				HIGH SCHOOL	191205 199-36-6411.39-001-299000	C	FFA SHEET SHOOT EXPE	484.27	N
				HIGH SCHOOL	191166 199-36-6412.75-001-299000	C	BAND STATE SOLO CONT	64.46	N
				SUPERINTENDENT	191061 199-41-6499.00-701-299000	C	INTERVIEW COMMITTEE P	40.96	N
				SUPERINTENDENT	191107 199-41-6499.00-701-299000	C	INTERVIEW COMMITTEE L	158.03	N
				SCHOOL BOARD	191134 199-41-6499.00-702-299000	C	SUPPLIES/TEACHER/PRO	76.00	N
				ELEMENTARY SCH	191048 199-51-6499.99-101-299000	C	STORAGE CONTAINER RE	340.00	N
				UNDIST. ORGAN.UN	191189 199-52-6219.00-999-299000	C	SRO OFFICER CELL PHON	33.08	N
				HIGH SCHOOL	190519 865-00-2190.52-001-200000	C	SR GRAD PRAC LUNCH	1,354.12	N
				MIDDLE SCHOOL	190795 865-00-2190.59-041-200000	C	Woodall Retirement	49.00	N
							Check 056647 Total:	**3,050.70**	
							Vendor 01251 Total:	**3,050.70**	
056579	06-09-2022	01368	LABATT FOOD SERVIC	UNDIST. ORGAN.UN	210488 240-35-6341.00-999-299000	C	FOOD INVOICE MS	6,403.18	N
				UNDIST. ORGAN.UN	210488 240-35-6341.00-999-299000	C	FOOD INVOICE ELEM	6,566.38	N
				UNDIST. ORGAN.UN	210488 240-35-6341.00-999-299000	C	FOOD INVOICE HS	7,053.91	N
				UNDIST. ORGAN.UN	210488 240-35-6342.00-999-299000	C	NON FOOD INVOICE MS	1,076.24	N
				UNDIST. ORGAN.UN	210488 240-35-6342.00-999-299000	C	NON FOOD INVOICE MS	448.25	N
				UNDIST. ORGAN.UN	210488 240-35-6342.00-999-299000	C	NON FOOD INVOICE ELEM	410.37	N
							Check 056579 Total:	**21,958.33**	
							Vendor 01368 Total:	**21,958.33**	
056596	06-09-2022	01680	SULLIVAN SUPPLY SO	HIGH SCHOOL	190929 PSI308916 199-11-6399.00-001-222000	C	AG BARN FAN	554.50	N
056608	06-09-2022	01742	US GAMES	HIGH SCHOOL	191098 917264552 199-11-6399.00-001-211000	C	PE FITNESS GRAM PROG	104.00	N
				MIDDLE SCHOOL	191098 917264552 199-11-6399.00-041-211000	C	PE FITNESS GRAM PROG	104.00	N

Check Nbr	Check Date	Vend Nbr	Payee	Organization	PO Nbr / Fnd-Fnc-Obj.So-Org-Prog	Invoice Nbr	Typ Cd	Reason	Amount	EFT
				ELEMENTARY SCH	191098 199-11-6399.00-101-211000	917264552	C	PE FITNESS GRAM PROG	104.00	N
								Check 056608 Total:	**312.00**	
								Vendor 01742 Total:	**312.00**	
056612	06-23-2022	01783	ALPHACARD SYSTEM	UNDIST. ORGAN.UN	191245 199-11-6399.20-999-299000	6856520	C	BADGE CARDS	100.00	N
056649	06-29-2022	01783	ALPHACARD SYSTEM	UNDIST. ORGAN.UN	191254 199-11-6399.20-999-299000	6860357	C	BADGE/PRINTER RIBBON	450.00	N
								Vendor 01783 Total:	**550.00**	
056592	06-09-2022	01816	RAINS COUNTY APPR	TAX OFFICE	191137 199-99-6213.00-703-299000	3-2022	C	2ND QTR APPRAISAL FEE	749.16	N
056561	06-09-2022	01968	ATWOODS	HIGH SCHOOL	191141 199-11-6399.39-001-222000		C	SHOP TOWELS	21.98	N
056607	06-09-2022	02103	TXTAG	HIGH SCHOOL	191177 199-36-6411.39-001-299000		C	FFA TRIP TOLLS	46.15	N
056617	06-23-2022	02196	COMPLETE SUPPLY IN	UNDIST. ORGAN.UN	190873 199-51-6319.00-999-299000		C	CUSTODIAL SUPPLIES	15,950.50	N
056577	06-09-2022	02198	JENNIFER MCCLANAH	HIGH SCHOOL	191147 199-36-6411.85-001-291000	REIMBURSE	C	USA CHEER SAFETY PRO	75.00	N
056593	06-09-2022	02244	READING WAREHOUS	MIDDLE SCHOOL	189255 410-11-6321.00-041-211000	217453	C	READING BOOKS	410.35	N
056587	06-09-2022	02394	NORTH TEXAS TOLLW	HIGH SCHOOL	191176 199-36-6411.39-001-299000		C	FFA TRIP TOLL	10.14	N
				HIGH SCHOOL	191202 199-36-6411.39-001-299000		C	FFA TRIP/TOLLS	12.53	N
								Check 056587 Total:	**22.67**	
056661	06-29-2022	02394	NORTH TEXAS TOLLW	UNDIST. ORGAN.UN	191262 199-34-6319.00-999-299000		C	TOLL FEES/CAR	2.70	N
								Vendor 02394 Total:	**25.37**	
056657	06-29-2022	02589	GREENVILLE FLORAL	SUPERINTENDENT	191157 865-00-2190.59-701-200000		C	PLANT/FORMER STUDENT	85.00	N
056630	06-23-2022	02652	LEAD4WARD	SUPERINTENDENT	191244 199-41-6499.00-701-299000	A22C16900233	C	ACCOUNTABILITY PROGR	2,500.00	N
056638	06-23-2022	02668	WELLS FARGO VENDO	ELEMENTARY SCH	191222 199-23-6249.00-101-299090	1092860456	C	REPAIR/ELEM COPIER MA	384.01	N
056639	06-23-2022	02668	WELLS FARGO VENDO	HIGH SCHOOL	191225 199-23-6249.00-001-299090	106260233	C	COPIER MAINTE OVERAG	85.95	N
								Vendor 02668 Total:	**469.96**	
056650	06-29-2022	02679	AMAZON	UNDIST. ORGAN.UN	191194 199-11-6219.20-999-211000		C	SUPPLIES	5,640.71	N
				HIGH SCHOOL	191060 199-11-6397.75-001-299000		C	BAND SUPPLIES	1,243.18	N
				HIGH SCHOOL	191082 199-11-6399.00-001-222000		C	ENRICHMENT CAMP	147.96	N
				MIDDLE SCHOOL	191186 199-11-6399.00-041-211000		C	CLASSROOM AWARD	72.72	N
				MIDDLE SCHOOL	191136 199-11-6399.00-041-211000		C	ENRICHMENT/CAMP SUPP	291.07	N
				MIDDLE SCHOOL	191150 199-11-6399.00-041-211000		C	ENRICHMENT CAMP SUPP	112.67	N

Check Nbr	Check Date	Vend Nbr	Payee	Organization	PO Nbr / Invoice Nbr / Fnd-Fnc-Obj.So-Org-Prog	Typ Cd	Reason	Amount	EFT
				ELEMENTARY SCH	191031 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SUPP	81.29	N
				ELEMENTARY SCH	191139 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SUPP	29.66	N
				ELEMENTARY SCH	191087 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SUPP	173.08	N
				ELEMENTARY SCH	191159 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SUPP	174.68	N
				ELEMENTARY SCH	191014 199-11-6399.00-101-211000	C	SUPPLIES	394.94	N
				ELEMENTARY SCH	191078 199-11-6399.00-101-211000	C	ENRICHMENT CAMP SUPP	106.97	N
				ELEMENTARY SCH	 199-11-6399.00-101-211000	M	CREDIT/ITEM NOT RECEIV	-11.12	N
				HIGH SCHOOL	191033 199-11-6399.88-001-223000	C	CLASS SUPPLIES	484.01	N
				MIDDLE SCHOOL	191049 199-23-6399.00-041-299000	C	RED TABLE CLOTHS	28.65	N
				MIDDLE SCHOOL	191020 199-23-6499.00-041-299000	C	Chairs in classroom	56.40	N
				HIGH SCHOOL	191068 199-31-6399.00-001-299000	C	ACADEMIC SIGNING DAY	133.16	N
				UNDIST. ORGAN.UN	191188 199-34-6319.00-999-299000	C	OFFICE CHAIR	74.99	N
				UNDIST. ORGAN.UN	191046 199-34-6319.00-999-299000	C	TABLE TOP ICE MACHINE	117.29	N
				UNDIST. ORGAN.UN	190982 199-34-6319.00-999-299000	C	ERASE CALENDAR/DRY E	257.39	N
				SUPERINTENDENT	191117 199-41-6399.00-701-299000	C	BOARD/ADMIN SUPPLIES	89.92	N
				SCHOOL BOARD	191117 199-41-6399.00-702-299000	C	BOARD/ADMIN SUPPLIES	19.99	N
				MIDDLE SCHOOL	191043 865-00-2190.49-041-200000	C	MORP DANCE AWARDS	79.17	N
				MIDDLE SCHOOL	191077 865-00-2190.50-041-200000	C	MS CHEER BOW SUPPLIE	94.81	N
							Check 056650 Total:	**9,893.59**	
							Vendor 02679 Total:	**9,893.59**	
056667	06-29-2022	02773	SCHOOL OUTFITTERS	MIDDLE SCHOOL	191028 13784652 199-11-6397.00-041-211000	C	MS CAFETERIA TABLES/C	1,122.36	N
				MIDDLE SCHOOL	191028 13784652 199-23-6249.00-041-299090	C	MS CAFETERIA TABLES/C	2,605.96	N
				MIDDLE SCHOOL	191028 13784652 199-23-6397.00-041-299000	C	MS CAFETERIA TABLES/C	750.00	N
							Check 056667 Total:	**4,478.32**	
							Vendor 02773 Total:	**4,478.32**	
056654	06-29-2022	02888	CM EQUIPMENT	UNDIST. ORGAN.UN	191253 452 199-51-6249.00-999-299000	C	GOLF CART REPAIRS	300.00	N
056640	06-23-2022	03042	SANITATION SOLUTIO	UNDIST. ORGAN.UN	191249 199-51-6249.00-999-299000	C	TRASH REMOVAL SERVIC	670.31	N

Check Nbr	Check Date	Vend Nbr	Payee	Organization	PO Nbr / Fnd-Fnc-Obj.So-Org-Prog	Invoice Nbr	Typ Cd	Reason	Amount	EFT
056609	06-09-2022	03082	WORTHINGTON DIREC	MIDDLE SCHOOL	190731 490-11-6399.00-041-211000	384781	C	4 X 10 VNI-TAL BULLENTIN	2,542.20	N
				ELEMENTARY SCH	190968 490-11-6399.00-101-211004	386679	C	GRANT AWARD/OTTMAN	1,730.84	N
								Check 056609 Total:	**4,273.04**	
056675	06-29-2022	03082	WORTHINGTON DIREC	HIGH SCHOOL	190993 199-11-6397.00-001-222000		C	CLASSROOM DESIGN	3,315.11	N
								Vendor 03082 Total:	**7,588.15**	
056601	06-09-2022	03095	TEXAS A&M UNIVERSI	HIGH SCHOOL	191182 865-00-2190.57-001-200000	SCHOLAR AWARD	C	SCHOLAR AWARD/L MCCL	500.00	N
				HIGH SCHOOL	191182 865-00-2190.57-001-200000	SCHOLAR AWARD	D	WRONG VENDOR	-500.00	N
								Check 056601 Total:	**.00**	
056669	06-29-2022	03095	TEXAS A&M UNIVERSI	HIGH SCHOOL	191207 865-00-2190.57-001-200000	MCCLELLAND	C	SCHOLAR AWARD/L MCCL	500.00	N
								Vendor 03095 Total:	**500.00**	
056662	06-29-2022	03109	PARIS FIRE EXTINGUI	UNDIST. ORGAN.UN	191257 199-51-6249.00-999-299000		C	FIRE EXTINGUISHER SER	2,483.00	N
056602	06-09-2022	03155	TEXAS YARD PRO INC	UNDIST. ORGAN.UN	191146 199-51-6249.00-999-299000	9460	C	LAWN MAINTE SERVICES	2,520.00	N
056642	06-23-2022	03155	TEXAS YARD PRO INC	UNDIST. ORGAN.UN	191240 199-51-6249.00-999-299000	9202	C	LAWN SERVICES	2,520.00	N
056670	06-29-2022	03155	TEXAS YARD PRO INC	UNDIST. ORGAN.UN	191267 199-51-6249.00-999-299000	9711	C	LAWN MAINTE SERVICES	2,520.00	N
								Vendor 03155 Total:	**7,560.00**	
056585	06-09-2022	04085	MATTHEW BRENNAN	UNDIST. ORGAN.UN	191200 199-34-6499.00-999-299000	BUS TESTING	C	REIMBURSE/BUS DRIVER	70.00	N
056584	06-09-2022	05007	LONE OAK ISD	SUPERINTENDENT	191142 199-41-6499.00-701-299000		C	PICTURE FRAME/SUPER	11.99	N
056631	06-23-2022	05007	LONE OAK ISD	HIGH SCHOOL	191223 199-23-6399.00-001-299000		C	HS OFFICE REIMBURSE P	107.94	N
								Vendor 05007 Total:	**119.93**	
056591	06-09-2022	05203	QUINLAN ISD	HIGH SCHOOL	190083 199-93-6492.00-001-222000	212202	C	READING ACADEMY PRO	10,195.62	N
056597	06-09-2022	05204	SUSANNAH WILLIAMS	HIGH SCHOOL	191164 199-11-6411.00-001-222000	SPONSORS	C	NTL/HS BETA MEAL MONE	272.00	N
				HIGH SCHOOL	191164 865-00-2190.49-001-200000	STUDENTS	C	NTL/HS BETA MEAL MONE	312.00	N
								Check 056597 Total:	**584.00**	
								Vendor 05204 Total:	**584.00**	
056634	06-23-2022	05229	NATIONAL FFA	HIGH SCHOOL	191247 865-00-2190.42-001-200000	272819/273079	C	FFA JACKET/SCARF/TIE	908.00	N
056588	06-09-2022	13630	OAK FARMS DAIRY DA	UNDIST. ORGAN.UN	210489 240-35-6341.00-999-299000		C	ELEM/MS/HS FOOD	5,657.87	N
056569	06-09-2022	13653	GENTRY FINANCIAL G	SUPERINTENDENT	191196 199-41-6499.00-701-299000	jUNE BILL	C	JUNE EMPLOYEE LIFE INS	117.65	N

Check Nbr	Check Date	Vend Nbr	Payee	Organization	PO Nbr / Fnd-Fnc-Obj.So-Org-Prog	Invoice Nbr	Typ Cd	Reason	Amount	EFT
056656	06-29-2022	13664	GARY SORRELLS	SUPERINTENDENT	191258 199-41-6411.00-701-299000		C	TASBO MEAL/SUPPLIES	93.80	N
056604	06-09-2022	13791	TREERING CORPORAT	HIGH SCHOOL	191140 865-00-2190.44-001-200000	220913-2021	C	YEARBOOK ORDERS	94.92	N
056566	06-09-2022	13799	EWELL EDUCATIONAL	HIGH SCHOOL	191154 199-11-6219.00-001-211000	476-66912	C	ONLINE AG RESOURCE P	325.00	N
				HIGH SCHOOL	191153 865-00-2190.42-001-200000	476-14177	C	AREA SCAN SHEET ENTR	437.00	N
								Check 056566 Total:	**762.00**	
								Vendor 13799 Total:	**762.00**	
056632	06-23-2022	13800	MATTHEW'S AC & HEA	UNDIST. ORGAN.UN	191219 199-51-6249.00-999-299000	2555	C	REPLACE TRANSFORMER	550.00	N
056621	06-23-2022	13812	GREEN LIGHT GROUP	UNDIST. ORGAN.UN	190903 199-51-6249.00-999-299000	0073209	C	REPAIRS/FLOOR MACHIN	1,584.17	N
056624	06-23-2022	13816	HARTLINE'S GOLF CE	HIGH SCHOOL	191221 199-36-6499.11-001-291000		C	BOYS/GIRLS GOLF TEAM	200.00	N
056595	06-09-2022	13860	SIMPLIFIED SCHOOL S	HUNT COUNTY COO	191165 459-41-6219.00-751-299000	1072	C	MAY CO-OP SERVICES	9,665.76	N
056562	06-09-2022	13862	BENSON BRO.WRECK	UNDIST. ORGAN.UN	191193 199-34-6249.00-999-299000	88099	C	TOW BUS	175.00	N
056600	06-09-2022	13867	TEACHERS PAY TEAC	MIDDLE SCHOOL	191185 199-11-6399.00-041-211000	196344886	C	HISTORY/SOCIAL ACTIVITI	46.99	N
056629	06-23-2022	13978	JIMMY SONGER	UNDIST. ORGAN.UN	191211 199-51-6249.00-999-299000	MAY/JUNE	C	MAY/JUNE MAINTE PAY	642.50	N
056663	06-29-2022	13997	PAYTON HOLLAND	HIGH SCHOOL	191270 199-36-6411.39-001-299000	MEALS	C	SAN ANTONIO/SHOOT ME	108.00	N
056589	06-09-2022	14055	POWELL LAW GROUP,	SUPERINTENDENT	191198 199-41-6211.00-701-299000	7114	C	GENERAL MATTE/LEGAL I	11,704.69	N
022020	06-29-2022	14066	ALL STAR EXTERIORS	UNDIST. ORGAN.UN	191277 699-81-6639.00-999-299000	RAMP/STEPS	C	FB/BLEACHER RAMP/STE	3,350.00	N
056633	06-23-2022	14095	NATHAN WHITEHEAD	UNDIST. ORGAN.UN	191252 199-51-6249.00-999-299000	MAY/JUNE	C	MAY/JUNE TECH PAY	1,260.00	N
056613	06-23-2022	14099	ANCHOR PLUMBING	UNDIST. ORGAN.UN	191238 199-51-6249.00-999-299000	002761	C	PLUMBING REPAIRS	1,275.00	N
056583	06-09-2022	14125	LINDSEY BUHLER	MIDDLE SCHOOL	190396 865-00-2190.49-041-200000	NTL BETA MEALS	C	MS BETA/TRAVEL MEALS	1,980.00	N
056636	06-23-2022	14157	PAYTON RAINBOLT	UNDIST. ORGAN.UN	191209 199-51-6249.00-999-299000	MAY/JUNE	C	MAY/JUNE MAINTE PAY	522.50	N
056645	06-23-2022	14161	TRISTON WILSON	UNDIST. ORGAN.UN	191210 199-51-6249.00-999-299000	MAY/JUNE	C	MAY/JUNE MAINTE PAY	760.00	N
056580	06-09-2022	14200	LACIE STEWART	UNDIST. ORGAN.UN	191168 240-35-6129.00-999-299000	MAY WORK	C	MAY CAFE/WRK PROGRA	33.00	N
022018	06-09-2022	14215	DYNAMIC ENGINEERIN	UNDIST. ORGAN.UN	191197 699-81-6639.00-999-299000	00008899	C	COMPRESSION TEST/CYLI	595.60	N

Check Nbr	Check Date	Vend Nbr	Payee	Organization	PO Nbr / Fnd-Fnc-Obj	Invoice Nbr / So-Org-Prog	Typ Cd	Reason	Amount	EFT
056635	06-23-2022	14218	ONWARD LEARNING	ELEMENTARY SCH	191251 199-11-6219.00	OL2056 -101-223000	C	SHARE SERVICES	471.52	N
056599	06-09-2022	14230	TAYLOR & FRANCIS G	ELEMENTARY SCH	191184 199-31-6339.00	TM-108087 -101-221000	C	COMPLETE KIT SET/GT TE	176.00	N
056664	06-29-2022	14263	RANDY ARRINGTON	UNDIST. ORGAN.UN	190748 240-35-6249.00	APRIL/MAY -999-299000	C	H/S CAFE SERVICES	1,250.00	N
022019	06-09-2022	14267	POGUE CONSTRUCTI	UNDIST. ORGAN.UN	191161 699-81-6639.00	# 3 -999-299000	C	CONSTRUCTION PHASE #	287,131.60	N
022022	06-29-2022	14267	POGUE CONSTRUCTI	UNDIST. ORGAN.UN	191260 699-81-6639.00	PHASE # 4 -999-299000	C	FB FIELD CONST PHASE #	344,194.62	N
								Vendor 14267 Total:	**631,326.22**	
022021	06-29-2022	14270	MX5 SERVICES	UNDIST. ORGAN.UN	191272 699-81-6639.00	6-22-328 -999-299000	C	CONCRETE SIDEWALK/EL	7,300.00	N
056582	06-09-2022	14275	LAURA FERNANDEZ	UNDIST. ORGAN.UN	191167 240-35-6129.00	MAY WORK -999-299000	C	MAY CAFE SUB WORK	81.00	N
056628	06-23-2022	14278	JACK TURNER	UNDIST. ORGAN.UN	191212 199-51-6249.00	MAY/JUNE -999-299000	C	MAY/JUNE MAINTE PAY	760.00	N
056614	06-23-2022	14279	BRAYDEN PATTERSO	UNDIST. ORGAN.UN	191213 199-51-6249.00	MAY/JUNE -999-299000	C	MAY/JUNE MAINTE PAY	710.00	N
056615	06-23-2022	14280	CALEB ROUSER	UNDIST. ORGAN.UN	191214 199-51-6249.00	MAY/JUNE -999-299000	C	MAY/JUNE MAINTE PAY	287.50	N
056611	06-23-2022	14281	ALEXIS MOUNGER	SUPERINTENDENT	191208 199-41-6249.00	MAY/JUNE -701-299000	C	ADMIN/SUMMER PAY	982.00	N
056620	06-23-2022	14282	DONALD STEWART	UNDIST. ORGAN.UN	191229 240-35-6129.00	JUNE 14,15,16 -999-299000	C	CAFE' REPAIRS	200.00	N
								Grand Total:	**874,936.05**	

End of Report

LONE OAK INDEPENDENT SCHOOL DISTRICT
SUMMARY OF BANK ACCOUNT BALANCES
FOR THE MONTH END JUNE 2022

		OPENING BALANCES	RECEIPTS	DISBURSEMENTS	ENDING BALANCES
CHECKING ACCOUNTS					
General Operating	$	1,591,419	1,751,121	1,152,279	2,190,261
Debt Service		2,311,035	23,018		2,334,053
Turf Replacement Funds		0	50,000	0	50,000
CAPITAL PROJECTS - BOND		3,827,278	151	288,882	3,538,547
TOTAL CHECKING ACCOUNTS	$	3,902,454	1,824,139	1,152,279	4,574,314
TIME DEPOSITS					
Texpool (General Operating)	$	76,053	63	0	76,116
Texpool (I & S)		4,727	4	0	4,731
American Nat'l Bank CD'S		2,298,685	172	0	2,298,857
Inwood Nat'l Bank CD		213,308	0	0	213,308
Inwood Nat'l Bank CD (I&S)		42,668	17	0	42,685
CAPITAL PROJECTS - CD#1		25,015,244	6,169	0	25,021,413
CAPITAL PROJECTS - CD #2		5,000,000	616	0	5,000,616
TOTAL TIME DEPOSITS	$	32,650,685	7,041	0	32,657,726
TOTAL ALL FUNDS	$	36,553,139	1,831,180	1,152,279	37,232,040
(Deduct) Interaccount Transfers		0	0	0	0
TOTAL FOR PERIOD	$	36,553,139	1,831,180	1,152,279	37,232,040

Fund Balance as of June 30, 2021: $4,455,783

ATTN: ALL CD INTEREST ABOVE IS ACCRUED INTEREST RECEIVABLE, AND WILL BE ACCURATELY RECONCILED TO THE DISTRICT'S GENERAL LEDGER AT YEAR END.

LONE OAK ISD
2022 - 2023 BUDGET

GENERAL OPERATING FUND

FUND 199 - General Operating

REVENUES: OBJECT	DESCRIPTION	(BEFORE) ESTIMATED REVENUES	(AFTER) ESTIMATED REVENUES						
5700	Local / Intermediate Revenue	$ 3,350,000	$ 3,350,000	$ -	$ -	$ -		$ -	$ -
5800	State Program Revenue	7,900,000	$ 7,900,000						
5900	Federal Program Revenue	250,000	$ 250,000						
	TOTAL	$ 11,500,000	$ 11,500,000	$ -	$ -	$ -	$ -	$ -	$ -

APPROPRIATIONS: FUNCTION	DESCRIPTION	(BEFORE) AMEND / REALLO	(AFTER) AMEND / REALLO	DIFFERENCE					
11	Instruction	$ 6,287,632	$ 6,287,632						
12	Instructional Resources & Media	186,899	$ 186,899						
13	Instructional Staff Development	13,000	$ 13,000						
21	Instructional Administration	38,000	$ 38,000						
23	School Leadership	774,987	$ 774,987						
31	Guidance and Counseling	345,411	$ 345,411						
33	Health Services	107,279	$ 107,279						
34	Student Transportation	722,577	$ 722,577						
35	Food Service	100,000	$ 100,000						
36	Cocurricular / Extracurricular	564,695	$ 564,695						
41	General Adfministration	658,650	$ 658,650						
51	Facilities Maintenance & Operations	1,105,282	$ 1,105,282						
52	Security & Monitoring Services	40,000	$ 40,000						
53	Data Processing	109,400	$ 109,400						
61	Community Services	26,688	$ 26,688						
71	Debt Services	165,000	$ 165,000						
93	Shared Service Arrangement	184,500	$ 184,500						
99	Other Intergovernmental Charges	70,000	$ 70,000						
		$ 11,500,000	$ 11,500,000	0.00	0.00	0.00	0.00	0.00	0.00

FOOD SERVICE FUND

FUND 240 - Food Service Fund

REVENUES: OBJECT	DESCRIPTION	(BEFORE) ESTIMATED REVENUES	(AFTER) ESTIMATED REVENUES	#1 AMENDMENT	#2 AMENDMENT	DIFFERENCE		
5700	Local / Intermediate Revenue	$ 200,000	$ 200,000					
5800	State Program Revenue	45,000	$ 45,000					
5900	Federal Program Revenue	465,000	$ 465,000					
	TOTAL	$ 710,000	$ 710,000	0.00	0.00	0.00	0.00	0.00

APPROPRIATIONS: FUNCTION	DESCRIPTION	(BEFORE) AMEND / REALLO	(AFTER) AMEND / REALLO	AMEND #1	#2 AMENDMENT	DIFFERENCE		
35	Food Service	$ 710,000	$ 710,000					
		$ 710,000	$ 710,000	0.00	0.00	0.00	0.00	0.00

DEBT SERVICE FUND

FUND 599 - Debt Service Fund

REVENUES: OBJECT	DESCRIPTION	(BEFORE) ESTIMATED REVENUES	(AFTER) ESTIMATED REVENUES			DIFFERENCE		
5700	Local / Intermediate Revenue	$ 2,149,642	$ 2,149,642					
5800	State Program Revenue	50,000	50,000					
5900	Federal Program Revenue	-						
	TOTAL	$ 2,199,642	$ 2,199,642	0.00	0.00	0.00	0.00	0.00

APPROPRIATIONS: FUNCTION	DESCRIPTION	(BEFORE) AMEND / REALLO	(AFTER) AMEND / REALLO			DIFFERENCE		
71	Debt Service	$ 2,199,642	$ 2,199,642					
		$ 2,199,642	$ 2,199,642	0.00	0.00	0.00	0.00	0.00

Regular Meeting

Monday, June 20, 2022 6:00 PM
Lone Oak ISD Administration Building, 8162 Highway 69 South, Lone Oak, TX 75453

Orville Gentry:	Present
Nikki Haynes:	Present
Donald Isenberg:	Present
Jeremy McClanahan:	Present
Chris Moore:	Present
Clint Patterson:	Present
Justin Ramm:	Present

1. **Establish a quorum and call meeting to order**
   Discussion: This meeting was called to order at 6:01 pm
2. **Opening Prayer & Pledges**
   Discussion: Jeremy McClanahan said the prayer.
3. **Public hearing to discuss the 2022-2023 proposed budget.**
   Discussion: The public hearing began at 6:03 pm. No questions or comments from the public. Public hearing ended at 6:06 pm.
4. **Forum for community input**
   Discussion: No input was provided.
5. **Consent Agenda**
   Action(s):
   Motion to approve the consent agenda as presented. This motion, made by Jeremy McClanahan and seconded by Nikki Haynes, Passed.
   Voting Detail:

Orville Gentry:	Yea
Nikki Haynes:	Yea
Donald Isenberg:	Yea
Jeremy McClanahan:	Yea
Chris Moore:	Yea
Clint Patterson:	Yea
Justin Ramm:	Yea

   Voting Summary: Yea: 7, Nay: 0

5.1. Monthly Check Register

5.2. Finance/Investment Report

5.3. Budget Amendments/Reallocation

5.4. Minutes from previous meeting

6. **Administrative Team Reports**
   Discussion: Dr. Wilhite gave a Middle School update.

Mrs. Luhn gave an Elementary School update.
Mr. Smith gave a College Street update.
Mr. Compton gave a High School update.
Mr. Hicks gave a PIEMS/testing update.
Mr. Shepherd gave a maintenance update.

7. **Discuss and possibly take action on the 2022-2023 proposed budget.**
Action(s):
Motion to approve the 2022-2023 proposed budget as presented. This motion, made by Donald Isenberg and seconded by Orville Gentry, Passed.
Voting Detail:

Orville Gentry:	Yea
Nikki Haynes:	Yea
Donald Isenberg:	Yea
Jeremy McClanahan:	Yea
Chris Moore:	Yea
Clint Patterson:	Yea
Justin Ramm:	Yea

Voting Summary: Yea: 7, Nay: 0

8. **Discuss and possibly approve bus and vehicle purchases for next year.**
Action(s):
Motion that we go with the International 77 passenger bus at $114,604.00 and the International 54 passenger bus as $117,890.00 that Wayne proposed. This motion, made by Chris Moore and seconded by Clint Patterson, Passed.
Voting Detail:

Orville Gentry:	Yea
Nikki Haynes:	Yea
Donald Isenberg:	Yea
Jeremy McClanahan:	Yea
Chris Moore:	Yea
Clint Patterson:	Yea
Justin Ramm:	Yea

Voting Summary: Yea: 7, Nay: 0

9. **Discuss and possibly approve the purchase of an SRO vehicle**
Action(s):
Motion that we budget $61,000.00 for a marked Chevy Tahoe to include the radio system. This motion, made by Donald Isenberg and seconded by Jeremy McClanahan, Passed.
Voting Detail:

Orville Gentry:	Yea
Nikki Haynes:	Yea

Donald Isenberg:	Yea
Jeremy McClanahan:	Yea
Chris Moore:	Yea
Clint Patterson:	Yea
Justin Ramm:	Yea

Voting Summary: Yea: 7, Nay: 0

10. **Discuss and possibly approve recommended Defender program updates for the 2022-2023 school year**

Discussion: No action taken at this time.

11. **Discuss and possibly approve security upgrades for the district to include sensors and notifications on all exterior doors**

Action(s):

Motion we approve the security upgrades for the District that includes sensors and notifications for all exterior doors as presented in the Guardian proposal. This motion, made by Donald Isenberg and seconded by Chris Moore, Passed.

Voting Detail:

Orville Gentry:	Yea
Nikki Haynes:	Yea
Donald Isenberg:	Yea
Jeremy McClanahan:	Yea
Chris Moore:	Yea
Clint Patterson:	Yea
Justin Ramm:	Yea

Voting Summary: Yea: 7, Nay: 0

Discussion: In light of recent events in Texas, we have looked into a solution for doors being propped open and other safety concerns.

12. **Discuss and possibly approve remodeling of two elementary classrooms to increase intervention spaces**

Action(s):

Motion we approve up to $25,000.00 for the renovation of classrooms as presented. This motion, made by Clint Patterson and seconded by Nikki Haynes, Passed.

Voting Detail:

Orville Gentry:	Yea
Nikki Haynes:	Yea
Donald Isenberg:	Yea
Jeremy McClanahan:	Yea
Chris Moore:	Yea
Clint Patterson:	Yea

Justin Ramm: Yea

Voting Summary: Yea: 7, Nay: 0

13. **Discuss and possibly update the effective date of the superintendent contract**

Action(s):

Motion to update the Superintendent's contract to January 18, 2022. This motion, made by Jeremy McClanahan and seconded by Donald Isenberg, Passed.

Voting Detail:

Orville Gentry:	Yea
Nikki Haynes:	Yea
Donald Isenberg:	Yea
Jeremy McClanahan:	Yea
Chris Moore:	Yea
Clint Patterson:	Yea
Justin Ramm:	Yea

Voting Summary: Yea: 7, Nay: 0

Discussion: This item was moved to after the executive session.

This meeting adjourned into executive session at 7:02 pm.

14. **Executive Session**

Discussion: This meeting went back into open session at 8:03 pm.

14.1. 551.074 Discuss personnel or to hear complaints against personnel

15. **Adjournment**

Discussion: This meeting was adjourned at 8:05 pm

_____

Board Secretary

Special Meeting

Tuesday, July 5, 2022 5:00 PM
Lone Oak ISD Administration Building, 8162 Highway 69 South, Lone Oak, TX 75453

Orville Gentry:	Present
Nikki Haynes:	Absent
Donald Isenberg:	Absent
Jeremy McClanahan:	Present
Chris Moore:	Present
Clint Patterson:	Present
Justin Ramm:	Present

Chris Moore was present via Google Teams.

1. **Establish a quorum and call meeting to order**
   Discussion: This meeting was called to order at 5:00 PM.
2. **Opening Prayer & Pledges**
   Discussion: Orville Gentry led the prayer.
3. **Forum for community input**
   Discussion: No community input was provided.
4. **Bond GMP Approval**
   Action(s):
   I move that we accept the Guaranteed Maximum Price presented by Pogue for the remainder of the football field, and authorize the Board President to execute the GMP on the District's behalf. This motion, made by Clint Patterson and seconded by Jeremy McClanahan, Passed.
   Voting Detail:

Orville Gentry:	Yea
Nikki Haynes:	Absent
Donald Isenberg:	Absent
Jeremy McClanahan:	Yea
Chris Moore:	Yea
Clint Patterson:	Yea
Justin Ramm:	Yea

   Voting Summary: Yea: 5, Nay: 0, Absent: 2
5. **Executive Session**
   Discussion: No executive session was necessary.

5.1. 551.074 Discuss personnel or to hear complaints against personnel

6. **Adjournment**
   Discussion: This meeting was adjourned at 5:23 PM.

_____
Board Secretary

Lone Oak ISD 2022–2023

Employee Handbook

If you have difficulty accessing the information in this document because of a disability, please email jdewitt@loisd.net.



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Employee Handbook Receipt

Name _____

Campus/Department _____

I hereby acknowledge receipt of a copy of the Lone Oak ISD Employee Handbook. I agree to read the handbook and abide by the standards, policies, and procedures defined or referenced in this document.

Employees have the option of receiving the handbook in electronic format or hard copy.If you elect to receive a hard copy of the employee handbook, contact Jan DeWitt.

Please indicate your choice by checking the appropriate box below:

- ❒ I choose to receive the employee handbook in electronic format and accept responsibility for accessing it according to the instructions provided.
- ❒ I choose to receive a hard copy of the employee handbook and understand I am required to contact Jan DeWitt to obtain a hard copy.

The information in this handbook is subject to change. I understand that changes in district policies may supersede, modify, or render obsolete the information summarized in this document. As the district provides updated policy information, I accept responsibility for reading and abiding by the changes.

I understand that no modifications to contractual relationships or alterations of at-will employment relationships are intended by this handbook.

I understand that I have an obligation to inform my supervisor or department head of any changes in personal information such as phone number, address, etc. I also accept responsibility for contacting my supervisor or the Superintendent if I have questions or concerns or need further explanation.

_____ _____

Signature Date

Please sign and date this receipt and forward it to Jan DeWitt.

Introduction

The purpose of this handbook is to provide information that will help with questions and pave the way for a successful year. Not all district policies and procedures are included. Those that are, have been summarized. Suggestions for additions and improvements to this handbook are welcome and may be sent to jcarter@loisd.net.

This handbook is neither a contract nor a substitute for the official district policy manual. Nor is it intended to alter the at-will status of noncontract employees in any way. Rather, it is a guide to and a brief explanation of district policies and procedures related to employment. These policies and procedures can change at any time; these changes shall supersede any handbook provisions that are not compatible with the change. For more information, employees may refer to the policy codes that are associated with handbook topics, confer with their supervisor, or call the appropriate district office. District policies can be accessed online at http://pol.tasb.org/Home/Index/696.

District Information

Description of the District
Lone Oak ISD is a rural school district serving 1000 students grades Prek-12.

Mission Statement, Goals, and Objectives
Policy AE

Board of Trustees
Policies BA, BB series, BD series, and BE series

Texas law grants the board of trustees the power to govern and oversee the management of the district's schools. The board is the policy-making body within the district and has overall responsibility for the curriculum, school taxes, annual budget, employment of the superintendent and other professional staff, and facilities. The board has complete and final control over school matters within limits established by state and federal laws and regulations.

The board of trustees is elected by the citizens of the district to represent the community's commitment to a strong educational program for the district's children. Board members are elected at-large and serve three-year terms. Board members serve without compensation, must be qualified voters, and must reside in the district.

Current board members include:

- Justin Ramm, President
- Jeremy McClanahan, Vice President
- Chris Moore, Secretary
- Orville Gentry, Trustee
- Clint Patterson, Trustee
- Donald Isenburg, Trustee
- Nikki Haynes, Trustee

The board usually meets every third Monday at 6:00 pm unless posted otherwise. Special meetings may be called when necessary. A written notice of regular and special meetings will be posted on the district website and on the front window of the Administration Building at 8162 Hwy 69 South at least 72 hours before the scheduled meeting time. The written notice will show the date, time, place, and subjects of each meeting. In emergencies, a meeting may be held with a two-hour notice.

All meetings are open to the public. In certain circumstances, Texas law permits the board to go into a closed session from which the public and others are excluded. Closed session may occur

for such things as discussing prospective gifts or donations, real-property acquisition, certain personnel matters including employee complaints, security matters, student discipline, or consulting with attorneys regarding pending litigation.

Board Meeting Schedule

September 19, 2022
October 17, 2022
November 14, 2022
December 12, 2022
January 16, 2023
February 20, 2023
March 20, 2023
April 17, 2023
May 15, 2023
June 19, 2023
July 17, 2023
August 21, 2023

Administration

Central Office	
Superintendent:	Janeé Carter
Business Manager:	Gary Sorrells
Curriculum:	Heather Bortz
Communications:	Katy Turner
HR/Payroll:	Jan DeWitt
Acct. Payable:	Cindy Smith
PEIMS:	Jeff Hicks
Programs:	Beth Luhn
Principals	
Elementary School:	Jill Whitehead
Middle School:	Shannon Wilhite
High School:	Nate Compton
College Street:	Jared Smith
Technology	
Director:	Cassie Pinkston
Network Tech:	Isaiah Whitehead
District Operations:	Wayne Shepherd
Food Service Director:	Gary Sorrells
Athletic Director:	Logan Turner

Employment

Equal Employment Opportunity

Policies DAA, DIA

In its efforts to promote nondiscrimination and as required by law, Lone Oak ISD does not discriminate against any employee or applicant for employment because of race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age, disability, military status, genetic information, or on any other basis prohibited by law. Additionally, the district does not discriminate against an employee or applicant who acts to oppose such discrimination or participates in the investigation of a complaint related to a discriminatory employment practice. Employment decisions will be made on the basis of each applicant's job qualifications, experience, and abilities.

In accordance with Title IX, the district does not discriminate on the basis of sex and is required not to discriminate on the basis of sex in its educational programs or activities. The requirement not to discriminate extends to employment. Inquiries about the application of Title IX may be referred to the district's Title IX coordinator, to the Assistant Secretary for Civil Rights of the Department of Education, or both.

The district designates and authorizes the following employee as the Title IX coordinator for employees to address concerns or inquiries regarding discrimination based on sex, including sexual harassment: Janee Carter, Superintendent, 8162 HWY 69 S, jcarter@loisd.net, 903-634-5270. Reports can be made at any time and by any person, including during non- business hours, by mail, email, or phone. During district business hours, reports may also be made in person.

The district designates and authorizes the following employee as the ADA/Section 504 coordinator for employees for concerns regarding discrimination on the basis of a disability: Elizabeth Tanoos, 8162 HWY 69 S, etanoos@loisd.net, and 903-634-0980

Questions or concerns relating to discrimination for any other reason should be directed to the Superintendent.

Job Vacancy Announcements

Policy DC

Announcements of job vacancies by position and location are posted on a regular basis to the district's website and on the front entrance of the Administration Building.

Employment after Retirement

Policy DC

Individuals receiving retirement benefits from the Teacher Retirement System (TRS) may be employed under certain circumstances on a full- or part-time basis without affecting their benefits, according to TRS rules and state law. Detailed information about employment after retirement is available in the TRS publication *Employment after Retirement*. Employees can contact TRS for additional information by calling 800-223-8778 or 512-542-6400. Information is also available on the TRS Website (www.trs.texas.gov).

Contract and Noncontract Employment

Policy DC series

State law requires the district to employ all full-time professional employees in positions requiring a certificate from the State Board for Educator Certification (SBEC) and nurses under probationary, term, or continuing contracts. Employees in all other positions are employed at-will or by a contract that is not subject to the procedures for nonrenewal or termination under Chapter 21 of the Texas Education Code. The paragraphs that follow provide a general description of the employment arrangements used by the district.

Probationary Contracts. Nurses and full-time professional employees new to the district and employed in positions requiring SBEC certification must receive a probationary contract during their first year of employment. Former employees who are hired after a two-year lapse in district employment or employees who move to a position requiring a new class of certification may also be employed by probationary contract. Probationary contracts are one-year contracts. The probationary period for those who have been employed as a teacher in public education for at least five of the eight years preceding employment with the district may not exceed one school year.

For those with less experience, the probationary period will be three school years (i.e., three one-year contracts) with an optional fourth school year if the board determines it is doubtful whether a term or continuing contract should be given.

Term Contracts. Full-time professionals employed in positions requiring certification and nurses will be employed by term contracts after they have successfully completed the probationary period. The terms and conditions of employment are detailed in the contract and employment policies. All employees will receive a copy of their contract. Employment policies can be accessed online or copies will be provided upon request.

Noncertified Professional and Administrative Employees. Employees in professional and administrative positions that do not require SBEC certification (such as noninstructional administrators) are not employed by contract. Employment is not for any specified term and may be terminated at any time by either the employee or the district.

Paraprofessional and Auxiliary Employees. All paraprofessional and auxiliary employees, regardless of certification, are employed at will and not by contract. Employment is not for any specified term and may be terminated at any time by either the employee or the district.

Certification and Licenses

Policies DBA, DF

Professional employees whose positions require SBEC certification or a professional license are responsible for taking actions to ensure their credentials do not lapse. Employees must submit documentation that they have passed the required certification exam and/or obtained or renewed their credentials to Jan DeWitt in a timely manner. Employees licensed by the Texas Department of Licensing and Regulations (TDLR) must notify Human Resources and their immediate supervisor when there is action against, or revocation of, their license.

A certified employee's contract may be voided without Chapter 21 due process and employment terminated if the individual does not hold a valid certificate or fails to fulfill the requirementsnecessary to renew or extend a temporary certificate, emergency certificate, probationary certificate, or permit. A contract may also be voided if SBEC suspends or revokes certificationbecause of an individual's failure to comply with criminal history background checks. Contact Jan DeWitt if you have any questions regarding certification or licensure requirements.

Recertification of Employment Authorization

Policy DC

At the time of hire all employees must complete the Employment Eligibility Verification Form (Form I-9) and present documents to verify identity and employment authorization.

Employees whose immigration status, employment authorization, or employment authorization documents have expired must present new documents that show current employment authorization. Employees should file the necessary application or petition sufficiently in advance to ensure that they maintain continuous employment authorization or valid employment authorization documents. Contact Jan DeWitt if you have any questions regarding reverification of employment authorization.

Searches and Alcohol and Drug Testing

Policy CQ, DHE

Non-investigatory searches in the workplace including accessing an employee's desk, file cabinets, or work area to obtain information needed for usual business purposes may occur when an employee is unavailable. Therefore, employees are hereby notified that they have no legitimate expectation of privacy in those places. In addition, the district reserves the right to conduct searches when there is reasonable cause to believe a search will uncover evidence of work-related misconduct. Such an investigatory search may include drug and alcohol testing if the suspected violation relates to drug or alcohol use. The district may search the employee, the employee's personal items, and work areas including district-owned technology resources, lockers, and private vehicles parked on district premises or work sites or used in district business.

Employees Required to Have a Commercial Driver's License. Any employee whose duties require a commercial driver's license (CDL) is subject to drug and alcohol testing. This includes all drivers who operate a motor vehicle designed to transport 16 or more people counting the driver, drivers of large vehicles, or drivers of vehicles used in the transportation of hazardous materials. Teachers, coaches, or other employees who primarily perform duties other than driving are subject to testing requirements if their duties include driving a commercial motor vehicle.

Drug testing will be conducted before an individual assumes driving responsibilities. Alcohol and drug tests will be conducted when reasonable suspicion exists, at random, when an employee returns to duty after engaging in prohibited conduct, and as a follow-up measure. Testing may be conducted following accidents. Return-to-duty and follow-up testing will be conducted if an employee who has violated the prohibited alcohol conduct standards or tested positive for alcohol or drugs is allowed to return to duty.

All employees required to have a CDL or who otherwise are subject to alcohol and drug testing will receive a copy of the district's policy, the testing requirements, and detailed information on alcohol and drug abuse and the availability of assistance programs.

Employees with questions or concerns relating to alcohol and drug testing policies and related educational material should contact Janeé Carter, Superintendent.

Health Safety Training

Policies DBA, DMA

Certain employees who are involved in physical activities for students must maintain and submit to the district proof of current certification or training in first aid, cardiopulmonary resuscitation (CPR), the use of an automated external defibrillator (AED), concussion, and extracurricular athletic activity safety. Certification or documentation of training must be issued by the American Red Cross, the American Heart Association, or another organization that provides equivalent training and certification. Employees subject to this requirement must submit their certification or documentation to Laurie Daniel by September 1, 2022.

School nurses and employees with regular contact with students must complete a Texas Education Agency approved, online training regarding seizure disorder awareness, recognition, and related first aid.

Reassignments and Transfers

Policy DK

All personnel are subject to assignment and reassignment by the superintendent or designee when the superintendent or designee determines that the assignment or reassignment is in the

best interest of the district. Reassignment is a transfer to another position, department, or facility that does not necessitate a change in the employment contract. Campus reassignments must be approved by the principal at the receiving campus except when reassignments are due to enrollment shifts or program changes. Extracurricular or supplemental duty assignments may be reassigned at any time unless an extracurricular or supplemental duty assignment is part of a dual-assignment contract. Employees who object to a reassignment may follow the district process for employee complaints as outlined in this handbook and district policy DGBA (Local).

An employee with the required qualifications for a position may request a transfer to another campus or department. A written request for transfer must be completed and signed by the employee and the employee's supervisor. A teacher requesting a transfer to another campus before the school year begins must submit his or her request by June 30th. Requests for transfer during the school year will be considered only when the change will not adversely affect students and after a replacement has been found. All transfer requests will be coordinated by the Superintendent's office and must be approved by the receiving supervisor.

Workload and Work Schedules

Policies DEAB, DK, DL

Professional Employees. Professional employees and academic administrators are exempt from overtime pay and are employed on a 10-, 11-, or 12-month basis, according to the work schedules set by the district. A school calendar is adopted each year designating the work schedule for teachers and all school holidays. Notice of work schedules including start and end dates and scheduled holidays will be distributed each school year.

Classroom teachers will have planning periods for instructional preparation including conferences. The schedule of planning periods is set at the campus level but must provide at least 450 minutes within each two-week period in blocks not less than 45 minutes within the instructional day. Teachers and librarians are entitled to a duty-free lunch period of at least 30 minutes. The district may require teachers to supervise students during lunch one day a week when no other personnel are available.

Paraprofessional and Auxiliary Employees. Support employees are employed at will and receive notification of the required duty days, holidays, and hours of work for their position on an annual basis. Paraprofessional and auxiliary employees must be compensated for overtime and are not authorized to work in excess of their assigned schedule without prior approval from their supervisor. See Overtime Compensation on page 16 for additional information.

Breaks for Expression of Breast Milk

Policies DEAB, DG

The district supports the practice of expressing breast milk and makes reasonable accommodations for the needs of employees who express breast milk. A place, other than a

multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk will be provided.

A reasonable amount of break time will be provided when the employee has a need to express milk. For nonexempt employees, these breaks are unpaid and are not counted as hours worked. Employees should meet with their supervisor to discuss their needs and arrange break times.

Notification to Parents Regarding Qualifications

Policies DK, DBA

In schools receiving Title I funds, the district is required by the Every Student Succeeds Act (ESSA) to notify parents at the beginning of each school year that they may request information regarding the professional qualifications of their child's teacher. ESSA also requires that parents be notified if their child has been assigned or taught for four or more consecutive weeks by a teacher who does not meet applicable state certification or licensure requirements.

Texas law requires that parents be notified if their child is assigned for more than 30 consecutive instructional days to a teacher who does not hold an appropriate teaching certificate. This notice is not required if parental notice under ESSA is sent. Inappropriately certified or uncertified teachers include individuals on an emergency permit (including individuals waiting to take a certification exam) and individuals who do not hold any certificate or permit. Information relating to teacher certification will be made available to the public upon request. Employees who have questions about their certification status can call Jan DeWitt, x5269 or Rob O'Conner, x5271.

Outside Employment and Tutoring

Policy DBD

Employees are required to disclose in writing to their immediate supervisor any outside employment that may create a potential conflict of interest with their assigned duties and responsibilities or the best interest of the district. Supervisors will consider outside employment on a case-by-case basis and determine whether it should be prohibited because of a conflict of interest.

Performance Evaluation

Policy DN series

Evaluation of an employee's job performance is a continuous process that focuses on improvement. Performance evaluation is based on an employee's assigned job duties and other job-related criteria. All employees will participate in the evaluation process with their assigned supervisor at least annually. Written evaluations will be completed on forms approved by the district. Reports, correspondence, and memoranda also can be used to document performance

information. All employees will receive a copy of their written evaluation, participate in a performance conference with their supervisor, and have the opportunity to respond to the evaluation.

Upon receiving a report, a nursing review committee may review a nurse's nursing services, qualifications, and quality of patient care, as well as the merits of a complaint concerning a nurse, and a determination or recommendation regarding a complaint. A nurse may request, orally or in writing, a determination by the committee regarding conduct requested of the nurse believed to violate the nurse's duty to a patient.

Employee Involvement

Policies BQA, BQB

At both the campus and district levels, Lone Oak ISD offers opportunities for input in matters that affect employees and influence the instructional effectiveness of the district. As part of the district's planning and decision-making process, employees are elected to serve on district- or campus-level advisory committees. Plans and detailed information about the shared decision-making process are available in each campus office or from the Superintendent's office.

Staff Development

Policy DMA

Staff development activities are organized to meet the needs of employees and the district. Staff development for instructional personnel is predominantly campus-based, related to achieving campus performance objectives, addressed in the campus improvement plan, and approved by a campus-level advisory committee. Staff development for noninstructional personnel is designed to meet specific licensing requirements (e.g., bus drivers) and continued employee skill development.

Individuals holding renewable SBEC certificates are responsible for obtaining the required training hours and maintaining appropriate documentation.

Compensation and Benefits

Salaries, Wages, and Stipends

Policies DEA, DEAA, DEAB

Employees are paid in accordance with administrative guidelines and an established pay structure. The district's pay plans are reviewed by the administration each year and adjusted as needed. All district positions are classified as exempt or nonexempt according to federal law. Professional employees and academic administrators are generally classified as exempt and are paid monthly salaries. They are not entitled to overtime compensation. Other employees are generally classified as nonexempt and are paid an hourly wage or salary and receive compensatory time or overtime pay for each hour worked beyond 40 in a workweek. (See *Overtime Compensation*, page 16.)

All employees will receive written notice of their pay and work schedules before the start of each school year. Classroom teachers, full-time librarians, full-time nurses, and full-time counselors will be paid no less than the minimum state salary schedule. Contract employees who perform extracurricular or supplemental duties may be paid a stipend in addition to their salary according to the district's extra-duty pay schedule.

Employees should contact Gary Sorrells, Business Manager, at x5273 or Jan DeWitt at x5269 for more informationabout the district's pay schedules or their own pay.

Paychecks

All professional and salaried employees are paid monthly. Hourly employees are paid monthly weeks. Paychecks will not be released to any person other than the district employee named on the check without the employee's written authorization.

The schedule of pay dates for the 2022–2023 school year follows:

August 25, 2022
September 23, 2022
October 25, 2022
November 18, 2022
December 16, 2022
January 25, 2023
February 24, 2023
March 24, 2023
April 25, 2023
May 25, 2023
June 23, 2023
July 25, 2023

Note: All supplemental pay and payroll changes are due in the business office on the 16th of the month.
Example: Supplemental/changes from September 16th thru October 15th will be paid or made on the October payroll check.

Automatic Payroll Deposit

Employees paychecks are electronically deposited into a designated account. A notification period of 15 days is necessary to activate this service. Contact Jan DeWitt or Gary Sorrells for moeinformation about the automatic payroll deposit service.

Payroll Deductions

Policy CFEA

The district is required to make the following automatic payroll deductions:

- Teacher Retirement System of Texas (TRS) or Social Security employee contributions
- Federal income tax required for all full-time employees
- Medicare tax (applicable only to employees hired after March 31, 1986)
- Child support and spousal maintenance, if applicable
- Delinquent federal education loan payments, if applicable

Other payroll deductions employees may elect include deductions for the employee's share of premiums for health, dental, life, and vision insurance; annuities; and higher education savings plans or prepaid tuition programs. Employees also may request payroll deduction for payment of membership dues to professional organizations and certain charitable contributions approved by the board. Salary deductions are automatically made for unauthorized or unpaid leave.

Overtime Compensation

Policies DEAB, DEC

The district compensates overtime for nonexempt employees in accordance with federal wage and hour laws. Only nonexempt employees (hourly employees and paraprofessional employees) are entitled to overtime compensation. Nonexempt employees are not authorized to work beyond their normal work schedule without advance approval from their supervisor. A

nonexempt employee who works overtime without prior approval will be subject to disciplinary action

Overtime is legally defined as all hours worked in excess of 40 hours in a workweek and is not measured by the day or by the employee's regular work schedule. For the purpose of calculating overtime, a workweek begins at 12:01 a.m. Sunday and ends at 12 midnight Saturday.

Nonexempt employees that are paid on a salary basis are paid for a 40-hour workweek and do not earn additional pay unless they work more than 40 hours.

Employees may be compensated for overtime (i.e., hours beyond 40 in a workweek) at time-and-a-half rate with compensatory time off (comp time) or direct pay. The following applies to all nonexempt employees:

- Employees can accumulate up to 60 hours of comp time.
- Comp time must be used in the duty year that it is earned.
- Use of comp time may be at the employee's request with supervisor approval, as workload permits, or at the supervisor's direction.
- An employee is required to use comp time before using available paid leave (e.g.,sick, personal, vacation).
- Weekly time records will be maintained on all nonexempt employees for the purpose of wage and salary administration.

Travel Expense Reimbursement

Policy DEE

Before any travel expenses are incurred by an employee, the employee's supervisor and campus principal must give approval. For approved travel, employees will be reimbursed for mileage and other travel expenditures according to the current rate schedule established by the district. Employees must submit receipts, to the extent possible, to be reimbursed for allowable expenses other than mileage.

Health, Dental, and Life Insurance

Policy CRD

Group health insurance coverage is provided through TRS-ActiveCare, the statewide public school employee health insurance program. The district's contribution to employee insurance premiums is determined annually by the board of trustees. Employees eligible for health insurance coverage include the following:

- Employees who are active, contributing TRS members
- Employees who are not contributing TRS members and who are employed for 10 or more regularly scheduled hours per week

TRS retirees who are enrolled in TRS-Care (retiree health insurance program) are not eligible to participate in TRS-ActiveCare.

The insurance plan year is from September 1 through August 31. Current employees can make changes in their insurance coverage during open enrollment each year or when they experience a qualifying event (e.g., marriage, divorce, birth). Detailed descriptions of insurance coverage, employee cost, and eligibility requirements are provided to all employees in a separate booklet. Employees should contact Gary Sorrells, Business Manager, for more information.

The insurance plan year is from September 1 through August 31. Current employees can make changes in their insurance coverage during open enrollment each year or when they experience a qualifying event (e.g., marriage, divorce, birth). Detailed descriptions of insurance coverage, employee cost, and eligibility requirements are provided to all employees in a separate booklet. Employees should contact Gary Sorrells, Business Manager, for more information.

Supplemental Insurance Benefits

Policy CRD

At their own expense, employees may enroll in supplemental insurance programs of various types. Premiums for these programs can be paid by payroll deduction. Employees should contact the Business Manager for more information.

Cafeteria Plan Benefits (Section 125)

Employees may be eligible to participate in the Cafeteria Plan (Section 125) and, under IRS regulations, must either accept or reject this benefit. This plan enables eligible employees to pay certain insurance premiums on a pretax basis (i.e., disability, accidental death and dismemberment, cancer and dread disease, dental, and additional term life insurance). A third-party administrator handles employee claims made on these accounts.

New employees must accept or reject this benefit during their first month of employment. All employees must accept or reject this benefit on an annual basis and during the specified time period.

Workers' Compensation Insurance

Policy CRE

The district, in accordance with state law, provides workers' compensation benefits to employees who suffer a work-related illness or are injured on the job. The district has workers' compensation coverage from TASB.

Benefits help pay for medical treatment and make up for part of the income lost while recovering. Specific benefits are prescribed by law depending on the circumstances of each case.

All work-related accidents or injuries should be reported immediately to his/her supervisor and business manager. Employees who are unable to work because of a work-related injury will be notified of their rights and responsibilities under the Texas Labor Code. See *Workers' Compensation Benefits,* page 27 for information on use of paid leave for such absences.

Unemployment Compensation Insurance

Policy CRF

Employees who have been laid off or terminated through no fault of their own may be eligible for unemployment compensation benefits. Employees are not eligible to collect unemployment benefits during regularly scheduled breaks in the school year or the summer months if they have employment contracts or reasonable assurance of returning to service. Employees with questions about unemployment benefits should contact the Business Manager, Gary Sorrells.

Teacher Retirement

All personnel employed on a regular basis for at least four and one-half months are members of the Teacher Retirement System of Texas (TRS). Substitutes not receiving TRS service retirement benefits who work at least 90 days a year are eligible to purchase a year of creditable service in TRS. TRS provides members with an annual statement of their account showing all deposits and the total account balance for the year ending August 31, as well as an estimate of their retirement benefits.

Employees who plan to retire under TRS should notify TRS and the business office as soon as possible. Information on the application procedures for TRS benefits is available from TRS at Teacher Retirement System of Texas, 1000 Red River Street, Austin, TX 78701-2698, or call 800-223-8778 or 512-542-6400. TRS information is also available on the web (www.trs.texas.gov).

Leaves and Absences

Policies DEC, DECA, DECB

The district offers employees paid and unpaid leaves of absence in times of personal need. This handbook describes the basic types of leave available and restrictions on leaves of absence. Employees who expect to be absent for an extended period of more than five days should call Jan DeWitt, x2269 or Gary Sorrells, x2273, for information about applicable leave benefits, payment of insurance premiums, and requirements for communicating with the district.

Paid leave must be used in one-half or whole increments. Earned comp time must be used before any available paid state and local leave. Unless an employee requests a different order, available paid state and local leave will be used in the following order:

- State Days
- Local Days

Employees must follow district and department or campus procedures to report or request any leave of absence and complete the appropriate form or certification. Any unapproved absences or absences beyond accumulated or available paid leave shall result in deduction from the employee's pay.

Immediate Family. For purposes of leave other than family and medical leave, immediate family is defined as the following:

- Spouse
- Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands in loco parentis.
- Parent, stepparent, parent-in-law, or other individual who stands in loco parentis to the employee.
- Sibling, stepsibling, and sibling-in-law
- Grandparent and grandchild
- Any person residing in the employee's household at the time of illness or death

For purposes of family and medical leave, the definition of family is limited to spouse, parent, son or daughter, and next of kin. The definition of these are found in Policy DECA (LEGAL).

Medical Certification. Any employee, who is absent more than 3 days because of a personal or family illness, must submit a medical certification from a qualified health care provider confirming the specific dates of the illness, the reason for the illness, and—in the case of personal illness—the employee's fitness to return to work.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits covered employers from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we ask that employees and health care providers do not provide any genetic information in any medical certification. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member, or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Continuation of Health Insurance. Employees, on an approved leave of absence other than family and medical leave, may continue their insurance benefits at their own expense. Health insurance benefits for employees on paid leave and leave designated under the Family and Medical Leave Act will be paid by the district as they were prior to the leave. Otherwise, the district does not pay any portion of insurance premiums for employees who are on unpaid leave.

Under TRS-Active Care rules, an employee is no longer eligible for insurance through the district after six months of unpaid leave other than FML. If an employee's unpaid leave extends for more than six months, the district will provide the employee with notice of COBRA rights.

Personal Leave

State law entitles all employees to five days of paid personal leave per year. Personal leave is available for use at the beginning of the year. A day of personal leave is equivalent to the number of hours per day in an employee's usual assignment, whether full-time or part-time. State personal leave accumulates without limit, is transferable to other Texas school districts, and generally transfers to education service centers. Personal leave may be used for two general purposes: nondiscretionary and discretionary.

Nondiscretionary. Leave taken for personal or family illness, family emergency, a death in the family, or active military service is considered nondiscretionary leave. Reasons for this type of leave allow very little, if any, advance planning. Nondiscretionary may be used in the same manner as state sick leave.

Discretionary. Leave taken at an employee's discretion that can be scheduled in advance is considered discretionary leave. An employee wishing to take discretionary personal leave must submit a request to his or her principal or supervisor 5 days in advance of the anticipated absence. The effect of the employee's absence on the educational program or department operations, as well as the availability of substitutes, will be considered by the principal or supervisor.

Leave Proration. If an employee separates from employment with the district before his or her last duty day of the year, or begins employment after the first duty day, state personal leave will be prorated based on the actual time employed. When an employee separates from employment before the last duty day of the school year, the employee's final paycheck will be reduced by the amount of state personal leave the employee used beyond his or her pro rata entitlement for the school year.

State Sick Leave

State sick leave accumulated before 1995 is available for use and may be transferred to other school districts in Texas.

State sick leave may be used for the following reasons only:

- Employee illness
- Illness in the employee's immediate family
- Family emergency (i.e., natural disasters or life-threatening situations)
- Death in the immediate family
- Active military service

Local Leave

All full-time employees shall earn three days of local leave per school year. Local sick leave shall be cumulative up to 12 days.

Full-time employees may donate *(2)* of their local sick leave days (if available) per school year to another employee who has exhausted his or her available paid leave days.

Vacation

Policy DED

Sick Leave Bank (or Pool)

An employee who has exhausted all paid leave and who suffers from a catastrophic illness or injury or is absent due to the catastrophic illness or injury of a member of the employee's immediate family may request the establishment of a sick leave pool, to which District employees may donate only state personal leave for use by the eligible employee.

If the employee is unable to submit the request, a member of the employee's family or the employee's supervisor may submit the request to establish a sick leave pool.

An eligible employee shall receive no more than 30 leave days from sick leave pools per school year.

The pool shall cease to exist when the employee no longer needs leave for the purpose requested, uses the maximum number of days allowed under a pool, or exhausts all leave days donated to the sick leave pool.

The Superintendent or designee shall develop regulations for the implementation of the sick leave pool that address the following:

1. Procedures to request the establishment of a sick leave pool;
2. The maximum number of days (2) an employee may donate to a sick leave pool; and
3. The return of unused days to donors.

Family and Medical Leave Act (FMLA)—General Provisions

The following text is from the federal notice, *Employee Rights and Responsibilities Under the Family and Medical Leave Act*. Specific information that the district has adopted to implement the FMLA follows this general notice.

Leave Entitlements

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within 1 year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;

- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

Benefits and Protections

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

Eligibility Requirements

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Special hours of service eligibility requirements apply to airline flight crew employees.

Requesting Leave

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection.

Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

Employer Responsibilities

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

Enforcement

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

For additional information:

1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
www.wagehour.dol.gov

Local Procedures for Implementing Family and Medical Leave Provisions

Eligible employees can take up to 12 weeks of unpaid leave in the 12-month period beginning on the first duty day of the school year.

Use of Paid Leave. FML runs concurrently with accrued sick and personal leave, temporary disability leave, compensatory time, assault leave, and absences due to a work-related illness or

injury. The district will designate the leave as FML, if applicable, and notify the employee that accumulated leave will run concurrently.

Combined Leave for Spouses. Spouses who are employed by the district are limited to a combined total of 12 weeks of FML to care for a parent with a serious health condition; or for the birth, adoption, or foster placement of a child. Military caregiver leave for spouses is limited to a combined total of 26 weeks.

Intermittent Leave. When medically necessary or in the case of a qualifying exigency, an employee may take leave intermittently or on a reduced schedule. The district does not permit the use of intermittent or reduced-schedule leave for the care of a newborn child or for adoption or placement of a child with the employee.

Fitness for Duty. An employee that takes FML due to the employee's own serious health condition shall provide, before resuming work, a fitness-for-duty certification from the health care provider. When leave is taken for the employee's own serious health condition, the certification must address the employee's ability to perform essential job functions. The district shall provide a list of essential job functions (e.g., job description) to the employee with the FML designation notice to share with the health care provider. Fitness for duty is not required when an employee returns to work following leave to care for a family member with a serious health condition; to care for a child following birth, adoption, or foster care placement; or for qualifying exigency leave.

Reinstatement. An employee returning to work at the end of FML will be returned to the same position held when the leave began or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

In certain cases, instructional employees desiring to return to work at or near the conclusion of a semester may be required to continue on family and medical leave until the end of the semester. The additional time off is not counted against the employee's FML entitlement, and the district will maintain the employees group health insurance and reinstate the employee at the end of the leave according the procedures outlined in policy (see DECA (LEGAL)).

Failure to Return. If, at the expiration of FML, the employee is able to return to work but chooses not to do so, the district may require the employee to reimburse the district's share of insurance premiums paid during any portion of FML when the employee was on unpaid leave. If the employee fails to return to work for a reason beyond the employee's control, such as a continuing personal or family serious health condition or a spouse being unexpectedly transferred more than 75 miles from the district, the district may not require the employee to reimburse the district's share of premiums paid.

District Contact. Employees that require FML or have questions should contact Jan DeWitt, x2269, for details on eligibility, requirements, and limitations.

Temporary Disability Leave

Certified Employees. Any full-time employee whose position requires certification from the State Board for Educator Certification (SBEC) is eligible for temporary disability leave. The purpose of temporary disability leave is to provide job protection to full-time educators who cannot work for an extended period of time because of a mental or physical disability of a temporary nature. Temporary disability leave must be taken as a continuous block of time. It may not be taken intermittently or on a reduced schedule. Pregnancy and conditions related to pregnancy are treated the same as any other temporary disability.

Employees must request approval for temporary disability leave. An employee's notification of need for extended absence due to the employee's own medical condition shall be accepted as a request for temporary disability leave. The request must be accompanied by a physician's statement confirming the employee's inability to work and estimating a probable date of return. If disability leave is approved, the length of leave is no longer than 180 calendar days.

If an employee is placed on temporary disability leave involuntarily, he or she has the right to request a hearing before the board of trustees. The employee may protest the action and present additional evidence of fitness to work.

When an employee is ready to return to work, the superintendent and his/her supervisor should be notified at least 30 days in advance. The return-to-work notice must be accompanied by a physician's statement confirming that the employee is able to resume regular duties. Certified employees returning from leave will be reinstated to the school to which they were previously assigned if an appropriate position is available. If an appropriate position is not available, the employee may be assigned to another campus, subject to the approval of the campus principal. If a position is not available before the end of the school year, the employee will be reinstated to a position at the original campus at the beginning of the following school year.

Workers' Compensation Benefits

An employee absent from duty because of a job-related illness or injury may be eligible for workers' compensation weekly income benefits if the absence exceeds seven calendar days.

An employee receiving workers' compensation wage benefits for a job-related illness or injury may choose to use accumulated sick leave or any other paid leave benefits. An employee choosing to use paid leave will not receive workers' compensation weekly income benefits until all paid leave is exhausted or to the extent that paid leave does not equal the pre-illness or -injury wage. If the use of paid leave is not elected, then the employee will only receive workers' compensation wage benefits for any absence resulting from a work-related illness or injury, which may not equal his or her pre-illness or -injury wage.

Assault Leave

Assault leave provides extended job income and benefits protection to an employee who is injured as the result of a physical assault suffered during the performance of his or her job. An incident involving an assault is a work-related injury and should be immediately reported to his/her immediate supervisor.

An injury is treated as an assault if the person causing the injury could be prosecuted for assault or could not be prosecuted only because that person's age or mental capacity renders the person nonresponsible for purposes of criminal liability.

An employee who is physically assaulted at work may take all the leave time medically necessary (up to two years) to recover from the physical injuries he or she sustained. At the request of an employee, the district will immediately assign the employee to assault leave. Days of leave granted under the assault leave provision will not be deducted from accrued personal leave and must be coordinated with workers' compensation benefits. Upon investigation the district may change the assault leave status and charge leave used against the employee's accrued paid leave. The employee's pay will be deducted if accrued paid leave is not available.

Bereavement Leave

All employees shall be permitted up to three (3) days of bereavement leave for the death of a member in the employee's immediate family for purposes of making funeral arrangements and attending the funeral. The district may require verification of the need for bereavement leave. Bereavement leave shall be taken with no loss of pay. Immediate family is defined on page 20 of this handbook.

Jury Duty

Policies DEC, DG

The district provides paid leave to employees who are summoned to jury duty including service on a grand jury. The district will not discharge, threaten to discharge, intimidate, or coerce any regular employee because of juror or grand juror service or for the employee's attendance or scheduled attendance in connection with the service in any court in the United States. Employees who report to the court for jury duty may keep any compensation the court provides. An employee should report a summons for jury duty to his or her supervisor as soon as it is received and may be required to provide the district a copy of the summons to document the need for leave.

An employee may be required to report back to work as soon as they are released from jury duty. The supervisor may consider the travel time required and the nature of the individual's position when determining the need to report to work. A copy of the release from jury duty or documentation of time spent at the court may be required.

Compliance with a Subpoena

Employees will be paid while on leave to comply with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding and will not be required to use personal leave. Employees may be required to submit documentation of their need for leave for court appearances.

Truancy Court Appearances

An employee who is a parent, guardian of a child, or a court-appointed guardian ad litem of a child who is required to miss work to attend a truancy court hearing may use personal leave or compensatory time for the absence. Employees who do not have paid leave available will be docked for any absence required because of the court appearance.

Religious Observance

The district will reasonably accommodate an employee's request for absence for a religious holiday or observance. Accommodations such as changes to work schedules or approving a day of absence will be made unless they pose an undue hardship to the district. The employee may use any accumulated personal leave for this purpose. Employees who have exhausted applicable paid leave may be granted an unpaid day of absence.

Military Leave

Paid Leave for Military Service. Any employee who is a member of the Texas National Guard, Texas State Guard, reserve component of the United States Armed Forces, or a member of a state or federally authorized Urban Search and Rescue Team is entitled to 15 days of paid leave per fiscal year when engaged in authorized training or duty ordered by proper authority. An additional seven days of leave per fiscal year are available if called to state active duty in response to a disaster. In addition, an employee is entitled to use available state and local personal or sick leave during a time of active military service.

Reemployment after Military Leave. Employees who leave the district to enter into the United States uniformed services or who are ordered to active duty as a member of the military force of any state (e.g., National or State Guard) may return to employment if they are honorably discharged. Employees who wish to return to the district will be reemployed provided they can be qualified to perform the required duties. Employees returning to work following military leave should contact Jan DeWitt, HR Director. In most cases, the length of federal military service cannot exceed five years.

Continuation of Health Insurance. Employees who perform service in the uniformed services may elect to continue their health plan coverage at their own cost for a period not to exceed 24 months. Employees should contact Gary Sorrells for details on eligibility, requirements, and limitations.

Leave for Peace Officers

HB 2073, effective 6/15/2021, and SB 1359, effective 9/1/2021, of the 87th Regular Session of the Texas Legislature, effective 9/1/2021, created two new types of leave for peace offices employed by districts. Districts that employ peace officers are required to provide paid mental health leave and quarantine leave to peace officers. Include a description of the leave benefits based on local policy, regulations, and applicable procedures.

Employee Relations and Communications

Employee Recognition and Appreciation

Continuous efforts are made throughout the year to recognize employees who make an extra effort to contribute to the success of the district. Employees are recognized at board meetings, in the district newsletter, and through special events and activities.

District Communications

Throughout the school year, the central office and individual campus offices publish newsletters, brochures, fliers, calendars, news releases, and other communication materials. These publications offer employees and the community information pertaining to school activities and achievements. They include the following:

- *http://www.loisd.net*
- https://www.facebook.com/LOISDTX

Complaints and Grievances

Policy DGBA

In an effort to hear and resolve employee concerns or complaints in a timely manner and at the lowest administrative level possible, the board has adopted an orderly grievance process. Employees are encouraged to discuss their concerns or complaints with their supervisors or an appropriate administrator at any time.

The formal process provides all employees with an opportunity to be heard up to the highest level of management if they are dissatisfied with an administrative response. Once all administrative procedures are exhausted, employees can bring concerns or complaints to the board of trustees. For ease of reference, the district's policy concerning the process of bringing concerns and complaints is reprinted as follows:

https://pol.tasb.org/Policy/Download/696?filename=DGBA(LEGAL).html&title=PERSONNEL-MANAGEMENT%20RELATIONS&subtitle=EMPLOYEE%20COMPLAINTS/GRIEVANCES

Employee Conduct and Welfare

Standards of Conduct

Policy DH

All employees are expected to work together in a cooperative spirit to serve the best interests of the district and to be courteous to students, one another, and the public. Employees are expected to observe the following standards of conduct:

- Recognize and respect the rights of students, parents, other employees, and members of the community.
- Maintain confidentiality in all matters relating to students and coworkers.
- Report to work according to the assigned schedule.
- Notify their immediate supervisor in advance or as early as possible in the event that they must be absent or late. Unauthorized absences, chronic absenteeism, tardiness, and failure to follow procedures for reporting an absence may be cause for disciplinary action.
- Know and comply with department and district policies and procedures.
- Express concerns, complaints, or criticism through appropriate channels.
- Observe all safety rules and regulations and report injuries or unsafe conditions to a supervisor immediately.
- Use district time, funds, and property for authorized district business and activities only.

All district employees should perform their duties in accordance with state and federal law, district policies and procedures, and ethical standards. Violation of policies, regulations, or guidelines, including intentionally making a false claim, offering false statements, or refusing to cooperate with a district investigation may result in disciplinary action, including termination. Alleged incidents of certain misconduct by educators, including having a criminal record, must be reported to SBEC not later than the seventh day after the superintendent knew of the incident.

The *Educators' Code of Ethics*, adopted by the State Board for Educator Certification, which all district employees must adhere to, is reprinted below:

Texas Educators' Code of Ethics

Purpose and Scope

The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty and good moral character. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community. This chapter shall apply to educators and candidates for certification. (19 TAC 247.1(b))

Enforceable Standards

1. Professional Ethical Conduct, Practices, and Performance

Standard 1.1 The educator shall not intentionally, knowingly, or recklessly engage in deceptive practices regarding official policies of the school district, educational institution, educator preparation program, the Texas Education Agency, or the State Board for Educator Certification (SBEC) and its certification process.

Standard 1.2 The educator shall not intentionally, knowingly, or recklessly misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage.

Standard 1.3 The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.

Standard 1.4 The educator shall not use institutional or professional privileges for personal or partisan advantage.

Standard 1.5 The educator shall neither accept nor offer gratuities, gifts, or favors that impair professional judgment or that are used to obtain special advantage. This standard shall not restrict the acceptance of gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.

Standard 1.6 The educator shall not falsify records, or direct or coerce others to do so.

Standard 1.7 The educator shall comply with state regulations, written local school board policies, and other state and federal laws.

Standard 1.8 The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications.

Standard 1.9 The educator shall not make threats of violence against school district employees, school board members, students, or parents of students.

Standard 1.10 The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.

Standard 1.11 The educator shall not intentionally, knowingly, or recklessly misrepresent his or her employment history, criminal history, and/or disciplinary record when applying for subsequent employment.

Standard 1.12 The educator shall refrain from the illegal use, abuse, or distribution of controlled substances, prescription drugs and toxic inhalants.

Standard 1.13 The educator shall not be under the influence of alcohol or consume alcoholic beverages on school property or during school activities when students are present.

2. Ethical Conduct toward Professional Colleagues

Standard 2.1 The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.

Standard 2.2 The educator shall not harm others by knowingly making false statements about a colleague or the school system.

Standard 2.3 The educator shall adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal of personnel.

Standard 2.4 The educator shall not interfere with a colleague's exercise of political, professional, or citizenship rights and responsibilities.

Standard 2.5 The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.

Standard 2.6 The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.

Standard 2.7 The educator shall not retaliate against any individual who has filed a complaint with the SBEC or who provides information for a disciplinary investigation or proceeding under this chapter.

Standard 2.8 The educator shall not intentionally or knowingly subject a colleague to sexual harassment.

3. Ethical Conduct toward Students

Standard 3.1 The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

Standard 3.2 The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.

Standard 3.3 The educator shall not intentionally, knowingly, or recklessly misrepresent facts regarding a student.

Standard 3.4 The educator shall not exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender, disability, national origin, religion, family status, or sexual orientation.

Standard 3.5 The educator shall not intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor.

Standard 3.6 The educator shall not solicit or engage in sexual conduct or a romantic relationship with a student or minor.

Standard 3.7 The educator shall not furnish alcohol or illegal/unauthorized drugs to any person under 21 years of age unless the educator is a parent or guardian of that child or knowingly allow any person under 21 years of age unless the educator is a parent or guardian of that child to consume alcohol or illegal/unauthorized drugs in the presence of the educator.

Standard 3.8 The educator shall maintain appropriate professional educator-student relationships and boundaries based on a reasonably prudent educator standard.

Standard 3.9 The educator shall refrain from inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

(i) the nature, purpose, timing, and amount of the communication;

(ii) the subject matter of the communication;

(iii) whether the communication was made openly or the educator attempted to conceal the communication;

(iv) whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;

(v) whether the communication was sexually explicit; and

(vi) whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.

Discrimination, Harassment, and Retaliation

Policies DH, DIA

Employees shall not engage in prohibited harassment, including sexual harassment, of other employees, unpaid interns, student teachers, or students. While acting in the course of their employment, employees shall not engage in prohibited harassment of other persons including board members, vendors, contractors, volunteers, or parents. A substantiated charge of harassment will result in disciplinary action.

Individuals who believe they have been discriminated or retaliated against or harassed are encouraged to promptly report such incidents to the campus principal, supervisor, or appropriate district official. If the campus principal, supervisor, or district official is the subject of a complaint, the complaint should be made directly to the superintendent. A complaint against the superintendent may be made directly to the board.

Any district employee who believes that he or she has experienced prohibited conduct based on sex, including sexual harassment, or believes that another employee has experienced such prohibited conduct, should immediately report the alleged acts. The employee may report the alleged acts to his or her supervisor, the campus principal, the Title IX coordinator, or the superintendent. The district's Title IX coordinator's name and contact information is listed in the Equal Employment Opportunity section of this handbook.

The district's policy that includes definitions and procedures for reporting and investigating discrimination, harassment, and retaliation is reprinted below:

http://pol.tasb.org/Policy/Download/696?filename=DIA(LOCAL).pdf

Harassment of Students

Policies DH, DHB, FFG, FFH, FFI

Sexual and other harassment of students by employees are forms of discrimination and are prohibited by law. Romantic or inappropriate social relationships between students and district employees are prohibited.

Employees who suspect a student may have experienced prohibited harassment are obligated to report their concerns to the campus principal or other appropriate district official. Any district employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct based on sex, including sexual

harassment, of a student shall immediately notify the district's Title IX coordinator, the ADA/Section 504 coordinator, or superintendent and take any other steps required by district policy.

All allegations of prohibited harassment of a student by an employee or adult will be reported to the student's parents and promptly investigated. An employee who knows of or has reasonable cause to believe that child abuse or neglect occurred must also report his or her knowledge or suspicion to the appropriate authorities, as required by law. See Reporting Suspected Child Abuse, page ___ and Bullying, page ___ for additional information. The district's policy that includes definitions and procedures for reporting and investigating harassment of students is reprinted below:

The district's policy that includes definitions and procedures for reporting and investigating harassment of students is reprinted below:

http://pol.tasb.org/Policy/Code/696?filter=DHB

http://pol.tasb.org/Policy/Code/696?filter=FFH

Reporting Suspected Child Abuse

Policies DG, GRA

All employees with reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect, as defined by Texas Family Code §261.001, are required by state law to make a report to a law enforcement agency, Child Protective Services (CPS), or appropriate state agency (e.g., state agency operating, licensing, certifying, or registering the facility) within 48 hours of the event that led to the suspicion. Alleged abuse or neglect involving a person responsible for the care, custody, or welfare of the child (including a teacher) must be reported to CPS.

Employees are also required to make a report if they have reasonable cause to believe that an adult was avictim of abuse or neglect as a child and they determine in good faith that the disclosure of theinformation is necessary to protect the health and safety of another child, elderly person, or person with a disability.

Reports to Child Protective Services can be made online at https://www.txabusehotline.org/Login/Default.aspx or to the Texas Abuse Hotline (800-252-5400). State law specifies that an employee may not delegate to or rely on another person or administrator to make the report.

Under state law, any person reporting or assisting in the investigation of reported child abuse or neglect is immune from liability unless the report is made in bad faith or with malicious intent. In addition, the district is prohibited from taking an adverse employment action against a certified or licensed professional who, in good faith, reports child abuse or neglect or who participates in an investigation regarding an allegation of child abuse or neglect.

An employee's failure to make the required report may result in prosecution as a Class A misdemeanor. The offense of failure to report by a professional may be a state jail felony if it is shown the individual intended to conceal the abuse or neglect. In addition, a certified employee's failure to report may result in disciplinary procedures by SBEC for a violation of the Texas Educators' Code of Ethics.

Employees who suspect that a student has been or may be abused or neglected should also report their concerns to the campus principal. This includes students with disabilities who are no longer minors. Employees are not required to report their concern to the principal before making a report to the appropriate agency.

Reporting the concern to the principal does not relieve the employee of the requirement to report it to the appropriate state agency. In addition, employees must cooperate with investigators of child abuse and neglect. Interference with a child abuse investigation by denying an interviewer's request to interview a student at school or requiring the presence of a parent or school administrator against the desires of the duly authorized investigator is prohibited.

Sexual Abuse and Maltreatment of Children

The district has established a plan for addressing sexual abuse and other maltreatment of children, which may be accessed at each campus office. As an employee, it is important for you to be aware of warning signs that could indicate a child may have been or is being sexually abused or maltreated. Sexual abuse in the Texas Family Code is defined as any sexual conduct harmful to a child's mental, emotional, or physical welfare as well as a failure to make a reasonable effort to prevent sexual conduct with a child. Maltreatment is defined as abuse or neglect. Anyone who has reasonable cause that a child has been or may be abused or neglected has a legal responsibility under state law for reporting the suspected abuse or neglect following the procedures described above in *Reporting Suspected Child Abuse*.

Reporting Crime

Policy DG

The Texas Whistleblower Act protects district employees who make good faith reports of violations of law by the district to an appropriate law enforcement authority. The district is prohibited from suspending, terminating the employment of, or taking other adverse personnel action against, an employee who makes a report under the Act. State law also provides employees with the right to report a crime witnessed at the school to any peace officer with authority to investigate the crime.

Scope and Sequence

Policy DG

If a teacher determines that students need more or less time in a specific area to demonstrate proficiency in the Texas Essential Knowledge and Skills (TEKS) for that subject and grade level, the district will not penalize the teacher for not following the district's scope and sequence.

The district may take appropriate action if a teacher does not follow the district's scope and sequence based on documented evidence of a deficiency in classroom instruction. This documentation can be obtained through observation or substantiated and documented third-party information.

Technology Resources

Policy CQ

The district's technology resources, including its networks, computer systems, email accounts, devices connected to its networks, and all district-owned devices used on or off school property, are primarily for administrative and instructional purposes. Limited personal use is permitted if the use:

- Imposes no tangible cost to the district.
- Does not unduly burden the district's technology resources.
- Has no adverse effect on job performance or on a student's academic performance.

Electronic mail transmissions and other use of the technology resources are not confidential and can be monitored at any time to ensure appropriate use.

Employees are required to abide by the provisions of the district's acceptable use agreement and administrative procedures. Failure to do so can result in suspension of access or termination of privileges and may lead to disciplinary and legal action. Employees with questions about computer use and data management can contact Cassie Pinkston, Technology Director.

Personal Use of Electronic Communications

Policy CQ, DH

Electronic communications include all forms of social media, such as text messaging, instant messaging, electronic mail (email), web logs (blogs), wikis, electronic forums (chat rooms), video-sharing websites (e.g., YouTube), editorial comments posted on the Internet, and social network sites (e.g., Facebook, Twitter, LinkedIn, Instagram). Electronic communications also include all forms of telecommunication such as landlines, cell phones, and web-based applications.

As role models for the district's students, employees are responsible for their public conduct even when they are not acting as district employees. Employees will be held to the same

professional standards in their public use of electronic communications as they are for any other public conduct. If an employee's use of electronic communications interferes with the employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment. If an employee wishes to use a social network site or similar media for personal purposes, the employee is responsible for the content on the employee's page, including content added by the employee, the employee's friends, or members of the public who can access the employee's page, and for web links on the employee's page. The employee is also responsible for maintaining privacy settings appropriate to the content.

An employee who uses electronic communications for personal purposes shall observe the following:

- The employee may not set up or update the employee's personal social network page(s) using the district's computers, network, or equipment.

- The employee shall limit use of personal electronic communication devices to send or receive calls, text messages, pictures, and videos to breaks, meal times, and before and after scheduled work hours, unless there is an emergency or the use is authorized by a supervisor to conduct district business.

- The employee shall not use the district's logo or other copyrighted material of the district without express written consent.

- An employee may not share or post, in any format, information, videos, or pictures obtained while on duty or on district business unless the employee first obtains written approval from the employee's immediate supervisor. Employees should be cognizant that they have access to information and images that, if transmitted to the public, could violate privacy concerns.

- The employee continues to be subject to applicable state and federal laws, local policies, administrative regulations, and the Texas Educators' Code of Ethics, even when communicating regarding personal and private matters, regardless of whether the employee is using private or public equipment, on or off campus. These restrictions include:

    - Confidentiality of student records. [See Policy FL]
    - Confidentiality of health or personnel information concerning colleagues, unless disclosure serves lawful professional purposes or is required by law. [See DH (EXHIBIT)]
    - Confidentiality of district records, including educator evaluations and private email addresses. [See Policy GBA]

- Copyright law [See Policy CY]
- Prohibition against harming others by knowingly making false statements about a colleague or the school system. [See DH (EXHIBIT)]

See *Electronic Communications between Employees, Students, and Parents,* below, for regulations on employee communication with students through electronic media.

Electronic Communications between Employees, Students, and Parents

Policy DH

A certified or licensed employee, or any other employee designated in writing by the superintendent or a campus principal, may use electronic communications with students who are currently enrolled in the district. The employee must comply with the provisions outlined below. Electronic communications between all other employees and students who are enrolled in the district are prohibited. Employees are not required to provide students with their personal phone number or email address.

An employee is not subject to the provisions regarding electronic communications with a student to the extent the employee has a social or family relationship with a student. For example, an employee may have a relationship with a niece or nephew, a student who is the child of an adult friend, a student who is a friend of the employee's child, or a member or participant in the same civic, social, recreational, or religious organization. An employee who claims an exception based on a social relationship shall provide written consent from the student's parent. The written consent shall include an acknowledgement by the parent that:

- The employee has provided the parent with a copy of this protocol
- The employee and the student have a social relationship outside of school;
- The parent understands that the employee's communications with the student are excepted from district regulation; and
- The parent is solely responsible for monitoring electronic communications between the employee and the student.

The following definitions apply for the use of electronic media with students:

- *Electronic communications* means any communication facilitated by the use of any electronic device, including a telephone, cellular telephone, computer, computer network, personal data assistant, or pager. The term includes email, text messages, instant messages, and any communication made through an Internet website, including a social media website or a social networking website.

- *Communicate* means to convey information and includes a one-way communication as well as a dialogue between two or more people. A public communication by an employee that is not targeted at students (e.g., a posting on the employee's personal social network page or a blog) is not a *communication*: however, the employee may be subject to district regulations on personal electronic communications. See *Personal Use of Electronic Media*, above. Unsolicited contact from a student through electronic means is not a *communication*.

- *Certified or licensed employee* means a person employed in a position requiring SBEC certification or a professional license, and whose job duties may require the employee to communicate electronically with students. The term includes classroom teachers, counselors, principals, librarians, paraprofessionals, nurses, educational diagnosticians, licensed therapists, and athletic trainers.

An employee who communicates electronically with students shall observe the following:

- The employee is prohibited from knowingly communicating with students using any form of electronic communications, including mobile and web applications, that are not provided or accessible by the district unless a specific exception is noted below.

- Only a teacher, trainer, or other employee who has an extracurricular duty may use text messaging, and then only to communicate with students who participate in the extracurricular activity over which the employee has responsibility. An employee who communicates with a student using text messaging shall comply with the following protocol:

    - For each text message addressed to one or more students, the employee shall send a copy of the text message to the employee's district email address.

- The employee shall limit communications to matters within the scope of the employee's professional responsibilities (e.g., for classroom teachers, matters relating to class work, homework, and tests; for an employee with an extracurricular duty, matters relating to the extracurricular activity).

- The employee is prohibited from knowingly communicating with students through a personal social network page; the employee must create a separate social network page ("professional page") for the purpose of communicating with students. The employee must enable administration and parents to access the employee's professional page.

- The employee shall not communicate directly with any student between the hours of 9:00 p.m. and 6:00 a.m. An employee may, however, make public posts to a social network site, blog, or similar application at any time.

- The employee does not have a right to privacy with respect to communications with students and parents.

- The employee continues to be subject to applicable state and federal laws, local policies, administrative regulations, and the Texas Educators' Code of Ethics including:

    - Compliance with the Public Information Act and the Family Educational Rights and Privacy Act (FERPA), including retention and confidentiality of student records. [See Policies CPC and FL]
    - Copyright law [Policy CY]
    - Prohibitions against soliciting or engaging in sexual conduct or a romantic relationship with a student. [See Policy DH]

- Upon request from administration, an employee will provide the phone number(s), social network site(s), or other information regarding the method(s) of electronic media the employee uses to communicate with one or more currently-enrolled students.

- Upon written request from a parent or student, the employee shall discontinue communicating with the student through email, text messaging, instant messaging, or any other form of one-to-one communication.

- An employee may request an exception from one or more of the limitations above by submitting a written request to his or her immediate supervisor.

- All staff are required to use school email accounts for all electronic communications with parents. Communication about school issues through personal email accounts or text messages are not allowed as they cannot be preserved in accordance with the district's record retention policy.

- An employee shall notify his or supervisor in writing within one business day if a student engages in an improper electronic communication with the employee. The employee should describe the form and content of the electronic communication.

Public Information on Private Devices

Policy DH

Employees should not maintain district information on privately owned devices. Any district information must be forwarded or transferred to the district to be preserved. The district will take reasonable efforts to obtain public information in compliance with the Public Information Act. Reasonable efforts may include:

- Verbal or written directive
- Remote access to district-owned devices and services

Criminal History Background Checks

Policy DBAA

Employees may be subject to a review of their criminal history record information at any time during employment. National criminal history checks based on an individual's fingerprints, photo, and other identification will be conducted on certain employees and entered into the Texas Department of Public Safety (DPS) Clearinghouse. This database provides the district and SBEC with access to an employee's current national criminal history and updates to the employee's subsequent criminal history.

Employee Arrests and Convictions

Policy DH

An employee must notify his or her principal or immediate supervisor within three calendar days of any arrest, indictment, conviction, no contest or guilty plea, or other adjudication of any felony, and any of the other offenses listed below:

- Crimes involving school property or funds
- Crimes involving attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator
- Crimes that occur wholly or in part on school property or at a school-sponsored activity
- Crimes involving moral turpitude

Moral turpitude includes the following:

- Dishonesty
- Fraud
- Deceit
- Theft
- Misrepresentation
- Deliberate violence
- Base, vile, or depraved acts that are intended to arouse or gratify the sexual desire of the actor
- Crimes involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance
- Felonies involving driving while intoxicated (DWI)
- Acts constituting abuse or neglect under the Texas Family Code

If an educator is arrested or criminally charged, the superintendent is also required to report the educator's criminal history to the Division of Investigations at TEA.

Alcohol and Drug-Abuse Prevention

Policy DH

Lone Oak ISD is committed to maintaining an alcohol- and drug-free environment and will not tolerate the use of alcohol and illegal drugs in the workplace and at school-related or school-sanctioned activities on or off school property. Employees who use or are under the influence of alcohol or illegal drugs as defined by the Texas Controlled Substances Act during working hours may be dismissed. The district's policy regarding employee drug use follows:

http://pol.tasb.org/Policy/Code/696?filter=DH

http://pol.tasb.org/Policy/Code/696?filter=DI

Tobacco Products and E-Cigarette Use

Policies DH, FNCD, GKA

State law prohibits smoking, using tobacco products, or e-cigarettes on all district-owned property and at school-related or school-sanctioned activities, on or off school property. This includes all buildings, playground areas, parking facilities, and facilities used for athletics and other activities. Drivers of district-owned vehicles are prohibited from smoking, using tobacco products, or e-cigarettes while inside the vehicle. Notices stating that smoking is prohibited by law and punishable by a fine are displayed in prominent places in all school buildings.

Fraud and Financial Impropriety

Policy CAA

All employees should act with integrity and diligence in duties involving the district's financial resources. The district prohibits fraud and financial impropriety, as defined below. Fraud and financial impropriety include the following:

- Forgery or unauthorized alteration of any document or account belonging to the district
- Forgery or unauthorized alteration of a check, bank draft, or any other financial document
- Misappropriation of funds, securities, supplies, or other district assets including employee time
- Impropriety in the handling of money or reporting of district financial transactions
- Profiteering as a result of insider knowledge of district information or activities
- Unauthorized disclosure of confidential or proprietary information to outside parties
- Unauthorized disclosure of investment activities engaged in or contemplated by the district
- Accepting or seeking anything of material value from contractors, vendors, or other persons providing services or materials to the district, except as otherwise permitted by law or district policy

- Inappropriately destroying, removing, or using records, furniture, fixtures, or equipment
- Failing to provide financial records required by federal, state, or local entities
- Failure to disclose conflicts of interest as required by law or district policy
- Any other dishonest act regarding the finances of the district
- Failure to comply with requirements imposed by law, the awarding agency, or a pass-through entity for state and federal awards

Conflict of Interest

Policy CB, DBD

Employees are required to disclose in writing to the district any situation that creates a potential conflict of interest with proper discharge of assigned duties and responsibilities or creates a potential conflict of interest with the best interests of the district. This includes the following:

- A personal financial interest
- A business interest
- Any other obligation or relationship
- Non-school employment

Employees should contact their supervisor for additional information.

Gifts and Favors

Policy DBD

Employees may not accept gifts or favors that could influence, or be construed to influence, the employee's discharge of assigned duties. The acceptance of a gift, favor, or service by an administrator or teacher that might reasonably tend to influence the selection of textbooks, electronic textbooks, instructional materials or technological equipment may result in prosecution of a Class B misdemeanor offense. This does not include staff development, teacher training, or instructional materials such as maps or worksheets that convey information to students or contribute to the learning process.

Copyrighted Materials

Policy CY

Employees are expected to comply with the provisions of federal copyright law relating to the unauthorized use, reproduction, distribution, performance, or display of copyrighted materials (i.e., printed material, videos, computer data and programs, etc.). Electronic media, including motion pictures and other audiovisual works, are to be used in the classroom for instructional purposes only. Duplication or backup of computer programs and data must be made within the provisions of the purchase agreement.

Associations and Political Activities

Policy DGA

The district will not directly or indirectly discourage employees from participating in political affairs or require any employee to join any group, club, committee, organization, or association. Employees may join or refuse to join any professional association or organization.

An individual's employment will not be affected by membership or a decision not to be a member of any employee organization that exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Use of district resources including work time for political activities is prohibited.

The district encourages personal participation in the political process, including voting. Employees who need to be absent from work to vote during the early voting period or on election day must communicate with their immediate supervisor prior to the absence.

Charitable Contributions

Policy DG

The Board or any employee may not directly or indirectly require or coerce an employee to make a contribution to a charitable organization or in response to a fundraiser. Employees cannot be required to attend a meeting called for the purpose of soliciting charitable contributions. In addition, the Board or any employee may not directly or indirectly require or coerce an employee to refrain from making a contribution to a charitable organization or in response to a fundraiser or attending a meeting called for the purpose of soliciting charitable contributions.

Safety

Policy CK series

The district has developed and promotes a comprehensive program to ensure the safety of its employees, students, and visitors. The safety program includes guidelines and procedures for responding to emergencies and activities to help reduce the frequency of accidents and injuries.

To prevent or minimize injuries to employees, coworkers, and students and to protect and conserve district equipment, employees must comply with the following requirements:

- Observe all safety rules.
- Keep work areas clean and orderly at all times.
- Immediately report all accidents to their supervisor.
- Operate only equipment or machines for which they have training and authorization.

While driving on district business, employees are required to abide by all state and local traffic laws. Employees driving on district business are prohibited from texting and using other electronic devices that require both visual and manual attention while the vehicle is in motion. Employees will exercise care and sound judgment on whether to use hands-free technology while the vehicle is in motion.

Employees with questions or concerns relating to safety programs and issues can contact the Superintendent's office.

Possession of Firearms and Weapons

Policies DH, FNCG, GKA

With exception of those assigned to the LOISD Guardian Program, employees, visitors, and students, including those with a license to carry a handgun, are prohibited from bringing firearms, knives, clubs, or other prohibited weapons onto school premises (i.e., building or portion of a building) or any grounds or building where a school-sponsored activity takes place. A person, including an employee, who holds a license to carry a handgun may transport or storea handgun or other firearm or ammunition in a locked vehicle in a parking lot, garage, or other district provided parking area, provided the handgun or firearm or ammunition is properly stored, and not in plain view. To ensure the safety of all persons, employees who observe or suspect a violation of the district's weapons policy should report it to their supervisor or call theSuperintendent immediately.

Visitors in the Workplace

Policy GKC

All visitors are expected to enter any district facility through the main entrance and sign in or report to the building's main office. Authorized visitors will receive directions or be escorted to their destination. Employees who observe an unauthorized individual on the district premises should immediately direct him or her to the building office or contact the administrator in charge.

Asbestos Management Plan

Policy CKA

The district is committed to providing a safe environment for employees. An accredited management planner has developed an asbestos management plan for each school. A copy of the district's management plan is kept in the Superintendent's office and is available for inspection during normal business hours. Contact Wayne Shepherd at 903-634-5254.

Pest Control Treatment

Policies CLB, DI

Employees are prohibited from applying any pesticide or herbicide without appropriate training and prior approval of the integrated pest management (IPM) coordinator. Any application of pesticide or herbicide must be done in a manner prescribed by law and the district's integrated pest management program.

Notices of planned pest control treatment will be posted in a district building 48 hours before the treatment begins. Notices are generally located in the doorways of the target buildings. In addition, individual employees may request in writing to be notified of pesticide applications. An employee who requests individualized notice will be notified by telephone, written, or electric means. Pest control information sheets are available from campus principals or facility managers upon request.

General Procedures

Emergency School Closing

The district may close schools because of bad weather or emergency conditions. When such conditions exist, the Superintendent will make the official decision concerning the closing of the district's facilities. When it becomes necessary to open late, to release students early, or to cancel school, district officials will post a notice on the district's website, social media and notify local radio and television stations. The emergency alert system will also be used for those who receive notices.

www.loisd.net

https://www.facebook.com/LOISDTX

KDFW Fox 4

WFAA ABC 8

KXAS NBC 5

Emergencies

Policies CKC, CKD

All employees should be familiar with the safety procedures for responding to emergencies, including a medical emergency. Employees should locate evacuation diagrams posted in their

work areas and be familiar with shelter in place, lockout, and lockdown procedures. Emergency drills will be conducted to familiarize employees and students with safety and evacuation procedures. Each campus is equipped with an automatic external defibrillator. Fire extinguishers are located throughout all district buildings. Employees should know the location of these devices and procedures for their use.

Purchasing Procedures

Policy CH

All requests for purchases must be submitted to the Business Office on an official district purchase order (PO) form with the appropriate approval signatures. No purchases, charges, or commitments to buy goods or services for the district can be made without a PO number. The district will not reimburse employees or assume responsibility for purchases made without authorization. Employees are not permitted to purchase supplies or equipment for personal use through the district's business office. Contact Gary Sorrells for additional information on purchasing procedures.

Name and Address Changes

It is important that employment records be kept up to date. Employees must notify the Human Resources office if there are any changes or corrections to their name, home address, contact telephone number, marital status, emergency contact, or beneficiary. The form to process a change in personal information can be obtained from Jan DeWitt, HR Director.

Personnel Records

Policy DBA, GBA

Most district records, including personnel records, are public information and must be released upon request. In most cases, an employee's personal email address is confidential and may not be released without the employee's permission.

Employees may choose to have the following personal information withheld:

- Address
- Phone number, including personal cell phone number
- Emergency contact information
- Information that reveals whether they have family members

The choice to not allow public access to this information or change an existing choice may be made at any time by submitting a written request to Jan DeWitt, HR Director. New or terminated employees have 14 days after hire or termination to submit a request. Otherwise, personal information may be released to the public until a request to withhold the information

is submitted or another exception for release of information under law applies. An employee is responsible for notifying the district if he or she is subject to any exception for disclosure of personal or confidential information.

Facility Use

Policies DGA, GKD

Employees who wish to use district facilities after school hours must follow established procedures. The building principal is responsible for scheduling the use of facilities after school hours. Contact campus principals to request to use school facilities and to obtain information on the fees charged.

Termination of Employment

Resignations

Policy DFE, DHB

Contract Employees. Contract employees may resign their position without penalty at the end of any school year if written notice is received at least 45 days before the first day of instruction of the following school year. A written notice of resignation should be submitted to the Superintendent. Contract employees may resign at any other time only with the approval of the superintendent or the board of trustees. Resignation without consent may result in disciplinary action by the State Board for Educator Certification (SBEC).

The principal is required to notify the superintendent of an educator's resignation within seven business days following an alleged incident of misconduct for any of the acts listed in *Reports to Texas Education Agency*. The superintendent will notify SBEC when an employee resigns and there is evidence that the employee has engaged in such misconduct.

Noncontract Employees. Noncontract employees may resign their position at any time. A written notice of resignation should be submitted to the Superintendent at least two weeks prior to the effective date. Employees are encouraged to include the reasons for leaving in the letter of resignation but are not required to do so.

The principal is required to notify the superintendent of a noncertified employee's resignation or termination within seven business days following an alleged incident of misconduct of abuse of a student, or was involved in a romantic relationship with or solicited or engaged in sexual conduct with a student or minor. The superintendent will notify TEA within seven business days of receiving a report from a principal, or of knowing about an employee's resignation or termination following an alleged incident of misconduct described above.

Dismissal or Nonrenewal of Contract Employees

Policies DF Series, DHB

Employees on probationary, term, and continuing contracts can be dismissed during the school year according to the procedures outlined in district policies. Employees on probationary or term contracts can be nonrenewed at the end of the contract term. Contract employees dismissed during the school year, suspended without pay, or subject to a reduction in force are entitled to receive notice of the recommended action, an explanation of the charges against them, and an opportunity for a hearing. The timelines and procedures to be followed when a suspension, termination, or nonrenewal occurs will be provided when a written notice is given to an employee. The principal is required to notify the superintendent of an educator's termination within seven business days following an alleged incident of misconduct for any of the acts listed in Reports to Texas Education Agency on page 57. The superintendent will notify SBEC when an employee is terminated and there is evidence to indicate that the employee has engaged in such misconduct. Advance notification requirements do not apply when a contract employee is dismissed for failing to obtain or maintain appropriate certification or when the employee's certification is revoked for misconduct. Information on the timelines and procedures can befound in the DF series policies that are provided to employees or are available online.

Dismissal of Noncontract Employees

Policies DCD, DP

Noncontract employees are employed at will and may be dismissed without notice, a description of the reasons for dismissal, or a hearing. It is unlawful for the district to dismiss any employee for reasons of race, color, religion, sex, national origin, age, disability, military status, genetic information, any other basis protected by law, or in retaliation for the exercise of certain protected legal rights. Noncontract employees who are dismissed have the right to grieve the termination. The dismissed employee must follow the district process outlined in this handbook when pursuing the grievance.

The principal is required to notify the superintendent of a noncertified employee's resignation or termination within seven business days following an alleged incident of misconduct of abuse of a student, or was involved in a romantic relationship with or solicited or engaged in sexual conduct with a student or minor. The superintendent will notify TEA within seven business days of receiving a report from a principal, or knew about an employee's resignation or termination following an alleged incident of misconduct described above.

Discharge of Convicted Employees

Policy DF

The district shall discharge any employee who has been convicted of or placed on deferred adjudication community supervision for an offense requiring the registration as a sex offender

or convicted of a felony under Title 5 Penal Code if the victim was a minor.

If the offense is more than 30 years before the date the person's employment began or the person satisfied all terms of the court order entered on conviction the requirement to discharge does not apply.

Exit Interviews and Procedures

Exit interviews will be scheduled for all employees leaving the district. Information on the continuation of benefits, release of information, and procedures for requesting references will be provided at this time. Separating employees are asked to provide the district with a forwarding address and phone number and complete a questionnaire that provides the district with feedback on his or her employment experience. All district keys, books, property, including intellectual property, and equipment must be returned upon separation from employment.

Reports to Texas Education Agency

Policies DF, DHB, DHC

Certified Employees. The resignation or termination of a certified employee must be reported to the Division of Investigations at TEA if there is evidence that the employee was involved in any of the following:

- Any form of sexual or physical abuse of a minor, or any other unlawful conduct with a student or a minor
- Soliciting or engaging in sexual contact or a romantic relationship with a student or minor
- The possession, transfer, sale, or distribution of a controlled substance
- The illegal transfer, appropriation, or expenditure of district or school property or funds
- An attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit for the purpose of promotion or additional compensation
- Committing a criminal offense or any part of a criminal offense on district property or at a school-sponsored event.

The reporting requirements above are in addition to the superintendent's ongoing duty to notify TEA when a certified employee or an applicant for certification has a reported criminal history or engaged in conduct violating the assessment security procedures established under TEC §39.0301. "Reported criminal history" means any formal criminal justice system charges and dispositions including arrests, detentions, indictments, criminal information, convictions, deferred adjudications, and probations in any state or federal jurisdiction that is obtained by a means other than the Fingerprint-based Applicant Clearinghouse of Texas (FACT).

Noncertified Employees. The voluntary or involuntary separation of a noncertified employee from the District must be reported to the Division of Investigations at TEA by the

superintendent if there is evidence the employee abused or otherwise committed an unlawful act with a student or minor, was involved in a romantic relationship with a student or minor, or solicited or engaged in sexual contact with a student or minor.

Reports Concerning Court-Ordered Withholding

The district is required to report the termination of employees that are under court order or writ of withholding for child support or spousal maintenance. Notice of the following must be sent to the support recipient and the court or, in the case of child support, the Texas Attorney General Child Support Division:

- Termination of employment not later than the seventh day after the date of termination
- Employee's last known address
- Name and address of the employee's new employer, if known

Student Issues

Equal Educational Opportunities

Policies FB, FFH

In an effort to promote nondiscrimination and as required by law, Lone Oak ISD does not discriminate on the basis of race, color, religion, national origin, age, sex, or disability in providing education services, activities, and programs, including Career and Technical Education (CTE) programs, in accordance with Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments of 1972; and Section 504 of the Rehabilitation Act of 1973, as amended.

Questions or concerns about discrimination of students based on any of the reasons listed above should be directed to Janeé Carter, Superintendent, jcarter@loisd.net, 903-634-5270.

Student Records

Policy FL

Student records are confidential and are protected from unauthorized inspection or use. Employees should take precautions to maintain the confidentiality of all student records. The following people are the only people who have general access to a student's records:

- Parents: Married, separated, or divorced unless parental rights have been legally terminated and the school has been given a copy of the court order terminating parental rights
- The student: The rights of parents transfer to a student who turns 18 or is enrolled in an

institution of post-secondary education. A district is not prohibited from granting the student access to the student's records before this time.
- School officials with legitimate educational interests

The student handbook provides parents and students with detailed information on student records. Parents or students who want to review student records should be directed to the principal for assistance.

Parent and Student Complaints

Policy FNG

In an effort to hear and resolve parent and student complaints in a timely manner and at the lowest administrative level possible, the board has adopted orderly processes for handling complaints on different issues. Any campus office or the superintendent's office can provide parents and students with information on filing a complaint.

Parents are encouraged to discuss problems or complaints with the teacher or the appropriate administrator at any time. Parents and students with complaints that cannot be resolved to their satisfaction should be directed to the campus principal. The formal complaint process provides parents and students with an opportunity to be heard up to the highest level of management if they are dissatisfied with a principal's response.

Administering Medication to Students

Policy FFAC

Only designated employees may administer prescription medication, nonprescription medication, and herbal or dietary supplements to students. Exceptions apply to the self-administration of asthma medication, medication for anaphylaxis (e.g., EpiPen®), and medication for diabetes management, if the medication is self-administered in accordance with district policy and procedures. A student who must take any other medication during the school day must bring a written request from his or her parent and the medicine in its original, properly labeled container. Contact the principal or school nurse for information on procedures that must be followed when administering medication to students.

Dietary Supplements

Policies DH, FFAC

District employees are prohibited by state law from knowingly selling, marketing, or distributing a dietary supplement that contains performance-enhancing compounds to a student with whom the employee has contact as part of his or her school district duties. In addition, employees may not knowingly endorse or suggest the ingestion, intranasal application, or inhalation of a performance-enhancing dietary supplement to any student.

Psychotropic Drugs

Policy FFAC

A psychotropic drug is a substance used in the diagnosis, treatment, or prevention of a disease or as a component of a medication. It is intended to have an altering effect on perception, emotion, or behavior and is commonly described as a mood- or behavior-altering substance.

District employees are prohibited by state law from doing the following:

- Recommending that a student use a psychotropic drug
- Suggesting a particular diagnosis
- Excluding from class or school-related activity a student whose parent refuses to consent to a psychiatric evaluation or to authorize the administration of a psychotropic drug to a student

Student Conduct and Discipline

Policies in the FN series and FO series

Students are expected to follow the classroom rules, campus rules, and rules listed in the Student Handbook and Student Code of Conduct. Teachers and administrators are responsible for taking disciplinary action based on a range of discipline management strategies that have been adopted by the district. Other employees that have concerns about a particular student's conduct should contact the classroom teacher or campus principal.

Student Attendance

Policy FEB

Teachers and staff should be familiar with the district's policies and procedures for attendance accounting. These procedures require minor students to have parental consent before they are allowed to leave campus. When absent from school, the student upon returning to school, must bring a note signed by the parent that describes the reason for the absence. These requirements are addressed in campus training and in the student handbook. Contact the campus principal for additional information.

Bullying

Policy FFI

Bullying is defined by §TEC 37.0832. All employees are required to report student complaints of bullying, including cyberbullying, to the campus principal. The district's policy includes definitions and procedures for reporting and investigating bullying of students and is reprinted below:

http://pol.tasb.org/Policy/Code/696?filter=FFI

Hazing

Policy FNCC

Students must have prior approval from the principal or designee for any type of "initiation rites" of a school club or organization. While most initiation rites are permissible, engaging in or permitting "hazing" is a criminal offense. Any teacher, administrator, or employee who observes a student engaged in any form of hazing, who has reason to know or suspect that a student intends to engage in hazing, or has engaged in hazing must report that fact or suspicion to the designated campus administrator.

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LONE OAK INDEPENDENT SCHOOL DISTRICT
STUDENT HANDBOOK
2022–2023 School Year



If you have difficulty accessing the information in this document because of disability, please contact the district at 903-662-5151

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Lone Oak ISD & Campus Administration

● Janee' Carter,	903- 662-5151	Superintendent
● Jill Whitehead	903-662-5151	Elementary Principal
● Lisa Brannon	903-662-5151	Elementary Assistant Principal
● Shannon Wilhite	903-662-5121	Middle School Principal
● Tammy Ragsdale	903-662-5121	Middle School Dean of Students
● Nate Compton	903-662-0980	High School Principal
● Robert Whitehead	903-662-0980	High School Assistant Principal
● Jared Smith	903-634-2071	College Street Director
● Logan Turner	903-662-0980	Athletic Director
● Laurie Daniel	903-662-0980	District Registered Nurse

School Colors: Red and White Mascot: Buffalo

District Motto:
"Working Toward a New Century of Excellence"

District Mission:
To create a supportive learning environment that nurtures positive self esteem and physical well-being while enabling students to reach their fullest academic and social potential. The district accepts the responsibilities for preparing students to be productive citizens and lifelong learners in our changing world.

School Song
We love you Lone Oak High School
You're the best and always will be.
We love you Lone Oak High School,
You mean the world to me.
You stand for truth and courage,
And for right you'll always stand.
We love you Lone Oak High School,
Lone Oak High School, we think you're grand.
We'll cheer you on to victory.
We'll stand by you when you fall.
We'll back you when you're losing,
Or when you have the ball.
We'll always be in there fighting.
We'll always be brave and true.
We've got the spirit.
We've got the team.
Lone Oak High School,
You're our dream.

Preface Parents and Students:

Welcome to the new school year!

Education is a team effort. Students, parents, teachers, and other staff members working together will make this a successful year.

The Lone Oak ISD Student Handbook is a general reference guide that is divided into two sections:

Section One: Parental Rights describes certain parental rights as specified in state or federal law.

Section Two: Other Important Information for Parents and Students is organized alphabetically by topic. Where applicable, the topics are further organized by grade level.

Note: Unless otherwise noted, the term “parent” refers to the parent, legal guardian, any person granted some other type of lawful control of a student, or any other person who has agreed to assume school-related responsibility for a student.

The Student Handbook is designed to align with law, board-adopted policy, and the Student Code of Conduct, a board-adopted document intended to promote school safety and an atmosphere for learning. The Student Handbook is not meant to be a complete statement of all policies, procedures, or rules in any given circumstance.

In case of conflicts between board policy (including the Student Code of Conduct) and any Student Handbook provision, the district will follow board policy and the Student Code of Conduct.

Therefore, parents and students should become familiar with the Lone Oak ISD Student Code of Conduct. To review the Code of Conduct, visit the district’s website at www.loisd.net State law requires that the Code of Conduct be prominently displayed or made available for review at each campus.

The Student Handbook is updated annually; however, policy adoption and revisions may occur throughout the year. The district encourages parents to stay informed of proposed policy changes by attending board meetings and reviewing newsletter and other communications explaining changes in policy or other rules that affect Student Handbook provisions. The district reserves the right to modify the Student Handbook at any time. Notice of revisions will be provided as is reasonably practical.

Although the Student Handbook may refer to rights established through law or district policy, it does not create additional rights for parents and students. It does not, nor is it intended to, represent a contract between any parent or student and the district.

A hard copy of either the Student Code of Conduct or Student Handbook can be requested from a campus office.

Note: References to board policy codes are included for ease of reference. The hard copy of the district’s official policy manual is available for review in the district administration office] and an unofficial electronic copy is available at www.loisd.net.

The policy manual includes:

- Legally referenced (LEGAL) policies that contain provisions from federal and state laws and regulations, case law, and other legal authorities that provide the legal framework for school districts.
- Board-adopted (LOCAL) policies that articulate the board's choices and values regarding district practices.

For questions about the material in this handbook, please contact your campus counselor or principal:

Complete and return to the student's campus the following forms provided in the forms packet distributed at the beginning of the year or upon enrollment:

- Acknowledgment Form ***OR*** Acknowledgment of Electronic Distribution of Student Handbook,
- Notice Regarding Directory Information and Parent's Response Regarding Release of Student Information,
- Parent's Objection to the Release of Student Information to Military Recruiters and Institutions of Higher Education (if you choose to restrict the release of information to these entities), and
- Consent/Opt-Out Form for participation in third-party surveys.

See **Objecting to the Release of Directory Information** on page and **Consent Required before Student Participation in a Federally Funded Survey** on page for more information.

Accessibility

If you have difficulty accessing this handbook because of a disability, please contact:

Lone Oak Elementary ● 8080 Highway 69 South Lone Oak, TX 75453 ● 903-634-5262

Lone Oak Middle School ● 8160 Highway 69 South Lone Oak, TX 75453 ● 903-634-5244

Lone Oak High School ● 8204 Highway 69 South Lone Oak, TX 75453 ● 903-634-5221

Section One: Parental Rights

This section describes certain parental rights as specified in state or federal law.

Consent, Opt-Out, and Refusal Rights

Consent to Conduct a Psychological Evaluation

Unless required under state or federal law, a district employee will not conduct a psychological examination, test, or treatment without obtaining prior written parental consent.

Note: An evaluation may be legally required under special education rules or by the Texas Education Agency for child abuse investigations and reports.

Consent to Human Sexuality Instruction

Annual Notification

As a part of the district's curriculum, students receive instruction related to human sexuality through Anatomy & Physiology. The state mandated TEKs will be followed for instruction.

In accordance with state law, a parent may:

- Review, receive a copy of, or purchase a copy of curriculum materials depending on the copyright of the materials.
- Remove his or her child from any part of the human sexuality instruction without academic, disciplinary, or other penalties.
- Become involved in the development of this curriculum by becoming a member of the district's SHAC or attending SHAC meetings. (See the campus principal for details.)
- Use the district's grievance procedure concerning a complaint. See **Complaints and Concerns (All Grade Levels)** on page and FNG(LOCAL).

State law also requires that instruction related to human sexuality, sexually transmitted diseases, or human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS):

- Present abstinence from sexual activity as the preferred choice in relationship to all sexual activity for unmarried persons of school age;
- Devote more attention to abstinence from sexual activity than to any other behavior;
- Emphasize that abstinence, if used consistently and correctly, is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted infections, and the emotional trauma associated with adolescent sexual activity;
- Direct adolescents to abstain from sexual activity before marriage as the most effective way to prevent pregnancy and sexually transmitted diseases; and
- If included in the content of the curriculum, teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates.

[See **Consent to Instruction of Prevention of Child Abuse, Family Violence, Dating Violence, and Sex Trafficking** on page .]

Consent before Human Sexuality Instruction

Before a student receives human sexuality instruction, the district must obtain written consent from the student's parent. Parents will be sent a request for written consent at least 14 days before the instruction will begin.

Consent before Instruction on Prevention of Child Abuse, Family Violence, Dating Violence, and Sex Trafficking

Before a student receives instruction on the prevention of child abuse, family violence, dating violence and sex trafficking, the district must obtain written consent from the student's parent. Parents will be sent a request for written consent at least 14 days before the instruction will begin.

Annual Notification

The district has established a plan for addressing child sexual abuse, trafficking, and other maltreatment of children, which may be accessed at www.loisd.net. Trafficking includes both sex and labor trafficking. In accordance with state law, a parent may:

- Review, receive a copy of, or purchase a copy of curriculum materials depending on the copyright of the materials. As required by law, any curriculum materials in the public domain used in this instruction will be posted on the district's website at the location indicated above.
- Remove his or her child from any part of this instruction without academic, disciplinary, or other penalties.
- Become involved in the development of this curriculum by becoming a member of the district's SHAC or attending SHAC meetings. (See the campus principal for details.)
- Use the district's grievance procedure concerning a complaint. See **Complaints and Concerns (All Grade Levels)** on page and FNG for information on the grievance and appeals process.

[See **Consent to Human Sexuality Instruction** on page ; **Dating Violence** on page ; and **Child Sexual Abuse, Trafficking, and Other Maltreatment of Children** on page]

Consent to Provide a Mental Health Care Service

The district will not provide a mental health care service to a student or conduct a medical screening of a student as part of the district's intervention procedures except as permitted by law.

The district has established procedures for recommending to a parent an intervention for a student with early warning signs of mental health concerns, substance abuse, or suicide risk. The district's mental health liaison will notify the student's parent within a reasonable amount of time after the liaison learns that a student has displayed early warning signs and provide information about available counseling options.

Please contact the school counselor for additional resources. The district has also established procedures for staff to notify the mental health liaison regarding a student who may need intervention. The mental health liaison can be reached at: The district has also established procedures for staff to notify the mental health liaison regarding a student who may need intervention.

The mental health liaison can be reached at:

Lone Oak Elementary ● 8080 Highway 69 South ● Lone Oak, TX 75453 ● 903-634-5262
Susan Gentry, Counselor sgentry@loisd.net
Lone Oak Middle School ● 8160 Highway 69 South ● Lone Oak, TX 75453 ● 903-634-5244
Leslie Putchio, Counselor lputchio@loisd.net
Lone Oak High School ● 8204 Highway 69 South ● Lone Oak, TX 75453 ● 903-634-5221
Susan Talbert, Counselor stalbert@loisd.net

The mental health liaison can provide further information regarding these procedures as well as curriculum materials on identifying risk factors, accessing resources for treatment or support on and off campus, and accessing available student accommodations provided on campus.

[See **Mental Health Support** on page .]

Consent to Display a Student's Original Works and Personal Information

Teachers may display a student's work in classrooms or elsewhere on campus as recognition of student achievement without seeking prior parental consent. These displays may include personally identifiable student information. Student work includes:

- Artwork,
- Special projects,
- Photographs,
- Original videos or voice recordings, and
- Other original works.

However, the district will seek parental consent before displaying a student's work on the district's website, a website affiliated or sponsored by the district (such as a campus or classroom website), or in district publications, which may include printed materials, videos, or other methods of mass communication.

Consent to Receive Parenting and Paternity Awareness Instruction if a Student is under Age 14

A student under age 14 must have parental permission to participate in the district's Parenting and Paternity Awareness Program (https://www.texasattorneygeneral.gov/child-support/programs-and-initiatives/parenting-and-paternity-awareness-papa/papa-educators/papa-curriculum). This program was developed by the Office of the Texas Attorney General and the State Board of Education (SBOE) to be incorporated into health education classes.

Consent to Video or Audio Record a Student when Not Already Permitted by Law

State law permits the school to make a video or voice recording without parental permission when it:

- Is to be used for school safety,
- Relates to classroom instruction or a cocurricular or extracurricular activity,
- Relates to media coverage of the school, or

- Relates to the promotion of student safety as provided by law for a student receiving special education services in certain settings.

In other circumstances, the district will seek written parental consent before making a video or voice recording of a student.

Please note that parents and visitors to a classroom, both virtual and in person, may not record video or audio or take photographs or other still images without permission from the teacher or other school official.

Prohibiting the Use of Corporal Punishment

Corporal punishment—spanking or paddling a student—may be used as a discipline management technique in accordance with the Student Code of Conduct and district policy FO(LOCAL).

However, in accordance with law, the district may not administer corporal punishment if a student's parent submits a signed, written statement prohibiting its use.

A parent who does not want corporal punishment administered to his or her child must return the form included in the forms packet ***OR*** submit a written statement to the campus principal stating this decision. This signed statement must be submitted each school year. A parent may revoke this prohibition at any time during the school year by providing a signed statement to the campus principal.

Note:

- District personnel may use discipline methods other than corporal punishment if a parent requests that corporal punishment not be used.
- If the district knows that a student is in temporary or permanent custody of the state (through foster care, kinship care, or other arrangements), corporal punishment will not be administered, even when the student's caregiver or caseworker has not submitted a signed statement prohibiting its use.

Limiting Electronic Communications between Students and District Employees

The district permits teachers and other approved employees to use electronic communications with students within the scope of professional responsibilities, as described by district guidelines.

For example, a teacher may create a social networking page for his or her class to relay information regarding class work, homework, and tests. A parent is welcome to access such a page.

However, text messages sent to an individual student are only allowed if a district employee with responsibility for an extracurricular activity must communicate with a student participating in that activity.

The employee is required to include his or her immediate supervisor and the student's parent as recipients on all text messages.

A parent who does not want his or her child to receive one-to-one electronic communications from a district employee should contact the campus principal.

Objecting to the Release of Directory Information

The Family Educational Rights and Privacy Act, or FERPA, permits the district to disclose appropriately designated "directory information" from a student's education records without written consent.

"Directory information" is information that, if released, is generally not considered harmful or an invasion of privacy. Examples include:

- A student's photograph (for publication in the school yearbook);
- A student's name and grade level (for communicating class and teacher assignments);
- The name, weight, and height of an athlete (for publication in a school athletic program);
- A list of student birthdays (for generating school wide or classroom recognition),
- A student's name and photograph (posted on a district-approved and -managed social media platform); and
- The names and grade levels of students submitted by the district to a local newspaper or other community publication (to recognize the A/B honor roll for a specific grading period.)

Directory information will be released to anyone who follows procedures for requesting it.

However, a parent or eligible student may object to the release of this information. Any objection must be made in writing to the principal within ten school days of the student's first day of instruction for this school year. [See **Notice Regarding Directory Information and Parent's Response Regarding Release of Student Information**, included in the forms packet.]

The district requests that families living in a shelter for survivors of family violence or trafficking notify district personnel that the student currently resides in such a shelter. Families may want to opt out of the release of directory information so that the district does not release any information that might reveal the location of such a shelter.

As allowed by state law, the district has identified two directory information lists—one for school-sponsored purposes and a second for all other requests. For district publications and announcements, the district has designated the following as directory information: student name, address; telephone listing; photograph; date and place of birth; major field of study; degrees; honors; and awards received; dates of attendance; grade level; most recent school attended; participation in officially recognized activities and sports; and weight and height if a member of an athletic team. If a parent does not object to the use of his or her child's information for these school-sponsored purposes, the school will not ask permission each time the district wants to use the information for these purposes.

For all other purposes, the district has identified the following as directory information: name, address, and grade level. If a parent does not object to the use of the student's information for these purposes, the school **must** release this information when requested by an outside entity or individual.

Note: Review **Authorized Inspection and Use of Student Records** on page .

Objecting to the Release of Student Information to Military Recruiters and Institutions of Higher Education (Secondary Grade Levels Only)

Unless a parent has advised the district not to release his or her student's information, the Every Student Succeeds Act (ESSA) requires the district to comply with requests from military recruiters or institutions of higher education for the student's:

- Name,
- Address, and
- Telephone listing.

Military recruiters may also have access to a student's district-provided email address, unless a parent has advised the district not to release this information.

[See **Parent's Objection to the Release of Student Information to Military Recruiters and Institutions of Higher Education,** included in the forms packet.]

Participation in Third-Party Surveys

Consent Required Before Student Participation in a Federally Funded Survey

The Protection of Pupil Rights Amendment (PPRA) provides parents certain rights regarding participation in surveys, the collection and use of information for marketing purposes, and certain physical exams.

A parent has the right to consent before a student is required to submit to a survey funded by the U.S. Department of Education that concerns any of the following protected areas:

- Political affiliations or beliefs of the student or the student's parent;
- Mental or psychological problems of the student or the student's family;
- Sex behavior or attitudes;
- Illegal, antisocial, self-incriminating, or demeaning behavior;
- Critical appraisals of individuals with whom the student has a close family relationship;
- Legally recognized privileged relationships, such as with lawyers, doctors, and ministers;
- Religious practices, affiliations, or beliefs of the student or parent; or
- Income, except when the information is required by law and will be used to determine the student's eligibility for a program.

A parent may inspect the survey or other instrument and any corresponding instructional materials used in connection with such a survey. [See policy EF(LEGAL) for more information.]

"Opting Out" of Participation in Other Types of Surveys or Screenings and the Disclosure of Personal Information

The PPRA gives parents the right to receive notice and an opportunity to opt a student out of:

- Activities involving the collection, disclosure, or use of personal information gathered from the child for the purpose of marketing, selling, or otherwise disclosing that information to others.

- Any nonemergency, invasive physical examination or screening required as a condition of attendance, administered by the school or its agent, and not necessary to protect the immediate health and safety of the student.

Exceptions are hearing, vision, or spinal screenings, or any physical examination or screening permitted or required under state law. [See policies EF and FFAA for more information.]

A parent may inspect:

- Protected information surveys of students and surveys created by a third party;
- Instruments used to collect personal information from students for any of the above marketing, sales, or other distribution purposes; and
- Instructional material used as part of the educational curriculum.

The ED provides extensive information about the Protection of Pupil Rights Amendment (https://studentprivacy.ed.gov/resources/protection-pupil-rights-amendment-ppra-general-guidance), including a PPRA Complaint Form (https://studentprivacy.ed.gov/file-a-complaint).

Removing a Student from Instruction or Excusing a Student from a Required Component of Instruction

See **Consent to Human Sexuality Instruction** on page and **Consent to Instruction on Prevention of Child Abuse, Family Violence, Dating Violence, and Sex Trafficking** on page for information on a parent's right to remove a student from such instruction.

Reciting a Portion of the Declaration of Independence in Grades 3–12

State law designates the week of September 17 as Celebrate Freedom Week and requires all social studies classes to provide:

- Instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution; and
- A specific recitation from the Declaration of Independence for students in grades 3–12.

Per state law, a student may be excused from recitation of a portion of the Declaration of Independence if:

- A parent provides a written statement requesting that his or her child be excused;
- The district determines that the student has a conscientious objection to the recitation; or
- A parent is a representative of a foreign government to whom the U.S. government extends diplomatic immunity.

[See policy EHBK(LEGAL) for more information.]

Reciting the Pledges to the U.S. and Texas Flags

A parent may request that his or her child be excused from participation in the daily recitation of the Pledge of Allegiance to the U.S. flag and the Pledge of Allegiance to the Texas flag. The request must be made in writing.

State law, however, requires that all students participate in one minute of silence following recitation of the pledges.

[See **Pledges of Allegiance and a Minute of Silence** on page and policy EC(LEGAL) for more information.]

Religious or Moral Beliefs

A parent may remove his or her child temporarily from the classroom if a scheduled instructional activity conflicts with the parent's religious or moral beliefs.

The removal may not be used to avoid a test and may not extend for an entire semester. The student must also satisfy grade-level and graduation requirements as determined by the school and by state law.

Tutoring or Test Preparation

A teacher may determine that a student needs additional targeted assistance for the student to achieve mastery in state-developed essential knowledge and skills based on:

- Informal observations;
- Evaluative data such as grades earned on assignments or tests; or
- Results from diagnostic assessments.

The school will always attempt to provide tutoring and strategies for test-taking in ways that prevent removal from other instruction as much as possible.

In accordance with state law and policy EC, districts must obtain parental permission before removing a student from a regularly scheduled class for remedial tutoring or test preparation for more than ten percent of the days the class is offered.

Under state law, students with grades below 70 for a reporting period are required to attend tutorial services—if the district offers these services.

[For questions about school-provided tutoring programs, contact the student's teacher and see policies EC and EHBC. See **Standardized Testing** on page for information regarding required accelerated instruction after a student fails to perform satisfactorily on certain state-mandated tests.]

Right of Access to Student Records, Curriculum Materials, and District Records/Policies

Instructional Materials

A parent has the right to review teaching materials, textbooks, and other teaching aids and instructional materials used in the curriculum, and to examine tests that have been administered, whether instruction is delivered in-person, virtually, or remotely. The district will provide login credentials to each student's parent for any learning management system or online learning portal used in instruction to facilitate parent access and review.

A parent is also entitled to request that the school allow the student to take home instructional materials the student uses. The school may ask the student to return the materials at the beginning of the next school day.

A school must provide printed versions of electronic instructional materials to a student if the student does not have reliable access to technology at home.

Notices of Certain Student Misconduct to Noncustodial Parent

A noncustodial parent may request in writing that he or she be provided, for the remainder of the school year, a copy of any written notice usually provided to a parent related to his or her child's misconduct that may involve placement in a disciplinary alternative education program (DAEP) or expulsion. [See the Student Code of Conduct and policy FO(LEGAL) for more information.]

Participation in Federally Required, State-Mandated, and District Assessments

In accordance with the Every Student Succeeds Act (ESSA), a parent may request information regarding any federal, state, or district policy related to his or her child's participation in required assessments.

Student Records

Accessing Student Records

A parent may review his or her child's records. These records include:

- Attendance records;
- Test scores;
- Grades;
- Disciplinary records;
- Counseling records;
- Psychological records;
- Applications for admission;
- Health and immunization information;
- Other medical records;
- Teacher and school counselor evaluations;
- Reports of behavioral patterns;
- Records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the child, as the term "intervention strategy" is defined by law;
- State assessment instruments that have been administered to the child; and
- Teaching materials and tests used in the child's classroom.

Authorized Inspection and Use of Student Records

The Family Educational Rights and Privacy Act (FERPA) affords parents and eligible students certain rights regarding student education records.

For purposes of student records, an "eligible" student is anyone age 18 or older or who attends a postsecondary educational institution. These rights, as discussed here and at **Objecting to the Release of Directory Information** on page , are the right to:

- Inspect and review student records within 45 days after the day the school receives a request for access;

- Request an amendment to a student record the parent or eligible student believes is inaccurate, misleading, or otherwise in violation of FERPA;
- Provide written consent before the school discloses personally identifiable information from the student's records, except to the extent that FERPA authorizes disclosure without consent; and
- File a complaint (https://studentprivacy.ed.gov/file-a-complaint) with the U.S. Department of Education concerning failures by the school to comply with FERPA requirements.

Both FERPA and state laws safeguard student records from unauthorized inspection or use and provide parents and eligible students certain rights of privacy.

Before disclosing personally identifiable information from a student's records, the district must verify the identity of the person, including a parent or the student, requesting the information.

Virtually all information pertaining to student performance—including grades, test results, and disciplinary records—is considered confidential educational records.

Inspection and release of student records is restricted to an eligible student or a student's parent unless the school receives a copy of a court order terminating parental rights or the right to access a student's education records. A parent's rights regarding access to student records are not affected by the parent's marital status.

Federal law requires that control of the records goes to the student as soon as the student:

- Reaches the age of 18;
- Is emancipated by a court; or
- Enrolls in a postsecondary educational institution.

However, the parent may continue to have access to the records if the student is a dependent for tax purposes and, under limited circumstances, when there is a threat to the health and safety of the student or other individuals.

FERPA permits the disclosure of personally identifiable information from a student's education records without written consent of the parent or eligible student when school officials have what federal law refers to as a "legitimate educational interest" in a student's records.

Legitimate educational interest may include:

- Working with the student;
- Considering disciplinary or academic actions, the student's case, or an individualized education program for a student with disabilities;
- Compiling statistical data;
- Reviewing an educational record to fulfill the official's professional responsibility; or
- Investigating or evaluating programs.

School officials may include:

- Board members and employees, such as the superintendent, administrators, and principals;

- Teachers, school counselors, diagnosticians, and support staff (including district health or medical staff);
- A person or company with whom the district has contracted or allowed to provide a specific institutional service or function (such as an attorney, consultant, third-party vendor that offers online programs or software, auditor, medical consultant, therapist, school resource officer, or volunteer);
- A person appointed to serve on a team to support the district's safe and supportive school program;
- A parent or student serving on a school committee; or
- A parent or student assisting a school official in the performance of his or her duties.

FERPA also permits the disclosure of personally identifiable information without written consent:

- To authorized representatives of various governmental agencies, including juvenile service providers, the U.S. Comptroller General's office, the U.S. Attorney General's office, the U.S. Secretary of Education, the Texas Education Agency, the U.S. Secretary of Agriculture's office, and Child Protective Services (CPS) caseworkers or, in certain cases, other child welfare representatives.
- To individuals or entities granted access in response to a subpoena or court order.
- To another school, district/system, or postsecondary educational institution to which a student seeks or intends to enroll or in which the student already is enrolled.
- In connection with financial aid for which a student has applied or has received.
- To accrediting organizations to carry out accrediting functions.
- To organizations conducting studies for, or on behalf of, the school to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction.
- To appropriate officials in connection with a health or safety emergency.
- When the district discloses directory information-designated details. [See **Objecting to the Release of Directory Information** on page to prohibit this disclosure.]

Release of personally identifiable information to any other person or agency—such as a prospective employer or for a scholarship application—will occur only with parental or student permission as appropriate.

The Superintendent or designee is custodian of all records for currently enrolled students at the assigned school. The Superintendent or designee is the custodian of all records for students who have withdrawn or graduated.

A parent or eligible student who wants to inspect the student's records should submit a written request to the custodian of records identifying the records he or she wants to inspect.

Records may be reviewed in person during regular school hours. The records custodian or designee will be available to explain the record and to answer questions.

A parent or eligible student who submits a written request and pays copying costs of ten cents per page may obtain copies. If circumstances prevent inspection during regular school hours and the student qualifies for free or reduced-price meals, the district will either provide a copy of

the records requested or make other arrangements for the parent or student to review the records.

You may contact the custodian of records for currently enrolled students at:

Lone Oak Elementary School ●8080 Highway 69 South Lone Oak, TX 75453●903-634-5262
Jill Whitehead, Principal ● jwhitehead@loisd.net
Lone Oak Middle School ● 8160 Highway 69 South Lone Oak, TX 75453 ● 903-634-5244
Shannon Wilhite, Principal ● swilhite@loisd.net
Lone Oak High School ● 8204 Highway 69 South Lone Oak, TX 75453 ● 903-634-0980
Nate Compton, Principal ● ncompton@loisd.net

You may contact the custodian of records for students who have withdrawn or graduated at:

Lone Oak ISD ● 8162 Highway 69 South Lone Oak, TX 75453 ● 903-634-5270
Katy Turner ● kturner@loisd.net

A parent or eligible student may inspect the student's records and request a correction or amendment if the records are considered inaccurate, misleading, or otherwise in violation of the student's privacy rights.

A request to correct a student's record should be submitted to the appropriate records custodian. The request must clearly identify the part of the record that should be corrected and include an explanation of how the information is inaccurate. If the district denies the request to amend the records, the parent or eligible student has the right to request a hearing. If after the hearing the records are not amended, the parent or eligible student has 30 school days to place a statement in the student's record.

Although improperly recorded grades may be challenged, contesting a student's grade in a course or on an examination is handled through the complaint process found in policy FNG(LOCAL). A grade issued by a teacher can be changed only if the board of trustees determines that the grade is arbitrary, erroneous, or inconsistent with the district's grading guidelines.

[See **Report Cards/Progress Reports and Conferences** on page , **Complaints and Concerns** on page , and Finality of Grades at policy FNG(LEGAL).]

The district's student records policy is found at policy FL(LEGAL) and (LOCAL) and is available at the principal's or superintendent's office www.loisd.net

Note: The parent's or eligible student's right of access to and copies of student records does not extend to all records. Materials that are not considered educational records—such as a teacher's personal notes about a student shared only with a substitute teacher—do not have to be made available.

Teacher and Staff Professional Qualifications

A parent may request information regarding the professional qualifications of his or her child's teachers, including whether the teacher:

- Has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction;
- Has an emergency permit or other provisional status for which state requirements have been waived; and

- Is currently teaching in the field or discipline of his or her certification.

The parent also has the right to request information about the qualifications of any paraprofessional who may provide services to the child.

A Student with Exceptionalities or Special Circumstances

Children of Military Families

The Interstate Compact on Educational Opportunities for Military Children entitles children of military families to flexibility regarding certain district and state requirements, including:

- Immunization requirements;
- Grade level, course, or educational program placement;
- Eligibility requirements for participation in extracurricular activities;
- Enrollment in the Texas Virtual School Network (TXVSN); and
- Graduation requirements.

The district will excuse absences related to a student visiting a parent, including a stepparent or legal guardian, who is:

- Called to active duty,
- On leave, or
- Returning from a deployment of at least four months.

The district will permit **no more than five** excused absences per year for this purpose. For the absence to be excused, the absence must occur no earlier than the 60th day before deployment or no later than the 30th day after the parent's return from deployment.

Additional information may be found at Military Family Resources at the Texas Education Agency (https://tea.texas.gov/about-tea/other-services/military-family-resources).

Parental Role in Certain Classroom and School Assignments

Multiple-Birth Siblings

State law permits a parent of multiple-birth siblings (for example, twins, triplets) assigned to the same grade and campus to request in writing that the children be placed in either the same classroom or separate classrooms.

Written requests must be submitted by the 14th day after the students' enrollment. [See policy FDB(LEGAL) for more information.]

Safety Transfers/Assignments

The board or its designee will honor a parent's request to transfer his or her child to another classroom or campus if the district has determined that the child has been a victim of bullying, including cyberbullying, as defined by Education Code 37.0832.

The board may transfer a student who has engaged in bullying to another classroom. The board will consult with the parent of a child who has engaged in bullying before deciding to transfer the child to another campus.

Transportation is not provided for a transfer to another campus. See the principal for more information.

[See **Bullying** on page , and policies FDB and FFI for more information.]

The district will honor a parent's request for the transfer of his or her child to a safe public school in the district if the child attends a school identified by the Texas Education Agency as persistently dangerous or if the child has been a victim of a violent criminal offense while at school or on school grounds.

[See policy FDE for more information.]

The board will honor a parent's request for the transfer of his or her child to another district campus ***OR*** a neighboring district if the child has been the victim of sexual assault by another student assigned to the same campus, whether the assault occurred on or off campus, and that student has been convicted of or placed on deferred adjudication for the assault. In accordance with policy FDE, if the victim does not wish to transfer, the board will transfer the assailant.

Student Use of a Service/Assistance Animal

A parent of a student who uses a service/assistance animal because of the student's disability must submit a written request to the principal before bringing the service/assistance animal on campus. The district will try to accommodate a request as soon as possible but will do so within ten district business days.

A Student in the Conservatorship of the State (Foster Care)

A student in the conservatorship (custody) of the state who enrolls in the district after the beginning of the school year will be allowed credit-by-examination opportunities at any point during the year.

The district will assess the student's available records to determine transfer of credit for subjects and courses taken before the student's enrollment in the district.

The district will award partial course credit when the student only passes one half of a two-half course. [For provisions on partial course credit for students who are not in the conservatorship of the state, see EI(LOCAL).]

A student in the conservatorship of the state who is moved outside the district's or school's attendance boundaries—or who is initially placed in the conservatorship of the state and moved outside the district's or school's boundaries—is entitled to remain at the school the student was attending prior to the placement or move until the student reaches the highest grade level at that particular school.

If a student in grade 11 or 12 transfers to another district but does not meet the graduation requirements of the receiving district, the student can request a diploma from the previous district if the student meets its graduation criteria.

For a student in the conservatorship of the state who is eligible for a tuition and fee exemption under state law and likely to be in care on the day preceding the student's 18th birthday, the district will:

- Assist the student with the completion of applications for admission or financial aid;
- Arrange and accompany the student on campus visits;
- Assist in researching and applying for private or institution-sponsored scholarships;

- Identify whether the student is a candidate for appointment to a military academy;
- Assist the student in registering and preparing for college entrance examinations, including (subject to the availability of funds) arranging for the payment of examination fees by the Texas Department of Family and Protective Services (DFPS); and
- Coordinate contact between the student and a liaison officer for students formerly in the conservatorship of the state.

[See **Credit by Examination for Advancement/Acceleration** on page , **Course Credit** on page , and **Students in Foster Care** on page .]

A Student Who Is Homeless

A student who is homeless will be provided flexibility regarding certain district provisions, including:

- Proof of residency requirements;
- Immunization requirements;
- Educational program placement (if the student is unable to provide previous academic records or misses an application deadline during a period of homelessness);
- Credit-by-examination opportunities at any point during the year (if the student enrolled in the district after the beginning of the school year), per State Board of Education (SBOE) rules;
- Assessment of the student's available records to determine transfer of credit for subjects and courses taken before the student's enrollment in the district;
- Awarding partial credit when a student passes only one half of a two-half course;
- Eligibility requirements for participation in extracurricular activities; and
- Graduation requirements.

Federal law allows a student who is homeless to remain enrolled in the "school of origin" or to enroll in a new school in the attendance area where the student is currently residing.

If a student who is homeless in grade 11 or 12 transfers to another district but does not meet the graduation requirements of the receiving district, state law allows the student to request a diploma from the previous district if the student meets the criteria to graduate from the previous district.

A student or parent who is dissatisfied by the district's eligibility, school selection, or enrollment decision may appeal through policy FNG(LOCAL). The district will expedite local timelines, when possible, for prompt dispute resolution.

[See **Credit by Examination for Advancement/Acceleration** on page , **Course Credit** on page , and **Students who are Homeless** on page .]

A Student Who Has Learning Difficulties or Who Needs Special Education or Section 504 Services

For those students who are having difficulty in the regular classroom, all school districts must consider tutorial, compensatory, and other academic or behavior support services that are available to all students, including a process based on Multi-Tiered System of Supports (MTSS).

The implementation of MTSS has the potential to have a positive impact on the ability of districts to meet the needs of all struggling students.

If a student is experiencing learning difficulties, his or her parent may contact the individuals listed below to learn about the school's overall general education referral or screening system for support services.

This system links students to a variety of support options, including making a referral for a special education evaluation or for a Section 504 evaluation to determine whether the student needs specific aids, accommodations, or services. A parent may request an evaluation for special education or Section 504 services at any time.

Special Education Referrals

If a parent makes a written request for an initial evaluation for special education services to the director of special education services or to a district administrative employee of the school district, the district must respond no later than 15 school days after receiving the request. At that time, the district must give the parent prior written notice of whether it agrees or refuses to evaluate the student, along with a copy of the *Notice of Procedural Safeguards*. If the district agrees to evaluate the student, it must also give the parent the opportunity to give written consent for the evaluation.

Note: A request for a special education evaluation may be made verbally; it does not need to be made in writing. Districts must still comply with all federal prior-written notices and procedural safeguard requirements as well as the requirements for identifying, locating, and evaluating children who are suspected of having a disability and in need of special education. However, a verbal request does not require the district to respond within the 15 school-day timeline.

If the district decides to evaluate the student, it must complete the student's initial evaluation and evaluation report no later than 45 school days from the day it receives a parent's written consent. However, if the student is absent from school during the evaluation period for three or more school days, the evaluation period will be extended by the number of school days equal to the number of school days that the student is absent.

There is an exception to the 45-school-day timeline. If the district receives a parent's consent for the initial evaluation at least 35 but less than 45 school days before the last instructional day of the school year, it must complete the written report and provide a copy of the report to the parent by June 30 of that year. However, if the student is absent from school for three or more days during the evaluation period, the June 30 due date no longer applies. Instead, the general timeline of 45 school days plus extensions for absences of three or more days will apply.

Upon completing the evaluation, the district must give the parent a copy of the evaluation report at no cost.

Additional information regarding special education is available from the school district in a companion document titled *Parent's Guide to the Admission, Review, and Dismissal Process*.

Contact Person for Special Education Referrals

The designated contact person regarding options for a student experiencing learning difficulties or regarding a referral for evaluation for special education services is:

Lone Oak Elementary School ●8080 Highway 69 South Lone Oak, TX 75453●903-634-5262
Mindy Hogue, Special Populations Coordinator ● mhogue@loisd.net

Lone Oak Middle School ● 8160 Highway 69 South Lone Oak, TX 75453 ● 903-634-5244
Joseph Riddle, Special Populations Coordinator ● jriddle@loisd.net

Lone Oak High School ● 8204 Highway 69 South Lone Oak, TX 75453 ● 903-662-0980
Elizabeth Tanoos, Special Populations Coordinator ● etanoos@loisd.net

For questions regarding post-secondary transitions, including the transition from education to employment, for students receiving special education services, contact the district's transition and employment designee:

Elizabeth Tanoos

Lone Oak High School Special Populations Coordinator

8204 Highway 69 South, Lone Oak, TX 75453

etanoos@loisd.net

903-662-0980

Section 504 Referrals

Each school district must have standards and procedures in place for the evaluation and placement of students in the district's Section 504 program. Districts must also implement a system of procedural safeguards that includes:

- Notice;
- An opportunity for a parent or guardian to examine relevant records;
- An impartial hearing with an opportunity for participation by the parent or guardian and representation by counsel; and
- A review procedure.

Contact Person for Section 504 Referrals

The designated person to contact regarding options for a student experiencing learning difficulties or regarding a referral for evaluation for Section 504 services is:

Lone Oak Elementary School ●8080 Highway 69 South Lone Oak, TX 75453●903-634-5262
Mindy Hogue, Special Populations Coordinator ● mhogue@loisd.net

Lone Oak Middle School ● 8160 Highway 69 South Lone Oak, TX 75453 ● 903-634-5244
Joseph Riddle, Special Populations Coordinator ● jriddle@loisd.net

Lone Oak High School ● 8204 Highway 69 South Lone Oak, TX 75453 ● 903-634-0980
Elizabeth Tanoos, Special Populations Coordinator ● etanoos@loisd.net

[See **A Student with Physical or Mental Impairments Protected under Section 504** on page .]

Visit these websites for information regarding students with disabilities and the family:

- Legal Framework for the Child-Centered Special Education Process (https://fw.esc18.net/display/Webforms/ESC18-FW-LandingPage.aspx?DT=G&LID=en)
- Partner Resource Network (http://prntexas.org/)
- SPEDTEX: Special Education Information Center (https://www.spedtex.org/)
- Texas First Project (http://www.texasprojectfirst.org/)

Notification to Parents of Intervention Strategies for Learning Difficulties Provided to Students in General Education

In accordance with state law, the district will annually notify parents if their child receives assistance for learning difficulties. Details of such assistance can include intervention strategies. This notice is not intended for those students already enrolled in a special education program.

A Student Who Receives Special Education Services with Other School-Aged Children in the Home

If a student is receiving special education services at a campus outside his or her attendance zone, state law permits the parent or guardian to request that other students residing in the household be transferred to the same campus—if the grade level for the transferring student is offered on that campus.

The student receiving special education services would be entitled to transportation; however, the district is not required to provide transportation to other children in the household.

The parent or guardian should contact the school principal regarding transportation needs prior to requesting a transfer for other children in the home. [See policy FDB(LOCAL) for more information.]

A Student Who Speaks a Primary Language Other than English

A student may be eligible to receive specialized support if his or her primary language is not English, and the student has difficulty performing ordinary class work in English.

If the student qualifies for these services, the Language Proficiency Assessment Committee (LPAC) will determine the types of services the student needs, including accommodations or modifications related to classroom instruction, local assessments, and state-mandated assessments.

[See **English Learners** on page and **Special Programs** on page .]

A Student with Physical or Mental Impairments Protected under Section 504

A student with a physical or mental impairment that substantially limits a major life activity, as defined by law—and who does not otherwise qualify for special education services—may qualify for protections under Section 504 of the Rehabilitation Act.

Section 504 is a federal law designed to prohibit discrimination against individuals with disabilities.

When an evaluation is requested, a committee will be formed to determine whether the student needs services and supports under Section 504 in order to receive a free appropriate public education (FAPE), as defined in federal law.

[See **A Student Who Has Learning Difficulties or Who Needs Special Education or Section 504 Services** on page and policy FB for more information.]

Section Two: Other Important Information for Parents and Students

This section contains important information on academics, school activities, and school operations and requirements.

It is organized alphabetically to serve as a quick-reference guide. Where applicable, the topics are further organized by grade level.

Parents and children should take a moment together to become familiar with the issues addressed in this section. For guidance on a particular topic, please contact the campus principal.

Absences/Attendance

Regular school attendance is essential. Absences from class may result in serious disruption of a student's education. The student and parent should avoid unnecessary absences.

Two important state laws—one dealing with compulsory attendance and the other with how attendance affects the award of a student's final grade or course credit—are discussed below.

Compulsory Attendance

Prekindergarten and Kindergarten

Students enrolled in prekindergarten or kindergarten are required to attend school and are subject to the compulsory attendance requirements as long as they remain enrolled.

Ages 6–18

State law requires that a student who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached their 19th birthday, shall attend school, as well as any applicable accelerated instruction program, extended-year program, or tutorial session, unless the student is otherwise excused from attendance or legally exempt.

State law requires a student in kindergarten–grade 2 to attend any assigned accelerated reading instruction program. Parents will be notified in writing if their child is assigned to an accelerated reading instruction program based on a diagnostic reading instrument.

A student will be required to attend any assigned accelerated instruction program before or after school or during the summer if the student does not meet the passing standards on an applicable subject area state assessment.

Age 19 and Older

A student who voluntarily attends or enrolls after his or her 19th birthday is required to attend each school day until the end of the school year. If the student incurs more than five unexcused absences in a semester, the district may revoke the student's enrollment. The student's presence on school property thereafter would be unauthorized and may be considered trespassing. [See policy FEA for more information.]

Compulsory Attendance—Exemptions

All Grade Levels

State law allows exemptions to the compulsory attendance requirements for the following activities and events, as long as the student makes up all work:

- Religious holy days;

- Required court appearances;
- Activities related to obtaining U.S. citizenship;
- Documented health-care appointments for the student or a child of the student, including absences related to autism services, if the student returns to school on the same day of the appointment and brings a note from the health-care provider;
- Absences resulting from a serious or life-threatening illness or related treatment that makes a student's attendance infeasible, with certification by a physician;
- For students in the conservatorship of the state:
    - An activity required under a court-ordered service plan; or
    - Any other court-ordered activity, provided it is not practicable to schedule the student's participation in the activity outside of school hours.

For children of military families, absences of up to five days will be excused for a student to visit a parent, stepparent, or legal guardian going to, on leave from, or returning from certain deployments. [See **Children of Military Families** on page .]

Note that documented health-care appointments may include telehealth appointments. Students who are physically on campus will not be allowed to participate in telehealth or other online appointments without specific authorization from an appropriate administrator. Students should not use district-issued technology, including wifi or internet, for telehealth appointments because use of district-owned equipment and its network systems is not private and will be monitored by the district. For more information, see **Telecommunication and Other Electronic Devices** on page .

Secondary Grade Levels

The district will allow a student who is 15 years of age or older to be absent for one day to obtain a learner license and one day to obtain a driver's license, provided that the board has authorized such excused absences under policy FEA(LOCAL). The student will be required to provide documentation of his or her visit to the driver's license office for each absence and must make up any work missed.

[See **Driver License Attendance Verification** on page .]

The district will allow junior and senior students to be absent for up to two days per year to visit a college or university, provided:

- The board has authorized such excused absences under policy FEA(LOCAL);
- The principal has approved the student's absence; and
- The student follows campus procedures to verify the visit and makes up any work missed.

The district will allow a student 17 years old or older to be absent for up to four days during the period the student is enrolled in high school to pursue enlistment in the U.S. armed services or Texas National Guard, provided the student verifies these activities to the district.

The district will allow a student to be absent for up to two days per school year to serve as:

- An early voting clerk, provided the district's board has authorized this in policy FEA(LOCAL), the student notifies his or her teachers, and the student receives approval from the principal prior to the absences; or

- An election clerk, if the student makes up any work missed.

The district will allow a student in grades 6–12 to be absent for the purpose of sounding “Taps” at a military honors funeral for a deceased veteran.

Compulsory Attendance—Failure to Comply

All Grade Levels

School employees must investigate and report violations of the compulsory attendance law.

A student absent without permission from school, any class, any required special program, or any required tutorial will be considered in violation of the compulsory attendance law and subject to disciplinary action.

Students with Disabilities

If a student with a disability is experiencing attendance issues, the student’s ARD or Section 504 committee will determine whether the attendance issues warrant an evaluation, a reevaluation, and/or modifications to the student's individualized education program or Section 504 plan, as appropriate.

Ages 6–18

When a student ages 6–18 incurs three or more unexcused absences within a four-week period, the law requires the school to send notice to the parent.

The notice will:

- Remind the parent of his or her duty to monitor the student’s attendance and require the student to attend school;
- Request a conference between school administrators and the parent; and
- Inform the parent that the district will initiate truancy prevention measures, including a behavior improvement plan, school-based community service, referrals to counseling or other social services, or other appropriate measures.

The truancy prevention facilitator for the district is:

Savannah Hurst School Resource Officer shurst@loisd.net

For any questions about student absences, parents should contact the facilitator or any other campus administrator.

A court of law may impose penalties against the parent if a school-aged student is deliberately not attending school. The district may file a complaint against the parent if the student incurs ten or more unexcused absences within a six-month period in the same school year.

If a student age 12–18 incurs ten or more unexcused absences within a six-month period in the same school year, the district, in most circumstances, will refer the student to truancy court.

[See policies FEA(LEGAL) and FED(LEGAL) for more information.]

Age 19 and Older

After a student age 19 or older incurs a third unexcused absence, the district is required by law to send the student a letter explaining that the district may revoke the student’s enrollment for the remainder of the school year if the student has more than five unexcused absences in a

semester. As an alternative to revoking a student's enrollment, the district may implement a behavior improvement plan.

Attendance for Credit or Final Grade (All Grade Levels)

To receive credit or a final grade in a class, a student must attend the class at least 90 percent of the days it is offered. A student who attends at least 75 percent but fewer than 90 percent of the days may receive credit or a final grade if he or she completes a plan, approved by the principal that allows the student to fulfill the class's instructional requirements. If a student is involved in a criminal or juvenile court proceeding, the judge presiding over the case must also approve the plan before the student receives credit or a final grade.

If a student attends fewer than 75 percent of the class days or does not complete the principal-approved plan, then the attendance review committee will determine whether there are extenuating circumstances for the absences and how the student can regain credit or a final grade. [See policy FEC for more information.]

With the exception of absences due to serious or life-threatening illness or related treatment, all absences, excused or unexcused, may be held against a student's attendance requirement. To determine whether there were extenuating circumstances for any absences, the attendance committee will consider:

- Whether the student has mastered the essential knowledge and skills and maintained passing grades in the course or subject.
- Whether the student has completed makeup work satisfactorily. If the student completes makeup work, absences listed under **Compulsory Attendance—Exemptions** on page and absences for extracurricular activities will be considered extenuating circumstances.
- The committee will consider the acceptability and authenticity of documented reasons for the student's absences.
- Whether the student or the student's parent had any control over the absences.
- Any information presented by the student or parent to the committee about the absences.

The student or parent may appeal the committee's decision to the board by following policy FNG(LOCAL).

Official Attendance-Taking Time (All Grade Levels)

The district will take official attendance every day at 10:00 am.

A student absent for any portion of the day, should follow the procedures below to provide documentation of the absence.

Documentation after an Absence (All Grade Levels)

A parent must provide an explanation for any absence upon the student's arrival or return to school. The student must submit a note signed by the parent. The campus may accept a phone call from the parent but reserves the right to require a written note.

A note signed by the student will not be accepted unless the student is age 18 or older or is an emancipated minor under state law.

The campus will document in its attendance records whether the absence is excused or unexcused.

Note: The district is not required to excuse any absence, even if the parent provides a note explaining the absence, unless the absence is an exemption under compulsory attendance laws.

Doctor's Note after an Absence for Illness (All Grade Levels)

When returning to school, a student absent for more than 3 consecutive days because of a personal illness must bring a statement from a doctor or health clinic verifying the illness or condition that caused the absence. Otherwise, the absence may be considered unexcused and in violation of compulsory attendance laws.

Should the student develop a questionable pattern of absences, the principal or attendance committee may require a statement from a doctor or health clinic verifying the illness or condition that caused the absence to determine whether an absence will be excused or unexcused.

Certification of Absence Due to Severe Illness or Treatment

If a student is absent because of a serious or life-threatening illness or related treatment that makes a student's attendance infeasible, a parent must provide certification from a physician licensed to practice in Texas specifying the student's illness and the anticipated period of absence related to the illness or treatment.

Driver License Attendance Verification (Secondary Grade Levels Only)

A currently enrolled student seeking a driver's license shall submit the Texas Department of Public Safety Verification of Enrollment and Attendance Form (VOE), signed by the parent, to the campus central office at least 10 days before it is needed. The district will issue a VOE only if the student meets class credit or attendance requirements. The VOE form (https://www.tdlr.texas.gov/driver/forms/VOE.pdf) is available online.

Further information may be found on the Texas Department of Public Safety website (https://www.dps.texas.gov/section/driver-license/how-apply-texas-driver-license-teen).

See **Compulsory Attendance—Exemptions for Secondary Grade Levels** on page for information on excused absences for obtaining a learner license or driver's license.

Accountability under State and Federal Law (All Grade Levels)

Lone Oak ISD and each of its campuses are held to certain standards of accountability under state and federal law. A key component of accountability is the dissemination and publication of certain reports and information, including:

- The Texas Academic Performance Report (TAPR) for the district, compiled by the Texas Education Agency (TEA), based on academic factors and ratings;
- A School Report Card (SRC) for each campus in the district, compiled by TEA;
- The district's financial management report, which includes the financial accountability rating assigned to the district by TEA; and
- Information compiled by TEA for the submission of a federal report card that is required by federal law.

Accountability information can be found on the district's website at www.loisd.net. Hard copies of any reports are available upon request to the district's administration office.

TEA maintains additional accountability and accreditation information at TEA Performance Reporting Division (https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting).

Armed Services Vocational Aptitude Battery Test (Grades 10–12)

A student in grades 10–12 will be offered an opportunity to take the Armed Services Vocational Aptitude Battery test and consult with a military recruiter.

Contact the principal for information about this opportunity.

Awards and Honors (All Grade Levels)

Students can earn awards of achievement in any academic area as well as recognition for specific projects and assignments. They have the opportunity of making the “Principal Honor Roll” or the “Superintendent Honor Roll” earning “Perfect Attendance” and other academic awards given their grade level. Awards programs are scheduled on each campus at designated times to acknowledge the recipients of all awards.

Bullying (All Grade Levels)

The district strives to prevent bullying, in accordance with the district’s policies, by promoting a respectful school climate; encouraging reporting of bullying incidents, including anonymous reporting; and investigating and addressing reported bullying incidents.

Bullying is defined in state law as a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct that:

- Has the effect or will have the effect of physically harming a student, damaging a student’s property, or placing a student in reasonable fear of harm to the student’s person or of damage to the student’s property;
- Is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;
- Materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or
- Infringes on the rights of the victim at school.

Bullying includes cyberbullying. Cyberbullying is defined in state law as bullying that is done through the use of any electronic communication device, including through the use of:

- A cellular or other type of telephone
- A computer
- A camera
- Electronic mail
- Instant messaging
- Text messaging
- A social media application

- An internet website
- Any other internet-based communication tool.

Bullying is prohibited by the district and could include:

- Hazing
- Threats
- Taunting
- Teasing
- Confinement
- Assault
- Demands for money
- Destruction of property
- Theft of valued possessions
- Name-calling
- Rumor-spreading
- Ostracism.

If a student believes that he or she has experienced bullying or witnesses the bullying of another student, the student or parent should notify a teacher, school counselor, principal, or another district employee as soon as possible. Procedures for reporting allegations of bullying may be found on the district's website.

A student may anonymously report an alleged incident of bullying by completing an anonymous form on stopit which can be found at www.loisd.net.

The administration will investigate any allegations of bullying and related misconduct. The district will also provide notice to the parent of the alleged victim and the parent of the student alleged to have engaged in bullying.

If an investigation determines that bullying occurred, the administration will take appropriate disciplinary action and may, in certain circumstances, notify law enforcement. Disciplinary or other action may be taken even if the conduct did not rise to the level of bullying.

Available counseling options will be provided to the affected individuals, including any student who witnessed the bullying.

Any retaliation against a student who reports an incident of bullying is prohibited.

Upon recommendation of the administration, the board may transfer a student found to have engaged in bullying to another classroom at the campus. In consultation with the student's parent, the board may transfer the student to another campus in the district.

The parent of a student who has been determined to be a victim of bullying may request that the student be transferred to another classroom or campus within the district. [See **Safety Transfers/Assignments** on page .]

A copy of the district's bullying policy is available in the principal's office, superintendent's office, and on the district's website, and is included at the end of this handbook as an appendix.

A student or parent who is dissatisfied with the outcome of an investigation may appeal through policy FNG(LOCAL).

[See **Safety Transfers/Assignments** on page , **Dating Violence, Discrimination, Harassment, and Retaliation** on page , **Hazing** on page , policy FFI, the district's Student Code of Conduct, and the district improvement plan, a copy of which can be viewed in the campus office.]

Career and Technical Education (CTE) and Other Work-Based Programs (Secondary Grade Levels Only)

The district offers career and technical education programs in the following areas

- Agriculture Sciences.
- Business and Computer Applications
- Family and Consumer Science
- Technology Applications
- Health Science

Admission to these programs is based on student request, prerequisite work and availability.

District policy prohibits discrimination on the basis of race, color, national origin, sex, or handicap in its vocational programs, services, or activities, as required by Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; and Section 504 of the Rehabilitation Act of 1973, as amended.

District policy also prohibits discrimination on the basis of race, color, national origin, sex, handicap, or age in its employment practices as required by Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975, as amended; and Section 504 of the Rehabilitation Act of 1973, as amended.

The district will take steps to assure that lack of English language skills will not be a barrier to admission or participation in all educational and vocational programs.

For information about your rights or grievance procedures, contact the Title IX coordinator and the ADA/Section 504 coordinator.

[See **Nondiscrimination Statement** on page for the name and contact information for the Title IX coordinator and ADA/Section 504 coordinator.]

Celebrations (All Grade Levels)

Although a parent or grandparent may provide food to share for a school-designated function or for a student's birthday, please be aware that children in the school may have severe allergies to certain food products. Therefore, it is imperative to discuss any classroom allergies with the teacher before bringing food to share.

Occasionally, the school or a class may host functions or celebrations tied to the curriculum that involve food. The school or teacher will notify students and parents of any known food allergies when soliciting potential volunteers to provide food.

[See **Food Allergies** on page .]

Child Sexual Abuse, Trafficking, and Other Maltreatment of Children (All Grade Levels)

The district has established a plan for addressing child sexual abuse, trafficking, and other maltreatment of children, which may be accessed at Lone Oak Independent School District Central Office. Trafficking includes both sex and labor trafficking.

Warning Signs of Sexual Abuse

Sexual abuse in the Texas Family Code is defined as any sexual conduct harmful to a child's mental, emotional, or physical welfare as well as a failure to make a reasonable effort to prevent sexual conduct with a child. A person who compels or encourages a child to engage in sexual conduct commits abuse. It is illegal to make or possess child pornography or to display such material to a child.

Anyone who suspects that a child has been or may be abused or neglected has a legal responsibility, under state law, to report the suspected abuse or neglect to law enforcement or to Child Protective Services (CPS).

A child who has been or is being sexually abused may exhibit physical, behavioral, or emotional warning signs, including:

- Difficulty sitting or walking, pain in the genital areas, and claims of stomachaches and headaches;
- Verbal references or pretend games of sexual activity between adults and children, fear of being alone with adults of a particular gender, or sexually suggestive behavior; or
- Withdrawal, depression, sleeping and eating disorders, and problems in school.

Be aware that children and adolescents who have experienced dating violence may show similar physical, behavioral, and emotional warning signs. [See **Dating Violence, Discrimination, Harassment, and Retaliation** on page and **Consent to Instruction on Prevention of Child Abuse, Family Violence, Dating Violence, and Sex Trafficking** on page .]

Warning Signs of Trafficking

Child trafficking of any sort is prohibited by the Penal Code. Sex trafficking involves forcing a person, including a child, into sexual abuse, assault, indecency, prostitution, or pornography. Labor trafficking involves forcing a person, including a child, to engage in forced labor or services.

Traffickers are often trusted members of a child's community, such as friends, romantic partners, family members, mentors, and coaches. Some traffickers make contact with victims online.

Possible warning signs of sexual trafficking in children include:

- Changes in school attendance, habits, friend groups, vocabulary, demeanor, and attitude;
- Sudden appearance of expensive items (for example, manicures, designer clothes, purses, technology);
- Tattoos or branding;
- Refillable gift cards;

- Frequent runaway episodes;
- Multiple phones or social media accounts;
- Provocative pictures posted online or stored on the phone;
- Unexplained injuries;
- Isolation from family, friends, and community; and
- Older romantic partners.

Additional warning signs of labor trafficking in children include:

- Being unpaid, paid very little, or paid only through tips;
- Being employed but not having a school-authorized work permit;
- Being employed and having a work permit but clearly working outside the permitted hours for students;
- Owing a large debt and being unable to pay it off;
- Not being allowed breaks at work or being subjected to excessively long work hours;
- Being overly concerned with pleasing an employer and/or deferring personal or educational decisions to a boss;
- Not being in control of his or her own money;
- Living with an employer or having an employer listed as a student's caregiver; and
- A desire to quit a job but not being allowed to do so.

[See **Consent to Instruction on Prevention of Child Abuse, Family Violence, Dating Violence, and Sex Trafficking** on page .]

Reporting and Responding to Sexual Abuse, Trafficking, and Other Maltreatment of Children

Anyone who suspects that a child has been or may be abused, trafficked, or neglected has a legal responsibility, under state law, to report the suspected abuse or neglect to law enforcement or to Child Protective Services (CPS).

A child who has experienced sexual abuse or any other type of abuse or neglect should be encouraged to seek out a trusted adult. Children may be more reluctant to disclose sexual abuse than physical abuse and neglect and may only disclose sexual abuse indirectly. As a parent or trusted adult, it is important to be calm and comforting if your child or another child confides in you. Reassure the child that he or she did the right thing by telling you.

If your child is a victim of sexual abuse, trafficking, or other maltreatment, the school counselor or principal will provide information on counseling options for you and your child available in your area. The Texas Department of Family and Protective Services (DFPS) also manages early intervention counseling programs.

To find out what services may be available in your county, see Texas Department of Family and Protective Services, Programs Available in Your County (http://www.dfps.state.tx.us/Prevention_and_Early_Intervention/Programs_Available_In_Your_County/default.asp).

Reports of abuse, trafficking, or neglect may be made to the CPS division of the DFPS at1-800-252-5400 or on the web at Texas Abuse Hotline Website (www.txabusehotline.org).

Further Resources on Sexual Abuse, Trafficking, and Other Maltreatment of Children

The following websites might help you become more aware of child abuse and neglect, sexual abuse, trafficking, and other maltreatment of children:

- Child Welfare Information Gateway Factsheet (https://www.childwelfare.gov/pubPDFs/*whatiscan*.pdf)
- KidsHealth, For Parents, Child Abuse (https://kidshealth.org/en/parents/child-abuse.html)
- Office of the Texas Governor's Child Sex Trafficking Team (https://gov.texas.gov/organization/cjd/childsextrafficking)
- Human Trafficking of School-aged Children (https://tea.texas.gov/about-tea/other-services/human-trafficking-of-school-aged-children)
- Child Sexual Abuse: A Parental Guide from the Texas Association Against Sexual Assault (https://taasa.org/product/child-sexual-abuse-parental-guide/)
- National Center of Safe Supportive Learning Environments: Child Labor Trafficking (https://safesupportivelearning.ed.gov/human-trafficking-americas-schools/child-labor-trafficking)

Class Rank/Highest-Ranking Student (Secondary Grade Levels Only)

Valedictorian/Salutatorian – The valedictory honors will be given to the student making the highest weighted average of grade points during their four years of Lone Oak High School.

Salutatory honors will be awarded to the student making the second highest weighted average of grade points during their four years of high school study.

A chart follows as to how grade points are determined. These honors are determined at the end of the sixth six week reporting period of the senior year. Whether courses taken in middle/junior high school are included in the calculation;

Eligibility: To be eligible for valedictory or salutatory honors, a student must be enrolled in the district high school for the four semesters of their junior and senior years and have had continuous enrollment until graduation. Eligible students must take at least four academic courses each of the four years he or she has been in high school. Eligible students must have earned distinguished achievement under HB 5. Students who transfer from other accredited schools are eligible for academic honors at Lone Oak High School provided they meet the enrollment requirements. Students who choose to be an early graduate are not eligible for valedictory or salutatory honors.

Honor Graduate – Those graduating seniors who are in the top 25% will be designated Honor Graduates. Eligibility: In order to be an honor graduate, the student does not have to meet the enrollment requirements but must have been enrolled in at least four academic courses each of the four years he or she has been in high school. Students who transfer from other accredited schools are eligible. Early graduates are also eligible.

The following grade points will be used to determine class rank:

Grade	Regular	Weighted	Advanced

97-100	13	16	19
94-96	12	15	18
90-93	11	14	17
87-89	10	13	16
84-86	9	12	15
80-83	8	11	14
77-79	7	10	13
75-76	6	9	12
72-74	5	8	11
70-71	4	7	10
Below 70	0	0	0

Weighted Classes shall include: All Pre-AP classes, Anatomy & Physiology, and PreCal.

Advanced Classes shall include: All AP classes and dual credit college classes (preapproved and designated for course credit/class rank.)

Class Rank and GPA Exceptions

Local credit courses, summer school, correspondence classes or credit by exams will not be used in calculating grade point average. Pre-AP Algebra and Art taken at the middle school will count towards credit, class rank and GPA earned at the high school. AP and Dual-Credit courses must be pre-approved for credit and class rank eligibility by the LOHS counselor. Any course taken without pre-approval will not be accepted.

Class of 2023+ will be eligible to earn 30 hours of dual credit college hours to apply towards their GPA and class rank. This is 10 prescribed college classes that are a part of your school day and a part of the approved LOHS course catalog. Core academic AP classes will receive advanced points towards GPA and class rank. We will no longer offer AP elective courses but will allow AP testing in these areas.

Conversion of Letter Grade Lone Oak High School will use the following conversion chart for transferring letter grades to numeric grades:

· A+ = 98	B+ = 88	C+ = 78
· A = 95	B = 85	C = 75
· A - = 92	B - = 82	C - = 72

Dual Credit College grades that are letter grades will be converted to a numeric grade using the chart below, unless a numeric grade is given by the instructor.

A = 97 B = 87 C = 77

[See policy EIC for more information.]

Class Schedules (Secondary Grade Levels Only)

All students are expected to attend school for the entire school day and maintain a full class schedule. Exceptions may be made occasionally by the campus principal for students in grades 9–12 who meet specific criteria and receive parental consent to enroll in less than a full-day schedule.

[See **Schedule Changes** on page for information related to student requests to revise their course schedule.]

College and University Admissions and Financial Aid (All Grade Levels)

For two school years following graduation, a district student who graduates as valedictorian or in the top ten percent of his or her class is eligible for automatic admission into four-year public universities and colleges in Texas if the student:

- Completes the distinguished level of achievement under the foundation graduation program [see **Foundation Graduation Program** on page]; or
- Satisfies the ACT College Readiness Benchmarks or earns at least a 1500 out of 2400 on the SAT.

The student is ultimately responsible for meeting the admission requirements of the university or college, including timely submission of a completed application.

If a college or university adopts an admissions policy that automatically accepts the top 25 percent of a graduating class, the provisions above will also apply to a student ranked in the top 25 percent of his or her class.

The University of Texas at Austin may limit the number of automatically admitted students to 75 percent of the University's enrollment capacity for incoming resident freshmen. From the summer 2022 term through the spring 2024 term, the University will admit the top six percent of a high school's graduating class who meet the above requirements. Additional applicants will be considered by the University through a holistic review process.

As required by law, the district will provide written notice concerning:

- Automatic college admission;
- Curriculum requirements for financial aid;
- Benefits of completing the requirements for automatic admission and financial aid; and
- The Texas First Early High School Completion Program and the Texas First Scholarship Program.

Parents and students will be asked to sign an acknowledgment that they received this information.

Students and parents should contact the school counselor for further information about automatic admissions, the application process, and deadlines.

[See **Class Rank/Highest-Ranking Student** on page for information specifically related to how the district calculates a student's rank in class, and requirements for **Graduation** on page for information associated with the foundation graduation program.]

[See **Students in the Conservatorship of the State (Foster Care)** on page for information on assistance in transitioning to higher education for students in foster care.]

College Credit Courses (Secondary Grade Levels Only)

Students in grades 9–12 may earn college credit through the following opportunities:

- Certain courses taught at the high school campus, which may include courses termed dual credit, Advanced Placement (AP), International Baccalaureate (IB), or college preparatory;
- Enrollment in AP or dual credit courses through the Texas Virtual School Network (TXVSN);
- Enrollment in courses taught in conjunction and in partnership with Paris Junior College which may be offered on or off campus; and
- Enrollment in courses taught at other colleges or universities.

Enrollment in these programs is based on TSI Scores.

A student may be eligible for subsidies based on financial need for AP or IB exam fees. See **Fees (All Grade Levels)** on page for more information.

A student may also earn college credit for certain Career and Technical Education (CTE) courses. See **Career and Technical Education (CTE) and Other Work-Based Programs (Secondary Grade Levels Only)** on page for information on CTE and other work-based programs.

All these methods have eligibility requirements and must be approved prior to enrollment in the course. Please see the school counselor for more information. Depending on the student's grade level and the course, a state-mandated end-of-course assessment may be required for graduation.

Not all colleges and universities accept credit earned in all dual credit or AP courses taken in high school for college credit. Students and parents should check with the prospective college or university to determine if a particular course will count toward the student's desired degree plan.

Communications (All Grade Levels)

Parent Contact Information

A parent is legally required to provide in writing the parent's contact information, including address, phone number, and email address.

A parent must provide the contact information to the district upon enrollment and again within two weeks after the beginning of each following school year while the student is enrolled in the district.

If the parent's contact information changes during the school year, the parent must update the information in writing no more than two weeks after the date the information changes.

A parent may update contact information by logging into the Parent Portal and making changes as needed. Parent Portal can be found at www.loisd.net

Automated Emergency Communications

The district will rely on contact information on file with the district to communicate with parents in an emergency situation, which may include real-time or automated messages. An emergency

situation may include early dismissal, delayed opening, or restricted access to the campus due to severe weather, another emergency, or a security threat. It is crucial to notify your child's school when a phone number changes.

[See **Safety** on page for information regarding contact with parents during an emergency situation.]

Automated Nonemergency Communications

Your child's school periodically sends information by automated or pre-recorded messages, text messages, or real-time phone or email communications that are closely related to the school's mission and specific to your child, your child's school, or the district.

Standard messaging rates of your wireless phone carrier may apply.

If you do not wish to receive such communications, please contact your child's principal. [See **Safety** on page for information regarding contact with parents during an emergency.]

Complaints and Concerns (All Grade Levels)

Usually, student or parent complaints or concerns can be addressed informally by a phone call or a conference with the teacher or principal.

For those complaints and concerns that cannot be resolved informally, the board has adopted a Student and Parent Complaints/Grievances policy at FNG(LOCAL). This policy can be viewed in the district's policy manual, available online at www.loisd.net. The complaint forms can be accessed at the principal's or superintendent's office.

To file a formal complaint a parent or student should complete and submit the complaint form. In general, the written complaint form should be completed and submitted to the campus principal in a timely manner.

If the concern is not resolved, a parent or student may request a conference with the superintendent.

If the concern is still unresolved, the district provides a process for parents and students to appeal to the board of trustees.

Conduct (All Grade Levels)

Applicability of School Rules

The board has adopted a Student Code of Conduct that defines standards of acceptable behavior—on and off campus, during remote and in-person instruction, and on district vehicles—and outlines consequences for violation of these standards. The district has disciplinary authority over a student in accordance with the Student Code of Conduct. Students and parents should be familiar with the standards set out in the Student Code of Conduct, as well as campus and classroom rules.

During summer instruction, the Student Handbook and Student Code of Conduct in place for the school year immediately preceding the summer period shall apply, unless the district amends either or both documents for the purposes of summer instruction.

Campus Behavior Coordinator

Each campus has a campus behavior coordinator to apply discipline management techniques and administer consequences for certain student misconduct, as well as provide a point of contact for student misconduct. The contact information for each campus behavior coordinator

is available on the district's website at www.loisd.net and the coordinator for this campus is listed below:

Lisa Brannon, Elementary Assistant Principal	903-634-5296	lbrannon@loisd.net
Tammy Ragsdale, Middle School Dean of Students	903-634-5253	tragsdale@loisd.net
Robert Whitehead, High School Assistant Principal	903-634-5222	rwhitehead@loisd.net

Deliveries

Except in emergencies, delivery of messages or packages to students will not be allowed during instructional time. A parent may leave a message or a package, such as a forgotten lunch, for the student to pick up from the front office during a passing period or lunch.

Disruption of School Operations

Disruption of school operations is not tolerated and may constitute a misdemeanor offense. As identified by state law, disruptions include the following:

- Interference with the movement of people at an exit, entrance, or hallway of a district building without authorization from an administrator.
- Interference with an authorized activity by seizing control of all or part of a building.
- Use of force, violence, or threats in an attempt to prevent participation in an authorized assembly.
- Use of force, violence, or threats to cause disruption during an assembly.
- Interference with the movement of people at an exit or an entrance to district property.
- Use of force, violence, or threats in an attempt to prevent people from entering or leaving district property without authorization from an administrator.

Disruption of classes or other school activities while on or within 500 feet of district property includes:

- Making loud noises;
- Trying to entice a student away from, or to prevent a student from attending, a required class or activity; and
- Entering a classroom without authorization and disrupting the activity with loud or profane language or any misconduct.

Interference with the transportation of students in vehicles owned or operated by the district is also considered a disruption.

Social Events

School rules apply to all school social events. Guests attending these events are expected to observe the same rules as students, and a student inviting a guest will share responsibility for the conduct of his or her guest.

A student attending a social event will be asked to sign out when leaving before the end of the event and will not be readmitted.

A parent interested in serving as a chaperone for any school social events should contact the campus principal.

Counseling

The district has a comprehensive school counseling program that includes:

- A guidance curriculum to help students develop their full educational potential, including the student's interests and career objectives;
- A responsive services component to intervene on behalf of any student whose immediate personal concerns or problems put the student's continued educational, career, personal, or social development at risk;
- An individual planning system to guide a student as the student plans, monitors, and manages the student's own educational, career, personal, and social development; and
- Systems to support the efforts of teachers, staff, parents, and other members of the community in promoting the educational, career, personal, and social development of students.

The district will make a preview of the program, including all materials and curriculum, available to parents to review during school hours.

Academic Counseling

Elementary and Middle/Junior High School Grade Levels

The school counselor will provide information to students and parents about college and university admissions and the importance of planning for postsecondary education, including appropriate coursework and financial aid availability and requirements.

In either grade 7 or 8, each student will receive instruction on how best to prepare for high school, college, and a career.

High School Grade Levels

High school students and their parents are encouraged to talk with a school counselor, teacher, or principal to learn more about course offerings, graduation requirements, and early graduation procedures.

Each year, high school students will be provided information on anticipated course offerings for the next school year, how to make the most of academic and career and technical education (CTE) opportunities, and the importance of postsecondary education.

The school counselor will also provide information each year a student is enrolled in high school regarding:

- The importance of postsecondary education;
- The advantages of earning an endorsement and completing the foundation program with the distinguished level of achievement;
- The disadvantages of pursuing a high school equivalency exam (GED) as opposed to earning a high school diploma;
- Financial aid eligibility and how to apply for financial aid;
- Automatic admission to state-funded Texas colleges and universities;

- Eligibility requirements for the TEXAS Grant;
- Availability of district programs that allow students to earn college credit;
- Availability of tuition and fee assistance for postsecondary education for students in foster care; and
- Availability of college credit awarded by institutions of higher education to veterans and military service members for military experience, education, and training.

Additionally, the school counselor can provide information about workforce opportunities after graduation or technical and trade school opportunities, including opportunities to earn industry-recognized certificates and licenses.

[See **Scholarships and Grants** on page for more information.]

Personal Counseling (All Grade Levels)

The school counselor is available to assist students with a wide range of personal, social, and family concerns, including emotional or mental health issues and substance abuse. A student who wishes to meet with the school counselor should stop by the office or ask a teacher. As a parent, if you are concerned about your child's mental or emotional health, please speak with the school counselor for a list of resources that may be of assistance.

If your child has experienced trauma, contact the school counselor for more information.

[See **Mental Health Support** on page , **Child Sexual Abuse, Trafficking, and Other Maltreatment of Children** on page , and **Dating Violence** on page .]

Course Credit (Secondary Grade Levels Only)

A student at any grade level enrolled in a high school course will earn credit for the course only if the final grade is 70 or above. For a two-part (two-semester, 1-credit course), the student's grades from both halves (semesters) will be averaged and credit will be awarded if the combined average is 70 or above. If the student's combined average is less than 70, the student will be awarded credit only for the half (semester) with the passing grade.

Credit by Examination—If a Student Has Taken the Course/Subject (Grades 6–12)

A student who has previously taken a course or subject but did not receive credit or a final grade for it may, in circumstances determined by the principal or attendance committee, be permitted to earn credit or a final grade by passing an examination approved by the district's board of trustees on the essential knowledge and skills defined for that course or subject.

Examples of prior instruction include incomplete coursework due to a failed course or excessive absences, homeschooling, or coursework by a student transferring from a nonaccredited school. The opportunity to earn credit by examination after the student has had prior instruction is sometimes referred to as "credit recovery."

The attendance review committee may also offer a student with excessive absences an opportunity to earn credit for a course by passing an examination.

If a student is granted approval to take an examination for credit, the student must score at least 70 on the examination to receive credit for the course or subject.

[See the school counselor and policy EHDB(LOCAL) for more information.]

Credit by Examination for Advancement/Acceleration—If a Student Has Not Taken the Course/Subject

A student will be permitted to earn credit by examination for an academic course or subject area for which the student had no prior instruction for advancement or to accelerate to the next grade level.

The examinations offered by the district are approved by the district's board of trustees. Testing windows for these examinations will be published in district publications and on the district's website. A student may take a specific examination only once per testing window.

The only exceptions to the published testing windows will be for examinations administered by another entity or to accommodate a student experiencing homelessness or a student involved in the foster care system.

When another entity administers an examination, the student and the district must comply with the testing schedule of the other entity.

If a student plans to take an examination, the student or parent must register with the school counselor no later than 30 days prior to the scheduled testing date. [See policy EHDC for more information.]

Kindergarten Acceleration

In accordance with State Board rules, the board shall approve procedures developed by the Superintendent or designee to allow a child who is five years old at the beginning of the school year to be assigned initially to grade 1 rather than kindergarten.

Criteria for acceleration may include:

- Scores on readiness tests or achievement tests that may be administered by appropriate District personnel.
- Recommendation of the kindergarten or preschool the student has attended.
- Chronological age and observed social and emotional development of the student.
- Other criteria deemed appropriate by the principal and Superintendents.

Students in Grades 1–5

A student in elementary school is eligible to accelerate to the next grade level if:

- The student scores at least an 80 on each examination in the subject areas of language arts, mathematics, science, and social studies;
- A district administrator recommends that the student be accelerated; and
- The student's parent gives written approval of the grade advancement.

Students in Grades 6–12

A student in grade 6 or above is eligible to earn course credit with:

- A passing score of at least 80 on an examination approved by the board; or
- A scaled score of 50 or higher on an examination administered through the College Level Examination Program (CLEP); or

- A score of 3 or higher on an AP examination, as applicable.

A student may take an examination to earn high school course credit no more than twice. If a student fails to achieve the designated score on the applicable exam before the beginning of the school year in which the student would need to enroll in the course according to the school's high school course sequence, the student must complete the course.

Dating Violence, Discrimination, Harassment, and Retaliation (All Grade Levels)

Students learn best, and their welfare is best served, in a school environment that is free from dating violence, discrimination, harassment, and retaliation.

Students are expected to treat peers and district employees with courtesy and respect, avoid offensive behaviors, and stop those behaviors as directed. District employees are likewise expected to treat students with courtesy and respect.

The board has established policies and procedures to prohibit and promptly address inappropriate and offensive behaviors that are based on a person's race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. A copy of the district's policy is available in the principal's office and in the superintendent's office. [See policy FFH for more information.]

Dating Violence

Dating violence will not be tolerated at school. To report dating violence, see **Reporting Procedures** on page .

Dating violence occurs when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship or any of the person's past or subsequent partners. This type of conduct is considered harassment if it is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; or substantially interferes with the student's academic performance.

Examples of dating violence against a student may include, but are not limited to:

- Physical or sexual assaults;
- Name-calling;
- Put-downs;
- Threats to hurt the student, the student's family members, or members of the student's household;
- Destroying property belonging to the student;
- Threats to commit suicide or homicide if the student ends the relationship;
- Threats to harm a student's past or current dating partner;
- Attempts to isolate the student from friends and family;
- Stalking; or
- Encouraging others to engage in these behaviors.

In accordance with law, when the district receives a report of dating violence, a district official will immediately notify the parent of the alleged victim and alleged perpetrator.

The counselor's office has information about the dangers of dating violence and resources for seeking help.

For more information on dating violence, see:

- Texas Attorney General's office recognizing and responding to dating violence flier (https://www.texasattorneygeneral.gov/sites/default/files/files/child-support/papa/session%2010/recognizing-relationship-violence-en.pdf)
- The CDC's Preventing Teen Dating Violence (https://www.cdc.gov/violenceprevention/intimatepartnerviolence/teendatingviolence/fastfact.html).

[See **Consent to Instruction on Prevention of Child Abuse, Family Violence, Dating Violence, and Sex Trafficking** on page .]

Discrimination

Discrimination is defined as any conduct directed at a student on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law that negatively affects the student.

Harassment

Harassment, in general terms, is conduct so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; or substantially interferes with the student's academic performance.

Examples of harassment may include, but are not limited to:

- Offensive or derogatory language directed at a person's religious beliefs or practices, accent, skin color, or need for accommodation;
- Threatening, intimidating, or humiliating conduct;
- Offensive jokes, name-calling, slurs, or rumors;
- Physical aggression or assault;
- Graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or
- Other kinds of aggressive conduct such as theft or damage to property.

Sexual Harassment and Gender-Based Harassment

Sexual harassment and gender-based harassment of a student by an employee, volunteer, or another student are prohibited.

Examples of sexual harassment may include, but are not limited to:

- Touching private body parts or coercing physical contact that is sexual in nature;
- Sexual advances;
- Jokes or conversations of a sexual nature; and

- Other sexually motivated conduct, communications, or contact.

Sexual harassment of a student by an employee or volunteer does not include necessary or permissible physical contact that a reasonable person would not construe as sexual in nature, such as comforting a child with a hug or taking the child's hand. However, romantic, sexual, and other inappropriate social relationships between students and district employees are prohibited, even if consensual.

Gender-based harassment includes physical, verbal, or nonverbal conduct based on a student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of masculinity or femininity.

Gender-based harassment can occur regardless of the student's or the harasser's actual or perceived sexual orientation or gender identity. Examples of gender-based harassment directed against a student may include, but are not limited to:

- Offensive jokes, name-calling, slurs, or rumors;
- Physical aggression or assault;
- Threatening or intimidating conduct; or
- Other kinds of aggressive conduct such as theft or damage to property.

Retaliation

Retaliation against a person who makes a good-faith report or participates in an investigation of discrimination, harassment, or dating violence is prohibited. A person who makes a false claim, offers false statements, or refuses to cooperate with a district investigation, however, may be subject to appropriate discipline.

Examples of retaliation may include threats, rumor spreading, ostracism, assault, destruction of property, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances.

Reporting Procedures

Any student who believes that he or she has experienced dating violence, discrimination, harassment, or retaliation should immediately report the problem to a teacher, school counselor, principal, or other district employee. The report may be made by the student's parent. [See policy FFH(LOCAL) and (EXHIBIT) for other appropriate district officials to whom to make a report.]

Upon receiving a report, the district will determine whether the allegations, if proven, constitute prohibited conduct as defined by policy FFH. If not, the district will refer to policy FFI to determine whether the allegations, if proven, constitute bullying, as defined by law and policy FFI. If the alleged prohibited conduct also meets the statutory and policy definitions for bullying, an investigation of bullying will also be conducted. [See **Bullying** on page]

The district will promptly notify the parent of any student alleged to have experienced prohibited conduct involving an adult associated with the district. In the event alleged prohibited conduct involves another student, the district will notify the parent of the student alleged to have experienced the prohibited conduct when the allegations, if proven, would constitute a violation as defined by policy FFH.

Investigation of Report

Allegations of prohibited conduct, which includes dating violence, discrimination, harassment, and retaliation, will be promptly investigated.

To the extent possible, the district will respect the privacy of the student. However, limited disclosures may be necessary to conduct a thorough investigation and comply with law.

If a law enforcement or other regulatory agency notifies the district that it is investigating the matter and requests that the district delay its investigation, the district will resume its investigation at the conclusion of the agency's investigation.

During the course of an investigation and when appropriate, the district will take interim action to address the alleged prohibited conduct.

If the district's investigation indicates that prohibited conduct occurred, appropriate disciplinary action and, in some cases, corrective action will be taken to address the conduct. The district may take disciplinary and corrective action even if the conduct was not unlawful.

All involved parties will be notified of the outcome of the district investigation within the parameters and limits allowed under the Family Educational Rights and Privacy Act (FERPA).

A student or parent who is dissatisfied with the outcome of the investigation may appeal in accordance with policy FNG(LOCAL).

Discrimination

[See **Dating Violence, Discrimination, Harassment, and Retaliation** on page .]

Distance Learning (All Grade Levels)

Distance learning and correspondence courses include courses that encompass the state-required essential knowledge and skills but are taught through multiple technologies and alternative methodologies such as mail, satellite, internet, video-conferencing, and instructional television.

If a student wishes to enroll in a correspondence course or a distance learning course that is not provided through the Texas Virtual School Network (TXVSN), as described below, to earn credit in a course or subject, the student must receive permission from the principal prior to enrolling in the course or subject. If the student does not receive prior approval, the district may not recognize and apply the course or subject toward graduation requirements or subject mastery.

[See **Remote Instruction** on page .]

Texas Virtual School Network (TXVSN) (Secondary Grade Levels)

The Texas Virtual School Network (TXVSN) has been established by the state as one method of distance learning. A student has the option, with certain limitations, to enroll in a course offered through the TXVSN to earn course credit for graduation.

Depending on the TXVSN course in which a student enrolls, the course may be subject to the "no pass, no play" rules. [See **Extracurricular Activities, Clubs, and Organizations** on page .] In addition, a student who enrolls in a TXVSN course for which an end-of-course (EOC) assessment is required must still take the corresponding EOC assessment.

A parent may ask questions or request that their child be enrolled in a TXVSN course by contacting the school counselor. Unless an exception is made by the Superintendent, a student will not be allowed to enroll in a TXVSN course if the school offers the same or a similar course.

A copy of policy EHDE addressing distance learning will be distributed to parents of middle and high school students at least once each year. If you do not receive a copy or have questions about this policy, please contact the campus principal.

Distribution of Literature, Published Materials, or Other Documents (All Grade Levels)

School Materials

Publications prepared by and for the school may be posted or distributed, with the prior approval of the principal, sponsor, or teacher. Such items may include school posters, newspapers, yearbooks, brochures, flyers, and the like.

All school publications are under the supervision of a teacher, sponsor, and the principal.

Nonschool Materials

From Students

Students must obtain prior approval from the principal before selling, posting, circulating, or distributing more than 100 copies of written or printed materials, handbills, photographs, pictures, films, tapes, or other visual or auditory materials that were not developed under the oversight of the school. To be considered, any nonschool material must include the name of the sponsoring person or organization. Approval will be granted or denied within two school days.

The *principal* has designated the library as the location for approved nonschool materials to be placed for voluntary viewing or collection by students. [See policy FNAA for more information.]

A student may appeal a decision in accordance with policy FNG(LOCAL). Any student who sells, posts, circulates, or distributes nonschool material without prior approval will be subject to disciplinary action in accordance with the Student Code of Conduct. Materials displayed without approval will be removed.

[See policy FNG(LOCAL) for student complaint procedures.]

From Others

No person or group will sell, circulate, distribute, or post on any district premises written or printed materials, handbills, photographs, pictures, films, tapes, or other visual or auditory materials that is not sponsored by the district or by a district-affiliated school-support organization, except as permitted by policy GKDA.

To be considered for distribution, any nonschool material must meet the limitations on content established in the policy, include the name of the sponsoring person or organization, and be submitted to the *principal* for prior review. The principal will approve or reject the materials within two school days of the time the materials are received. The requestor may appeal a rejection in accordance with the appropriate district complaint policy. [See policies DGBA or GF for more information.]

The principal has designated office as the location for approved nonschool materials to be placed for voluntary viewing or collection.

Prior review will not be required for:

- Distribution of materials by an attendee to other attendees of a school-sponsored meeting intended for adults and held after school hours.
- Distribution of materials by an attendee to other attendees of a community group meeting held after school hours in accordance with policy GKD(LOCAL) or a noncurriculum-related student group meeting held in accordance with policy FNAB(LOCAL).
- Distribution for electioneering purposes during the time a school facility is being used as a polling place, in accordance with state law.

All nonschool materials distributed under these circumstances must be removed from district property immediately following the event at which the materials are distributed.

Dress and Grooming (All Grade Levels)

The district's dress code teaches grooming and hygiene, prevents disruption, minimizes safety hazards, and maintains a positive learning climate. Students and parents may determine a student's personal dress and grooming standards, provided that they comply with the following:

Elementary:

- Dresses, skirts and shorts should be fingertip length or longer.
- Leggings, workout leggings, spandex, or biking shorts must be worn with tops, dresses, skirts, or shorts that are fingertip length or longer.
- Leggings must be worn under cheer skirts.
- Halter tops or off the shoulder tops will not be allowed.
- Sleeveless shirts should be at least 3 fingertips wide on the shoulder.
- Mesh shirts, clothing that reveals midriff, and oversized arm holes will not be permitted.
- No hats, caps, or scarves used as head coverings – except as pre-approved during special events.
- No clothing with inappropriate words, pictures, or phrases, including but not limited to advertising for cigarettes, alcohol, and gang-related slogans.
- Pants must not sag or give the appearance of sagging.
- Holes are permitted in jeans as long as they begin no more than 3 inches above the knee. Excessively torn, ripped, or cut clothing will not be permitted.
- No visible body piercings other than earrings.
- Male student's hair length shall not extend below the bottom of the collar.
- Bangs/hair shall not fall below the eyebrows.
- Extreme hairstyles or unnatural hair coloring is not permitted.
- No flip flops or flip flop style shoes. No heels over 1 inch.
- Tennis/athletic shoes are recommended and must be worn for physical education classes.
- No skate shoes.

Middle School:
Examples of prohibited choices of clothing, jewelry, body decorations, or hairstyle, appearance, or actions include, but are not limited to:

- Shorts/skirts/dresses must not be shorter than 3 inches above the knee (with the waistband at or above the hips). Shorts or leggings must be worn under dresses/skirts.
- Jeans with holes/slits above the knees must have patches or leggings underneath (skin not showing through-tape or paper cannot be used). Pants and shorts must be worn at waist level.

- Tank tops are not allowed. Females' shirts should be modest and appropriate; Clothing that reveals the midriff or cleavage will not be allowed. This includes when arms are raised or leaning over.
- Excessive or distracting makeup or hair color is not allowed.
- Males are not allowed to wear sleeveless shirts/tank tops. No mustaches or beards.
- No accessories may be worn that might create a distraction from the learning process; this includes tongue rings, nose studs, nose rings, or any other facial piercing, chains hanging from the waistline. Gauged ears are not allowed. All body art/tattoos must be covered. Backpacks ARE NOT ALLOWED IN CLASS. Purses in the classroom must fit under the student's desk. (Subject to inspection)
- Cell phones must be put away at all times.
- No excessively oversized garments will be allowed. No see-through, provocative, or excessively tight clothing will be allowed. Students must wear undergarments. Undergarments are not to be exposed.
- Pajamas are not allowed. No house shoes/slippers may be worn.
- Shoes or sandals must be worn at all times.
- No hats, caps, bandanas, or sunglasses may be worn inside the building unless it is a designated theme day.
- Clothing or styles that solicit racial discord or promote gang related activity are not acceptable. Inappropriate or suggestive language or symbols, provocative pictures, advertising tobacco, alcohol, narcotics on clothing, jewelry, or exposed body parts is not permitted.

High School:

Examples of prohibited choices of clothing, jewelry, body decorations, or hairstyle, appearance, or actions include, but are not limited to:

- Shorts/skirts/dresses must not be shorter than 3 inches above the knee (with the waistband at or above the hips). Shorts or leggings must be worn under dresses/skirts. All garments must be appropriate enough to maintain dignity while sitting and standing.
- Pants and shorts must be worn and remain at waist level. The "sagging" look is not acceptable.
- Jeans with holes/slits above the knees must have patches or leggings underneath (skin not showing through). Pants and shorts must be worn at waist level. No skin should show 3 inches above the knee (frayed or open). Napkins, paper, Etc. cannot be used to make jeans in compliance.
- All items must be modest and appropriate.
- Sleeveless shirts, tank tops, undershirts, and clothing that reveals the midriff or cleavage will not be allowed. This includes when arms are raised or leaning over.
- Halters, racer-back shirts, tube tops, crop tops, and/ or spaghetti straps shirts are permitted. Straps must be more than 3 inches wide and not show any undergarments.
- Makeup, hair color, or hair designs that are deemed distracting are not allowed. This will be at the discretion of administration.
- No accessories may be worn that might create a distraction from the learning process and / or create a safety hazard for students. This will be at the discretion of administration.
- Visible body piercings will be limited to:
    - Earrings- Gauged earrings are not allowed.
    - Nose rings-small studs only. Loops, rings, and gauges are not allowed.
    - No other items can be attached to these piercings (Example: chains, charms, etc.)

    - All other piercings (not limited to the following) including, eyebrows, cheeks, lips, tongue, etc. will not be allowed
- Chain wallets (or any other hanging chain) from the waste-line is not acceptable.
- No excessively oversized garments will be allowed. No see-through, provocative, or excessively tight clothing will be allowed. Students must wear undergarments. Undergarments are not to be exposed.
- Pajamas, house shoes, or slippers are not allowed.
- Shoes or sandals must be worn at all times
- Cleats or any shoe that damages floors are not permitted in the building(s).
- Hats, caps, headbands, sunglasses, blankets, and bandannas are not allowed in the hallways and classroom areas. Hats used in Athletics or Shop must be kept in those buildings.
- Clothing or styles that solicit racial discord or gang related activity are not acceptable. Inappropriate or suggestive language or symbols, provocative pictures, advertising tobacco, alcohol or narcotics on clothing, jewelry, or exposed body parts is not permitted.
- Tattoos that are considered a distraction or offensive are unacceptable.
- All students are expected to practice personal hygiene. Students will be expected to keep their hair neat, well-groomed and out of their faces.
- Hair should be clean and kept out of the student's face.
- Facial hair must be kept well-groomed and cannot be longer than 1inch in length.
- DISTRACTIVE THEMES OR SYMBOLS are not permitted.

The principal, in cooperation with sponsors, coaches, or other persons in charge of an extracurricular activity, may regulate the dress and grooming of students who participate in the activity. Students who violate these standards may be removed or excluded from the activity for a period determined by the principal or sponsor, and may be subject to other disciplinary actions.
If the principal determines that a student's grooming or clothing violates the school's dress code, the student will be given an opportunity to correct the problem at school and return to the classroom. If the problem cannot be corrected at school, the principal will work with the student and parent to obtain an acceptable change of clothing for the student in a way that minimizes loss of instructional time. Students that do not comply with the campus dress code policies and/or refuse to change clothes when asked will be subject to the campus discipline management plan.

Repeated or severe offenses may result in more serious disciplinary action in accordance with the Student Code of Conduct.

Persistent dress code violation will result in stricter consequences and/or higher standards of dress.

Electronic Devices and Technology Resources (All Grade Levels)

Possession and Use of Personal Telecommunications Devices, Including Cell Phones, and Other Electronic Devices

The district is a one-to one district and each student is issued a Chromebook for instructional purposes. The district permits students to possess personal cell phones for safety purposes; however, these devices must remain turned off and put away during the instructional day, including during all testing. [See **Textbooks, Electronic Textbooks, Technological Equipment, and Other Instructional Materials** on page for graphing calculator applications on computing devices.]

A student must have approval to possess other personal telecommunications devices on campus such as laptops, tablets, or other portable computers.

Without such permission, teachers will collect the items and turn them in to the principal's office. The principal will determine whether to return items to students at the end of the day or to contact parents to pick up the items.

The use of cell phones or any device capable of capturing images is strictly prohibited in locker rooms or restroom areas while at school or at a school-related or school-sponsored event.

If a student uses a telecommunications device without authorization during the school day, the device will be confiscated. The student/parent may pick up the confiscated telecommunications device from the principal's office for a fee of $15.

Confiscated telecommunications devices that are not retrieved by the student or the student's parent will be disposed of after the notice required by law. [See policy FNCE for more information.]

In limited circumstances and in accordance with law, a student's personal telecommunications device may be searched by authorized personnel. [See **Searches** on page and policy FNF for more information.]

Any disciplinary action will be in accordance with the Student Code of Conduct. The district is not responsible for damaged, lost, or stolen telecommunications devices.

Instructional Use of Personal Telecommunications and Other Electronic Devices

Students must obtain prior approval to use personal telecommunications or other personal electronic devices for instructional purposes while on campus. Students must also sign a user agreement that contains applicable rules for use (separate from this handbook).

All personal devices must be turned off during the instructional day when not in use for approved instructional purposes. Violations of the user agreement may result in withdrawal of privileges and other disciplinary action.

Acceptable Use of District Technology Resources

District-owned technology resources may be issued to individual students for instructional purposes. Use of the district's network systems and equipment is restricted to approved purposes only. Students and parents will be asked to sign a user agreement (separate from this handbook) regarding use of these district resources. Violations of the user agreement may result in withdrawal of privileges and other disciplinary action.

Unacceptable and Inappropriate Use of Technology Resources

Students are prohibited from possessing, sending, forwarding, posting, accessing, or displaying electronic messages that are abusive, obscene, sexually oriented, threatening, harassing, damaging to another's reputation, or illegal. This prohibition also applies to conduct off school property, whether on district-owned or personally owned equipment, if it results in a substantial disruption to the educational environment.

Any person taking, disseminating, transferring, possessing, or sharing obscene, sexually oriented, lewd, or otherwise illegal images or other content—commonly referred to as "sexting"—will be disciplined in accordance with the Student Code of Conduct, may be required to complete an educational program related to the dangers of this type of behavior, and, in certain circumstances, may be reported to law enforcement.

This type of behavior may constitute bullying or harassment, as well as impede future endeavors of a student. We encourage parents to review with their child the "Before You Text" Sexting Prevention Course (https://txssc.txstate.edu/tools/courses/before-you-text/), a state-developed program that addresses the consequences of sexting.

Any student who engages in conduct that results in a breach of the district's computer security will be disciplined in accordance with the Student Code of Conduct. In some cases, the consequence may be expulsion.

End-of-Course (EOC) Assessments

[See **Graduation** on page and **Standardized Testing** on page .]

English Learners (All Grade Levels)

A student who is an English learner is entitled to receive specialized services from the district. A Language Proficiency Assessment Committee (LPAC), consisting of both district personnel and at least one parent representative, will determine whether the student qualifies for services. The student's parent must consent to any services recommended by the LPAC. However, pending the receipt of parental consent or denial of services, an eligible student will receive the services to which the student is entitled and eligible.

To determine a student's level of proficiency in English, the LPAC will use information from a variety of assessments. If the student qualifies for services, and once a level of proficiency has been established, the LPAC will designate instructional accommodations or additional special programs that the student will require to eventually become proficient at grade level work in English. Ongoing assessments will be conducted to determine a student's continued eligibility for the program.

The LPAC will also determine whether certain accommodations are necessary for any state-mandated assessments. The STAAR Spanish, as mentioned at **Standardized Testing** on page , may be administered to an English learner up to grade 5. In limited circumstances, a student's LPAC may exempt the student from an otherwise required state-mandated assessment or may waive certain graduation requirements related to the English I end-of-course (EOC) assessment. The Texas English Language Proficiency Assessment System (TELPAS) will also be administered to English learners who qualify for services.

If a student is considered an English learner and receives special education services because of a qualifying disability, the student's ARD committee will make instructional and assessment decisions in conjunction with the LPAC.

Extracurricular Activities, Clubs, and Organizations (All Grade Levels)

Participation in school-sponsored activities is an excellent way for a student to develop talents, receive individual recognition, and build strong friendships.

Some extracurricular activities may include off-campus events. Students are required to use transportation provided by the district to and from the events. Exceptions may only be made with the approval of the activity's coach or sponsor. [See **Transportation** on page .]

Eligibility for many of these activities is governed by state law and the rules of the University Interscholastic League (UIL), a statewide association overseeing interdistrict competition. If a student is involved in an academic, athletic, or music activity governed by UIL, the student and parent are expected to know and follow all rules of the UIL organization. Students and parents

can access the UIL Parent Information Manual (https://www.uiltexas.org/athletics/manuals) online. A hard copy can be provided by the coach or sponsor of the activity on request.

To report alleged noncompliance with required safety training or an alleged violation of safety rules required by law and the UIL, please contact the curriculum division of TEA at (512) 463-9581 or curriculum@tea.texas.gov.

[See UIL Texas (https://www.uiltexas.org/) for additional information on all UIL-governed activities.]

Student safety in extracurricular activities is a priority of the district. Parents are entitled to review the district's records regarding the age of each football helmet used by the campus, including when a helmet has been reconditioned.

Generally, a student who receives a grade below 70 at the end of a grading period in any academic class may not participate in extracurricular activities for at least three school weeks.

However, if a student receives a grade below 70 at the end of a grading period in an Advanced Placement (AP) or International Baccalaureate (IB) course, or an honors or dual credit course in English language arts, mathematics, science, social studies, economics, or languages other than English, the student remains eligible for participation in all extracurricular activities.

If a student is enrolled in a state-approved course that requires demonstration of the mastery of an essential knowledge and skills in public performance and the student receives a grade below 70 in any course at the end of the grading period, the student may participate in a performance so long as the general public is invited.

If a student is enrolled in a state-approved music course that participates in UIL Concert and Sight-reading Evaluation, and the student receives a grade below 70 in any course at the end of a grading period, the student may perform with the ensemble during the UIL evaluation performance, but is ineligible for other extracurricular activities for at least three weeks.

In addition, the following applies to all extracurricular activities:

- A student who receives special education services and who fails to meet the standards in the individualized education program (IEP) may not participate for at least three school weeks.
- An ineligible student may practice or rehearse but may not participate in any competitive activity.
- A student is allowed in a school year up to 10 absences not related to post-district competition, a maximum of 5 absences for post-district competition prior to state, and a maximum of 2 absences for state competition. All extracurricular activities and public performances, whether UIL activities or other activities approved by the board, are subject to these restrictions.
- An absence for participation in an activity that has not been approved will be considered an unexcused absence.

Standards of Behavior

Sponsors of student clubs and performing groups such as the band, choir, and drill and athletic teams may establish standards of behavior—including consequences for misbehavior—that are stricter than those for students in general. If a violation is also a violation of school rules, the

consequences specified by the Student Code of Conduct or by board policy will apply in addition to any consequences specified by the organization's standards of behavior.

Offices and Elections

Certain clubs, organizations, and performing groups will hold elections for student officers. These groups include:

BETA Club- Purpose and Standards of Membership The purpose of this organization shall be the promotion of scholarship, leadership, service and good citizenship at the Lone Oak Middle School. The grades from which the members may be drawn shall be the sixth through eighth. The scholastic requirements for membership in this chapter of the National Jr. Beta Club shall be: a 6-weeks grade point average of 90% out of a possible 100% with no grade lower than an 80%, on grade level. For the purpose of weighting, only core classes at each grade level will be averaged. The citizenship requirement for membership is to maintain overall satisfactory conduct with no grade less than S. Invitations to membership will be based on grades from the first sixth weeks of school. The prospective members must be willing to provide service and leadership within the community and school. Ten Service hours are required per year to maintain membership. An additional ten hours are required to attend the State Convention for 7th and 8th graders only. The prospective member must not have been convicted of the commission of any act classified as a misdemeanor or felony by the State Code of Texas or the United States Code. The BETA bylaws are available from the sponsor for review.

Student Council - Entry & General Policies Student Council Officers and representatives will be elected by student and teacher vote. There will be student council representatives elected from sixth through eighth grade, along with the offices listed below. In addition, student council walk-ons will be chosen by the sponsor and officers from the application process. Student Council Representatives and walk-ons must maintain a passing average. If a student has received more than two “N’s” or one “U” on his/her report card, the student is ineligible to participate. If any student council member is assigned In School Suspension (ISS), the student shall be removed from Student Council for the remainder of the school year. Executive offices and Officers for Student Council shall be: President, Secretary and Parliamentarian Vice President and Reporter/Historian Officers and Representative Requirements: Student Council Executive Officers and Representatives must have and maintain an overall 80 average. Representatives must have been in student council the school year prior before they can run for Executive Office. Students may run for grade level representatives without being a prior student council member. The Student Council by-laws are available from the sponsor for review. *A student cannot hold an executive office position in more than one student organization. (Example: BETA, STUCO)

Cheerleading – Eligibility and Selection

CHEERLEADER TRYOUTS - Requirements Cheerleader/Mascot: Any student who will be entering the seventh or eighth grades may try out for the Middle School squad as a cheerleader or mascot. All candidates must meet the following requirements: The student must return all necessary paperwork that is required in order to tryout by the set deadline. The student must be able to attend all required activities during the summer. Camp is mandatory. The student must be able to meet all financial expenses, including the cost of all uniforms, camp clothes and camp. A $500 payment will be due within the first three days of becoming a member of the squad. Other payments will be due on or before May 1 of the current school year or as expenses occur. Any member who is unable to meet the financial obligations will be removed from the squad, and the next candidate may be moved up. The student must have been enrolled and attended Lone Oak ISD the first class day of the second semester of the current school year. For students that enroll in Lone Oak I.S.D. during the first semester, all try-out rules and requirements still apply. Other cheerleading rules and policies regarding middle school cheerleading are available by request from the cheerleading sponsor. These rules and policies are written in the Middle School Cheerleading Handbook. This handbook could be revised prior to Cheer Tryouts.

Fees (All Grade Levels)

Basic educational program materials are provided at no charge to a student. However, a student is expected to provide his or her own supplies, such as pencils, paper, erasers, and notebooks. A student may also be required to pay certain other costs, fees, or deposits, including:

- Materials for a class project that the student will keep.
- Membership dues in voluntary clubs or student organizations.
- Admission fees to extracurricular activities.
- Security deposits.
- Personal physical education and athletic equipment and apparel.
- Voluntarily purchased pictures, publications, class rings, yearbooks, graduation announcements, and the like.
- Voluntarily purchased student health and accident insurance.
- Musical instrument rental and uniform maintenance when uniforms are provided by the district.
- Personal apparel used in extracurricular activities that becomes the property of the student.
- Parking fees and student identification cards.
- Fees for lost, damaged, or overdue library books.
- Fees for driver training courses.
- Fees for optional courses offered for credit that require use of facilities not available on district premises.
- Summer school for courses that are offered tuition-free during the regular school year.
- A reasonable fee for providing transportation to a student who lives within two miles of the school. [See **Buses and Other School Vehicles** on page .]
- A maximum fee of $50 for an educational program outside of regular school hours for a student who has lost credit or has not been awarded a final grade because of absences and whose parent chooses the program for the student to meet the 90 percent attendance requirements. The fee will be charged only if the parent or guardian signs a district-provided request form.
- In some cases, a fee for a course taken through the Texas Virtual School Network (TXVSN).

Any required fee or deposit may be waived if the student and parent are unable to pay. Application for such a waiver may be made to the principal. [See policy FP for more information.]

Fundraising (All Grade Levels)

Student groups or classes and/or parent groups may be permitted to conduct fundraising drives for approved school purposes in accordance with administrative regulations. [See policies FJ and GE for more information.]

Gang-Free Zones (All Grade Levels)

Certain criminal offenses, including gang-related crimes, will be enhanced to the next-highest category of offense if they are committed in a gang-free zone. Gang-free zones include a school bus and any location in, on, or within 1,000 feet of any district-owned or leased property or campus playground.

Gender-Based Harassment

[See **Dating Violence, Discrimination, Harassment, and Retaliation** on page .]

Grade-Level Classification (Grades 9–12 Only)

After grade 9, students are classified according to the number of credits earned toward graduation.

Credits Earned	Classification
5	Grade 10 (Sophomore)
10	Grade 11 (Junior)
15	Grade 12 (Senior)

Grading Guidelines (All Grade Levels)

Approved grading guidelines for each grade level or course will be communicated to students and their parents by the classroom teacher. These guidelines establish:

- The minimum number of assignments, projects, and examinations required for each grading period;
- How the student's mastery of concepts and achievement will be communicated (for example, letter grades, numerical averages, checklist of required skills, and the like);
- Circumstances under which a student will be allowed to redo an assignment or retake an examination the student originally failed; and
- Procedures for a student to follow after an absence.

Holding our students to a high level of expectation for their assignments and tests is critical for their future success. In order for students to make progress and reach the Meets and Master's Grade Level on STAAR assessments, they will need to study hard and give 100% effort. We also need parent support to make sure that students are staying on top or their work and coming to tutorials. The grading guidelines are listed below:

Elementary School:

In elementary school, students are assessed in a variety of ways including written assignments, group work, oral assessments, as well as projects that cover a number of subject areas. Each grade level has prescribed objectives known as the Texas Essential Knowledge and Skills (TEKS) that must be mastered at each grade level. Mastery is assessed through the use of standardized tests and teacher created assessments.

Grades in academic areas will reflect what level the TEKS have been mastered as well as a cumulative assessment of TEKS that was taught in previous grade levels. The minimum expectation for mastering the skills is 70% of the assignment completed correctly with little

or no assistance from a teacher. Students who make less than a 70 on an assignment or test may have the opportunity to redo an assignment or test after a reteach is administered for a maximum grade of 70.

The Overtime program is intended to reteach assignments to allow students the opportunity to understand the concept, and not receive a failing grade or zero on an assignment or test. Students will only be allowed to redo assignments and tests up to a 70. Students must attend a reteach with the teacher before being placed in Overtime. A maximum grade of 70 can be earned for the redo. Students that have missing assignments will have a one day reminder to turn in or complete the assignment. If the student does not meet this timeline, then the student will be added to the Overtime list. The maximum grade for all late work will be a 70. All assignments in Overtime must be completed within 2 school days of being placed on the Overtime list.

Teachers are required to enter at least two daily grades each week and at least one test grade per 3 week period, for a total of at least 3 test grades, with the exception of Science, Health, and Social Studies in grades 1-5. There will be a minimum of 9 daily grades and 3 test grades for Science, Health, and Social Studies for grades 1-5.

Pre-Kindergarten/Kindergarten
- Skills-based reporting

First Grade
- ELAR and Math require 18 daily grades and 3 test grades a nine weeks.
- Science, Social Studies, and Health require 9 daily grades and 3 test grades a nine weeks.
- Assignments/Tests: Not weighted

Second Grade
- ELAR and Math require 18 daily grades and 3 test grades a nine weeks.
- Science, Social Studies, and Health require 9 daily grades and 3 test grades a nine weeks.
- Daily assignments weighted: 80%
    - Tests weighted: 20%

Third-Fifth Grade
- ELAR and Math require 18 daily grades and 3 test grades a nine weeks.
- Science, Social Studies, and Health require 9 daily grades and 3 test grades a nine weeks.
- Daily assignments weighted: 70%
- Tests weighted: 30%

Students are also graded on conduct following the same criteria, though all behavioral objectives are not delineated by the Texas Education Agency. Conduct grades may indirectly affect academic grades and student success. An example would be when a student does not complete enough of an assignment in class to assess the TEKS that have been taught. When this happens, the teacher may not be able to accurately assess mastery of the TEKS because of the lack of effort from the student. All students start with 100 conduct points for each nine weeks. One point is deducted when a student exhibits inappropriate behavior. Serious offenses (office referrals), including violation of the Student Code of Conduct, will have five points deducted. Conduct grades are as follows:

E (Excellent): 100-95
S (Satisfactory): 94-85
N (Needs Improvement): 84-75

U (Unsatisfactory): 74 and below

Middle School:

- If a student is absent, they will have 1 day per absence to turn in their work. If a student misses 3 or more days in a row, they will need a doctor's note for it to be excused.
- If a student does not turn in an assignment on time, "MISSING" will be entered into the gradebook until it is turned in.
    - o Late work will receive a penalty of -10 points for each day that it is late. Once an assignment is 5 days late, a grade of zero will be entered in the gradebook and can no longer be made up.
    - o If a student is missing assignments, he/she will be pulled in during Power Hour or after hours tutoring. Students will sign in for Power Hour/Tutoring so we have a log of their attendance.
- Any student can correct or re-take a test for up to a 70 if completed within five days. The student is responsible for requesting this opportunity during Power Hour within five days of getting the test back.
- Power Hour will be utilized for teachers to pull students in for tutoring, or for tests that were failed.
- If a student is continually having problems with late work or not attending required tutorials outside of school hours, we will schedule a parent conference to create a success plan for the student.
- Daily assignments will count for 50% of the final grade and major projects/tests will count for the other 50% of the final grade.

High School:

Grading guidelines for each grade level or course will be communicated and distributed to students and their parents by the classroom teacher. These guidelines have been reviewed by each applicable curriculum department and have been approved by the campus principal. These guidelines establish the minimum number of assignments, projects, and examinations required for each grading period. In addition, these guidelines establish how the student's mastery of concepts and achievement will be communicated (i.e., letter grades, numerical averages, checklist of required skills, etc.). Grading guidelines also outline in what circumstances a student will be allowed to redo an assignment or retake an examination for which the student originally made a failing grade. Procedures for a student to follow after an absence will also be addressed.

- · At the beginning of a lesson or unit, the objectives, expectations, and grading criteria will be clearly and expressly communicated to the student.
- · The actual grade earned for any assessed work shall be the actual grade recorded on the student's record with the Policy exceptions imposed.
- · Students should make an effort to complete work or projects in a timely manner in order to meet the deadline required by the teacher. If a student does not complete required work or projects due to excused, unavoidable circumstances, the student may receive a zero for their grade (refer to topic Incomplete).
- · Cheating in any matter will not be permitted. A student who is caught cheating may be given a zero and not permitted to redo the work.

The individual grading period and semester grades shall be determined in the following manner:

- · For each grading period, daily formative assessments will count 50% and major summative assessments will count as the other 50%.
- · There will be at least 10 grades per grading period. There will be a minimum of 8 daily formative assessments and 2 major summative assessments.
- · Each grading period for that semester will count as 1/3 of the final grade.

The mid nine week and nine week exams will count as a test grade for that nine week grading period. To be exempt from the (end of semester) nine week exam, the student shall:
Have a 70 or higher course average. Exemptions are per class. Students may be exempt from some, but not others.
Not be absent for more than 2 days that nine weeks
No unexcused absences/Class detention
No ISS/DAEP
No Night/Friday School
No more than 1 tardy

All students will take the Nine Weeks Exam. It is up to the exempt student to ask that their Nine Weeks Test grade count for their grade. If they do not request it, then do not count it.

Guidelines to Retake a Failed Test or Redo a Failed Assignment

- · This policy applies to all test grades and daily grades.
- · Requests to redo an assignment or retake a test should be initiated by the student within 48 hours of the student first receiving hard-copy or online grade. It will be scheduled within 3 days from the request. Students must participate in re-teaching or review activities assigned by the teacher in preparation for redoing an assignment or retaking a test in that timeframe. If the student fails to complete the review or retake/ redo as scheduled, the student may lose his/ her eligibility to redo/ retake the assignment.
- · Students may not be permitted to redo an assignment or retake a test if the failing grade is due to an incomplete assignment or late assignment.
- · Students may not be permitted to redo an assignment or retake a test if they received a grade of zero or a reduced grade on the original assignment or test because they violated LOHS expectations for academic honesty.
- · Students may not be permitted to redo an assignment if they did not complete any part of a longer assignment with multiple elements (ex. Research paper).
- · Students will not be permitted to redo an assignment or retake a test on the final day of a progress report/evaluation period or grading period.
- · All current UIL and LOISD policies concerning the student's eligibility to participate in extracurricular activities still apply.
- · The maximum grade for a redone assignment or retaken test will be grade of 70.
- · On the retake/redo, if the student receives between a score between 70-100%, then they shall be given a grade of 70. The higher of the two grades (original vs. Redo/Retake) will be the grade recorded in the grade book.

[See **Report Cards/Progress Reports and Conferences** on page for additional information on grading guidelines.]

Graduation (Secondary Grade Levels Only)

Requirements for a Diploma

A student must meet the following requirements to receive a high school diploma from the district:

- Achieve passing scores on certain end-of-course (EOC) assessments or approved substitute assessments, unless specifically waived as permitted by state law;
- Complete the required number of credits established by the state and any additional credits required by the district;
- Complete any locally required courses in addition to the courses mandated by the state;
- Demonstrate proficiency, as determined by the district, in the specific communication skills required by the State Board of Education (SBOE); and
- Complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA).

Testing Requirements for Graduation

Students are required, with limited exceptions and regardless of graduation program, to perform satisfactorily on EOC assessments in:

- English I,
- English II,
- Algebra I,
- Biology, and
- U.S. History.

A student who does not achieve a sufficient score will have opportunities to retake an assessment.

State law allows a student to meet EOC requirements by substituting satisfactory performance on approved national standardized assessments or on the state-developed assessment used for entrance into Texas public universities. [See the school counselor for more information on the state testing requirements for graduation.]

If a student fails to perform satisfactorily on an EOC assessment, the district will provide remediation in the applicable content area. This may require the student's participation outside normal school operating times.

In limited circumstances, a student who fails to demonstrate proficiency on up to two of the required assessments may still be eligible to graduate if an individual graduation committee, formed in accordance with state law, unanimously determines that the student is eligible to graduate.

[See **Standardized Testing** on page .]

Foundation Graduation Program

Every Texas public school student will graduate under the foundation graduation program. The foundation graduation program features endorsements, which are paths of interest that include:

- Science, Technology, Engineering, and Mathematics (STEM);
- Business and Industry;
- Public Service;

- Arts and Humanities; and
- Multidisciplinary Studies.

Endorsements earned by a student will be noted on the student's transcript.

A student can complete the foundation graduation program with a "distinguished level of achievement," which reflects the completion of at least one endorsement and Algebra II as one of the required advanced mathematics credits.

A **Personal Graduation Plan** will be completed for each high school student, as described on page .

State law generally prohibits a student from graduating solely under the foundation graduation program without an endorsement. However, after the student's sophomore year, the student and student's parent may request that the student graduate without an endorsement. The district will advise the student and the student's parent of the specific benefits of graduating with an endorsement. The student and the student's parent must then submit written permission to the school counselor for the student to graduate without an endorsement. A student who wishes to attend a four-year university or college after graduation must carefully consider whether graduation under the foundation program without an endorsement will satisfy the admission requirements of the student's desired college or university.

A student graduating under the foundation graduation program can also earn performance acknowledgments on his or her transcript. Performance acknowledgments are available for outstanding performance in bilingualism and biliteracy, in a dual credit course, on an AP or IB examination, on certain national college preparatory and readiness or college entrance examinations, or for earning a license or certificate recognized at the state, national, or international level. The school counselor can provide more information about these acknowledgments.

A student is not required to complete an Algebra II course to graduate under the foundation graduation program, and the district will annually notify a student's parent of this fact. However, not taking Algebra II will make a student ineligible for automatic admission to four-year public universities and colleges in Texas and for certain financial aid and grants while attending those institutions.

A school district will permit a student to satisfy the curriculum requirements for graduation under the foundation program with the distinguished level of achievement, including an endorsement, by successfully completing courses in the core curriculum of a public Texas institution of higher education. Please see your counselor for more information.

Credits Required

The foundation graduation program requires completion of the following credits:

Course Area	Number of Credits: Foundation Graduation Program	Number of Credits: Foundation Graduation Program with an Endorsement
English/Language Arts	4	4
Mathematics	3	4
Science	3	4

Course Area	Number of Credits: Foundation Graduation Program	Number of Credits: Foundation Graduation Program with an Endorsement
Social Studies	3	3
Physical Education	1	1
Languages other than English	2	2
Fine Arts	1	1
Electives	5	7
Locally required courses	As needed	As needed
Total	**22 credits**	**26 credits**

Additional considerations apply in some course areas, including:

- **Mathematics.** To obtain the distinguished level of achievement under the foundation graduation program, a student must complete an endorsement and take Algebra II as one of the 4 mathematics credits. A student's completion of the distinguished level of achievement is a requirement to be considered for automatic admission to a Texas four-year college or university and will be included on a student's transcript.
- **Physical education.** A student who is unable to participate in physical activity due to a disability or illness may be able to substitute a course in English language arts, mathematics, science, social studies, or another locally determined credit-bearing course for the required credit of physical education. This determination will be made by the student's ARD committee, Section 504 committee, or other campus committee, as applicable.
- **Languages other than English.** Students are required to earn 2 credits in the same language other than English to graduate. Any student may substitute computer programming languages for these credits.
    - A student may satisfy one of the 2 required credits by successfully completing in elementary school a dual language immersion program or a course in American Sign Language.
    - In limited circumstances, a student may be able to substitute this requirement with other courses, as determined by a district committee authorized by law to make these decisions for the student.

Available Endorsements

A student must specify upon entering grade 9 which endorsement he or she wishes to pursue:

- Science, Technology, Engineering, and Mathematics (STEM)
- Business and Industry
- Public Services
- Arts and Humanities or
- Multidisciplinary Studies

Financial Aid Application Requirement

Before graduating from high school, each student must complete and submit an application for financial aid for post-secondary education. Students must complete and submit either a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA).

- Student/Parent FASFA/TASFA night
- FASFA/TASFA check during individual senior meeting

A student is not required to complete and submit a FAFSA or TASFA if:

- The student's parent submits a form provided by the district indicating that the parent authorizes the student to opt out;
- A student who is 18 years of age or older or a legally independent minor submits a form provided by the district indicating that the student opts out; or
- A school counselor authorizes the student to opt out for good cause.

Please contact the school counselor for more information.

To confirm that a student has completed and submitted a TASFA, the student must submit:

- A screenshot that includes the processed date field of the FAFSA ApplyTexas Counselor Suite;
- Notification, such as a copy of an email, from the United States Department of Education verifying completion of the FAFSA;
- A copy or screenshot of the FAFSA acknowledgment page;
- A screenshot of the TASFA submission acknowledgment page (from those institutions that offer an electronic form);
- An acknowledgment receipt from an institution of higher education (IHE); or
- A copy of a financial aid award letter from an IHE.

Personal Graduation Plans

A personal graduation plan will be developed for each high school student.

The district encourages all students to pursue a personal graduation plan that includes the completion of at least one endorsement and to graduate with the distinguished level of achievement. Attainment of the distinguished level of achievement entitles a student to be considered for automatic admission to a public four-year college or university in Texas, depending on his or her rank in class.

The school will review personal graduation plan options with each student entering grade 9 and his or her parent. Before the end of grade 9, a student and his or her parent will be required to sign off on a personal graduation plan that promotes college and workforce readiness, promotes career placement and advancement, and facilitates the transition from secondary to postsecondary education.

The student's personal graduation plan will outline an appropriate course sequence based on the student's choice of endorsement.

Please review TEA's Graduation Toolkit (https://tea.texas.gov/about-tea/news-and-multimedia/brochures/tea-brochures).

A student may, with parental permission, amend his or her personal graduation plan after the initial confirmation.

Available Course Options for All Graduation Programs

Each spring, the district will update students on the courses required or offered in each curriculum area so students can enroll for the upcoming school year.

Note: The district may require the completion of certain courses for graduation even if these courses are not required by the state for graduation.

Not all courses are offered at every secondary campus in the district. A student who wants to take a course not offered at his or her regular campus should contact the school counselor about a transfer or other alternatives. If the parents of at least 22 students request a transfer for a course in the required curriculum other than fine arts or career and technical education (CTE), the district will offer the course the following year either by teleconference or at the school from which the transfers were requested.

Certificates of Coursework Completion

A certificate of coursework completion will ***be*** issued to a student who has successfully completed state and local credit requirements for graduation but has not yet demonstrated satisfactory performance on the state-mandated tests required for graduation.

Students with Disabilities

Admission, review, and dismissal (ARD) committees will make instructional and assessment decisions for students with disabilities who receive special education services in accordance with state law.

Upon the recommendation of the ARD committee, a student with a disability who receives special education services may be permitted to graduate under the provisions of his or her individualized education program (IEP) and in accordance with state rules.

A student who receives special education services may earn an endorsement under the foundation program. If the student's curriculum requirements for the endorsement were modified, the student's ARD committee will determine whether the modified curriculum is sufficiently rigorous to earn the endorsement. The ARD committee must also determine whether the student must perform satisfactorily on any end-of-course assessment to earn an endorsement.

A student who receives special education services and has completed four years of high school but has not met the requirements of his or her IEP may participate in graduation ceremonies and receive a certificate of attendance. The student may then remain enrolled to complete the IEP and earn his or her high school diploma but will only be allowed to participate in one graduation ceremony.

[See policy FMH(LEGAL) for more information.]

Graduation Activities

Students who have met coursework requirements for graduation but have not yet demonstrated satisfactory performance on end-of-course assessments or been declared eligible to graduate by an individual graduation committee, if applicable, will be allowed to participate in graduation

activities. Keep in mind that participating in the ceremonies is not the same as graduating. Ultimately, the final awarding of a diploma will be contingent upon the student's completion of all applicable requirements for graduation.

Students who are eligible to graduate but are assigned to a disciplinary alternative education program at the end of the school year will not be allowed to participate in the graduation ceremony and related graduation activities.

The following students and student groups shall be recognized at graduation ceremonies:

- Valedictorian
- Salutatorian
- Honor Graduates

Graduation Speakers

Certain graduating students will be given an opportunity to speak at graduation ceremonies.

A student must meet local eligibility criteria, which may include requirements related to student conduct, to have a speaking role. Students eligible for speaking roles will be notified by the principal and given an opportunity to volunteer.

[See the Student Code of Conduct and policy FNA(LOCAL) for more information.]

[See **Student Speakers** on page for student speakers at other school events.]

Graduation Expenses

Because students and parents will incur expenses to participate in the traditions of graduation—such as the purchase of invitations, senior ring, cap and gown, and senior picture—both the student and parent should monitor progress toward completion of all requirements for graduation. The expenses often are incurred in the junior year or first semester of the senior year. [See **Fees** on page .]

Scholarships and Grants

Students who have a financial need according to federal criteria and who complete the foundation graduation program may be eligible under the TEXAS Grant Program and the Teach for Texas Grant Program for scholarships and grants toward tuition and fees to Texas public universities, community colleges, and technical schools, as well as to private institutions. Certain students who graduate early may also be eligible for the Texas First Scholarship Program.

See **College and University Admissions and Financial Aid (All Grade Levels)** on page for more information.

Contact the school counselor for information about other scholarships and grants available to students.

Harassment

[See **Dating Violence, Discrimination, Harassment, and Retaliation** on page .]

Hazing (All Grade Levels)

Hazing is defined as an intentional, knowing, or reckless act, on or off campus, by one person alone or acting with others, directed against a student for the purpose of pledging, initiation into,

affiliation with, holding office in, or maintaining membership in a student organization if the act meets the elements in Education Code 37.151, including:

- Any type of physical brutality;
- An activity that subjects the student to an unreasonable risk of harm or that adversely affects the student's mental or physical health, such as sleep deprivation, exposure to the elements, confinement to small spaces, calisthenics, or consumption of food, liquids, drugs, or other substances;
- An activity that induces, causes, or requires the student to perform a duty or task that violates the Penal Code; and
- Coercing a student to consume a drug or alcoholic beverage in an amount that would lead a reasonable person to believe the student is intoxicated.

The district will not tolerate hazing. Disciplinary consequences for hazing will be in accordance with the Student Code of Conduct. It is a criminal offense if a person engages in hazing; solicits, encourages, directs, aids, or attempts to aid another in hazing; or has firsthand knowledge of an incident of hazing being planned or having occurred and fails to report this to the principal or superintendent.

[See **Bullying** on page and policies FFI and FNCC for more information.]

Health—Physical and Mental

Illness (All Grade Levels)

When your child is ill, please contact the school to let us know he or she will not be attending that day.

State rules require schools to exclude students with certain illnesses from school for certain periods of time. For example, if a child has a fever over 100 degrees, he or she must stay out of school until fever-free for 24 hours without use of fever-reducing medications. Students with diarrheal illnesses must stay home until they are diarrhea-free without use of diarrhea-suppressing medications for 24 hours.

A parent should contact the school nurse if a student has been diagnosed with COVID-19.

A full list of conditions for which the school must exclude children can be obtained from the school nurse.

If a student becomes ill during the school day and the school nurse determines that the child should go home, the nurse will contact the parent.

The district is required to report certain contagious (communicable) diseases or illnesses to the Department of State Health Services (DSHS) or our local/regional health authority. The school nurse can provide information from DSHS on these notifiable conditions.

The school nurse is available to answer any questions for parents who are concerned about whether or not their child should stay home.

Immunization (All Grade Levels)

A student must be fully immunized against certain diseases or must present a certificate or statement that, for medical reasons or reasons of conscience, including a religious belief, the student will not be immunized.

For exemptions based on reasons of conscience, only official forms issued by the Texas Department of State Health Services (DSHS), Immunization Branch, can be honored by the district. You may access the DSHS exemption form (https://dshs.texas.gov/immunize/school/exemptions.aspx) online or by writing to this address:

Texas Department of State Health Services
Immunization Section, Mail Code 1946
P.O. Box 149347
Austin, Texas 78714-9347

The form must be notarized and submitted to the principal or school nurse within 90 days of notarization. If the parent is seeking an exemption for more than one student in the family, a separate form must be provided for each student.

The immunizations required are:

- Diphtheria, tetanus, and pertussis
- Polio
- Measles, mumps, and rubella
- Hepatitis B
- Varicella (chicken pox)
- Meningococcal
- Hepatitis A

The school nurse can provide information on immunization requirements. Proof of immunization may be established by personal records from a licensed physician or public health clinic with a signature or rubber-stamp validation.

If a student should not be immunized for medical reasons, the student or parent must present a certificate signed by a U.S. registered and licensed physician stating that, in the doctor's opinion, the immunization required is medically contraindicated or poses a significant risk to the health and well-being of the student or a member of the student's family or household. This certificate must be renewed yearly unless the physician specifies a lifelong condition.

For information on immunization against bacterial meningitis and college enrollment and attendance, see **Bacterial Meningitis** on page .

[See the DSHS's Texas School & Child Care Facility Immunization Requirements (https://www.dshs.state.tx.us/immunize/school/default.shtm) and policy FFAB(LEGAL) for more information.]

Lice (All Grade Levels)

Head lice is very common among children. Although not an illness or a disease, it spreads easily through head-to-head contact during play, sports, nap time, and when children share things like brushes, combs, hats, and headphones.

The district does not require or recommend that students be removed from school because of lice or nits.

If careful observation indicates that a student has head lice, the school nurse will contact the student's parent to discuss a treatment plan using an FDA-approved medicated shampoo or

cream rinse that may be purchased from any drug or grocery store. After the student undergoes one treatment, the parent should contact the school nurse to discuss the treatment used. The nurse can also offer additional recommendations, including subsequent treatments, how best to get rid of lice, and how to prevent lice from returning.

The district will provide notice to parents of elementary school students in an affected classroom without identifying the student with lice.

More information on head lice can be obtained from the DSHS website Managing Head Lice in School Settings and at Home (https://www.dshs.state.tx.us/schoolhealth/lice.shtm).

[See policy FFAA for more information.]

Medicine at School (All Grade Levels)

If a student must take medication during school hours, the student's parent must provide the medication. All medication, whether prescription or nonprescription, must be kept in the nurse's office and be administered by the nurse or another authorized district employee. A student may be authorized to possess his or her own medication because of asthma or a severe allergy as described below or as otherwise allowed by law.

The district will not purchase nonprescription medication to give to a student.

In accordance with policy FFAC, authorized employees may administer:

- Prescription medication in the original, properly labeled container, provided by the parent along with a written request.
- Prescription medication from a properly labeled unit dosage container filled by a registered nurse or another qualified district employee from the original, properly labeled container provided by the parent along with a written request.
- Nonprescription medication in the original, properly labeled container, provided by the parent along with a written request. **Note:** Insect repellant is considered a nonprescription medication.
- Herbal or dietary supplements provided by the parent only if required by the student's individualized education program (IEP) or Section 504 plan for a student with disabilities.

Students whose schedules provide for regular time spent outdoors, including for recess and physical education classes, should apply sunscreen before coming to school.

At the elementary level, a student's teacher or other district personnel will apply sunscreen to the student's exposed skin if the student brings the sunscreen to school and asks for help applying it. A student at this level may apply his or her own sunscreen if the student is able to do so.

At the secondary level, a student may possess and apply sunscreen when necessary. If the student needs assistance with sunscreen application, please address the need with the school nurse.

Whether a student is at the elementary or secondary level, if sunscreen needs to be administered to treat any type of medical condition, this should be handled through communication with the school nurse so that the district is made aware of any safety and medical issues.

Asthma and Severe Allergic Reactions

A student with asthma or severe allergic reaction (anaphylaxis) may possess and use prescribed asthma or anaphylaxis medication at school or school-related events only if he or she has written authorization from his or her parent and a physician or other licensed health-care provider. The student must also demonstrate to his or her health-care provider and the school nurse the ability to use the prescribed medication, including any device required to administer the medication.

If the student has been prescribed asthma or anaphylaxis medication for use during the school day, the student and parents should discuss this with the school nurse or principal.

See also **Food Allergies** on page .

Steroids (Secondary Grade Levels Only)

State law prohibits students from possessing, dispensing, delivering, or administering an anabolic steroid. Anabolic steroids are for physician-prescribed medical use only.

Body building, muscle enhancement, or the increase of muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a healthy student is not a valid medical use and is a criminal offense.

Mental Health Support (All Grade Levels)

The district has implemented programs to address the following mental health, behavioral health, and substance abuse concerns:

- Mental health promotion and early intervention;
- Building skills to manage emotions, establish and maintain positive relationships, and engage in responsible decision-making;
- Substance abuse prevention and intervention;
- Suicide prevention, intervention, and postvention (interventions after a suicide in a community);
- Grief, trauma, and trauma-informed care;
- Positive behavior interventions and supports;
- Positive youth development; and
- Safe, supportive, and positive school climates.

Lone Oak Elementary School programs that address mental health support:

Character Academy – combines Character Education and Social and Emotional Learning to help focus on developing internal competences in order to influence outward behaviors – including SEL Competencies – self-awareness, self-management, social awareness, relationship skills, responsibility, decision making with Character Values including wisdom, imitative, individuality, contentment, service, self-control, compassion, cooperation, hope and perseverance.

Lone Oak Middle School programs that address mental health support:

Core Essentials Program – combines Character Education and Social and Emotional Learning to help focus on developing internal competences in order to influence outward behaviors – including SEL Competencies – self-awareness, self-management, social awareness, relationship skills, responsibility, decision making with Character Values including wisdom, imitative, individuality, contentment, service, self-control, compassion, cooperation, hope and perseverance.

Youth180 –Prevention Program that educates students on coping, decision making and problem solving skills as well as risks associated with substance abuse.

EverFi digital lessons – physical wellness, substance abuse prevention, bully prevention, mental wellness, healthy living.

If a student has been hospitalized or placed in residential treatment for a mental health condition or substance abuse, the district has procedures to support the student's return to school. Please contact the district's mental health liaison for further information.

Teachers and other district employees may discuss a student's academic progress or behavior with the student's parents or another employee as appropriate; however, they are not permitted to recommend use of psychotropic drugs. A psychotropic drug is a substance used in the diagnosis, treatment, or prevention of a disease or as a component of a medication that is intended to alter perception, emotion, mood, or behavior.

A district employee who is a registered nurse, an advanced nurse practitioner, a physician, or a certified or credentialed mental health professional can recommend that a student be evaluated by an appropriate medical practitioner, if appropriate. [See policy FFEB for more information.]

For related information, see:

- **Consent to Conduct a Psychological Evaluation** on page and **Consent to Provide a Mental Health Care Service** on page for the district's procedures for recommending a mental health intervention and the mental health liaison's contact information;
- **Counseling** on page for the district's comprehensive school counseling program;
- **Physical and Mental Health Resources** on page for campus and community mental and physical health resources; and
- **Policies and Procedures that Promote Student Physical and Mental Health** on page for board-adopted policies and administrative procedures that promote student health.

Physical Activity Requirements

Elementary School

The district will ensure that students in full-day prekindergarten–grade 5 engage in moderate or vigorous physical activity for at least 30 minutes per day or 135 minutes per week, in accordance with policies at EHAB, EHAC, EHBG, and FFA.

For additional information on the district's elementary school student physical activity programs and requirements, please see the principal.

Middle School

The district will ensure that students in middle school will engage in at least 225 minutes of moderate or vigorous physical activity within each two-week period for at least four semesters, in accordance with policies at EHAB, EHAC, EHBG, and FFA.

For additional information on the district's junior high and middle school student physical activity programs and requirements, please see the principal.

Temporary Restriction from Participation in Physical Education

Students who are temporarily restricted from participation in physical education will not actively participate in skill demonstration but will remain in class to learn the concepts of the lessons.

Physical Fitness Assessment (Grades 3–12)

Annually, the district will conduct a physical fitness assessment of students in grades 3–12 who are enrolled in a physical education course or a course for which physical education credit is awarded. At the end of the school year, a parent may submit a written request to obtain the results of his or her child's physical fitness assessment conducted during the school year by contacting the campus physical education teacher.

Physical Health Screenings/Examinations

Athletics Participation (Secondary Grade Levels Only)

For certain extracurricular activities, a student must submit certification from an authorized health-care provider. The certification must state that the student has been examined and is physically able to participate in the relevant program, including:

- A district athletics program.
- District marching band.
- Any district extracurricular program identified by the superintendent.

This examination is required to be submitted annually to the district.

Students should be aware of the rare possibility of sudden cardiac arrest, which in athletes is usually caused by a previously unsuspected heart disease or disorder. A student may request an electrocardiogram (ECG or EKG) to screen for such disorders, in addition to his or her required physical examination.

See the UIL's explanation of sudden cardiac arrest (https://www.uiltexas.org/health/info/sudden-cardiac-death) for more information.

Spinal Screening Program

School-based spinal screening helps identify adolescents with abnormal spinal curvature at an early stage when the curve is mild and may go unnoticed. Early detection is key to controlling spinal deformities. Spinal screening is non-invasive and conducted in accordance with the most recent nationally accepted and peer-reviewed standards.

All students who meet the Texas Department of State Health Services criteria will be screened for abnormal spinal curvature before the end of the school year. As appropriate, students will be referred for follow-up with their physician.

For information on spinal screening by an outside professional or exemption from spinal screening based on religious beliefs, contact the superintendent or see policy FFAA(LEGAL).

Other Examinations and Screenings (All Grade Levels)

Students are required to undergo a risk assessment for Type 2 diabetes at the same time the district screens students for hearing and vision issues or for abnormal spinal curvatures.

See policy FFAA for more information.

Special Health Concerns (All Grade Levels)

Bacterial Meningitis (All Grade Levels)

Please see the district's website at www.loisd.net for information regarding meningitis.

Note: Entering college students must show, with limited exception, evidence of receiving a bacterial meningitis vaccination within the five-year period prior to enrolling in and taking courses at an institution of higher education. Please see the school nurse for more information, as this may affect a student who wishes to enroll in a dual credit course taken off campus.

[See **Immunization** on page .]

Diabetes

In accordance with a student's individual health plan for management of diabetes, a student with diabetes will be permitted to possess and use monitoring and treatment supplies and equipment while at school or at a school-related activity. See the school nurse or principal for information. [See policy FFAF(LEGAL) for more information.]

Food Allergies (All Grade Levels)

Parents should notify the district when a student has been diagnosed with a food allergy, especially an allergy that could result in dangerous or life-threatening reactions either by breathing, eating, or touching the particular food. It is important to disclose the food to which the student is allergic as well as the nature of the allergic reaction. Please contact the school nurse or campus principal if your child has a known food allergy or as soon as possible after any diagnosis of a food allergy.

The district has developed and annually reviews a food allergy management plan, based on the Texas Department of State Health Services' (DSHS) *Guidelines for the Care of Students with Food Allergies At-Risk for Anaphylaxis* found on the DSHS Allergies and Anaphylaxis website (https://www.dshs.texas.gov/schoolhealth/allergiesandanaphylaxis/)

When the district receives information that a student has a food allergy that puts the student at risk for anaphylaxis, an individual care plan will be developed to assist the student in safely accessing the school environment. The district's food allergy management plan can be accessed at www.loisd.net.

[See **Celebrations** on page and policy FFAF for more information.]

Seizures (All Grade Levels)

To address the care of a student with a seizure disorder while at school or participating in a school activity, a parent may submit a seizure management and treatment plan to the district before the beginning of the school year, upon enrollment of the student, or as soon as practicable following diagnosis of a seizure disorder.

[See **A Student with Physical or Mental Impairments Protected under Section 504** on page and contact the school nurse for more information.]

Tobacco and E-Cigarettes Prohibited (All Grade Levels and All Others on School Property)

Students are prohibited from possessing or using any type of tobacco product, electronic cigarette (e-cigarette), or any other electronic vaporizing device while on school property or while attending an off-campus school-related activity.

The district and its staff strictly enforce prohibitions against the use of all tobacco products, e-cigarettes, or any other electronic vaporizing device by students and all others on school property and at school-sponsored and school-related activities. [See the Student Code of Conduct and policies FNCD and GKA for more information.]

Health-Related Resources, Policies, and Procedures

Physical and Mental Health Resources (All Grade Levels)

Parents and students in need of assistance with physical and mental health concerns may contact the following campus and community resources:

- The district full-time nurse:

Laurie Daniel, RN	ldaniel@loisd.net	903-634-5225

- The campus full-time school counselor:

Susan Gentry, Lone Oak Elementary School	sgentry@loisd.net	903-634-5287
Leslie Putchio, Lone Oak Middle School	lputchio@loisd.net	903-634-5242
Susan Talbert, Lone Oak High School	stalbert@loisd.net	903-634-5244

- The local public health authority, Hunt County Health Department, which may be contacted at 2700 Johnson Street, Greenville TX 75401; 903-408-4140
- The local mental health authority, Lakes Regional MHMR Center, which may be contacted at 4804Wesley Street, Greenville TX 75401; 903-455-5770

Policies and Procedures that Promote Student Physical and Mental Health (All Grade Levels)

The district has adopted board policies that promote student physical and mental health. (LOCAL) policies on the topics below can be found in the district's policy manual, available at www.loisd.net.

- Food and nutrition management: CO, COA, COB
- Wellness and Health Services: FFA
- Physical Examinations: FFAA
- Immunizations: FFAB
- Medical Treatment: FFAC
- Communicable Diseases: FFAD
- School-Based Health Centers: FFAE
- Care Plans: FFAF

- Crisis Intervention: FFB
- Trauma-informed Care: FFBA
- Student Support Services: FFC
- Student Safety: FFF
- Child Abuse and Neglect: FFG
- Freedom from Discrimination, Harassment, and Retaliation: FFH
- Freedom from Bullying: FFI

In addition, the District Improvement Plan details the district's strategies to improve student performance through evidence-based practices that address physical and mental health.

The district has developed administrative procedures as necessary to implement the above policies and plans.

For further information regarding these procedures and access to the District Improvement Plan, please contact:

Katy Turner

Superintendent Communications

kturner@loisd.net

903-634-5270

School Health Advisory Council (SHAC) (All Grade Levels)

During the preceding school year, the district's School Health Advisory Council (SHAC) held 2 meetings. Additional information regarding the district's SHAC is available from the district nurse or campus principal.

Notification of upcoming SHAC meetings will be posted at each campus administrative office at least 72 hours before the meeting. Notification of upcoming SHAC meetings, meeting minutes, and a recording of each meeting will be posted on the district website at www.loisd.net.

[See **Consent to Human Sexuality Instruction** on page , **Consent to Instruction on Prevention of Child Abuse, Family Violence, Dating Violence, and Sex Trafficking** on page , and policies BDF and EHAA. for more information.]

Student Wellness Policy/Wellness Plan (All Grade Levels)

To encourage healthy habits in our students, the district has developed a board-adopted wellness policy at FFA(LOCAL) and corresponding plans and procedures to implement it. For questions about the content or implementation of the district's wellness policy and plan, please contact:

Laurie Daniel

District Rn

8162 Highway 69 South Lone Oak, TX 75453

ldaniel@loisd.net

903-634-5225

Homework (All Grade Levels)

Homework is a supportive and an integral part of classroom instruction at all grade levels. Research supports that homework (1) reinforces skill acquisition and (2) helps develop a student's habit of completing and returning homework, which builds work ethics. Homework should not take an excessive amount of time. Students failing to return homework on time, as designated and articulated by the teacher, will be subject to grading sanctions to include being given a 0. Law Enforcement Agencies (All Grade Levels)

Questioning of Students

When law enforcement officers or other lawful authorities wish to question or interview a student at school, the principal will cooperate fully regarding the conditions of the interview, including without parental consent, if necessary, if it is part of a child abuse investigation. In other circumstances, the principal will:

- Verify and record the identity of the officer or other authority and ask for an explanation of the need to question the student at school.
- Ordinarily make reasonable efforts to notify the parents, unless the interviewer raises what the principal considers to be a valid objection.
- Ordinarily be present for the questioning or interview, unless the interviewer raises what the principal considers to be a valid objection.

Students Taken into Custody

State law requires the district to permit a student to be taken into legal custody:

- To comply with an order of the juvenile court.
- To comply with the laws of arrest.
- By a law enforcement officer if there is probable cause to believe the student has engaged in delinquent conduct or conduct in need of supervision.
- By a law enforcement officer to obtain fingerprints or photographs for comparison in an investigation.
- By a law enforcement officer to obtain fingerprints or photographs to establish a student's identity where the child may have engaged in conduct indicating a need for supervision, such as running away.
- By a probation officer if there is probable cause to believe the student has violated a condition of probation imposed by the juvenile court.
- By an authorized representative of Child Protective Services (CPS), Texas Department of Family and Protective Services (DFPS), a law enforcement officer, or a juvenile probation officer, without a court order, under the conditions set out in the Family Code relating to the student's physical health or safety.
- To comply with a properly issued directive from a juvenile court to take a student into custody.

Before a student is released to a legally authorized person, the principal will verify the person's identity and, to the best of his or her ability, will verify the person's authority to take custody of the student.

The principal will immediately notify the superintendent and will attempt to notify the parent, unless the legally authorized person raises what the principal considers to be a valid objection to notifying the parents. Because the principal does not have the authority to prevent or delay a student's release to a legally authorized person, any notification will most likely be after the fact.

Notification of Law Violations

The district is required by state law to notify:

- All instructional and support personnel who have responsibility for supervising a student who has been taken into custody, arrested, or referred to the juvenile court for any felony offense or for certain misdemeanors.
- All instructional and support personnel who have regular contact with a student who has been convicted, received deferred prosecution, received deferred adjudication, or was adjudicated for delinquent conduct for any felony offense or certain misdemeanors that occur in school, on school property, or at a school-sponsored or school-related activity on or off school property. These personnel will also be notified if the principal has reasonable grounds to believe the student has engaged in certain conduct.
- All appropriate district personnel regarding a student who is required to register as a sex offender.

[See policy GRAA(LEGAL) for more information.]

Leaving Campus (All Grade Levels)

Remember that student attendance is crucial. Appointments should be scheduled outside of school hours if possible. Except for extenuating circumstances, students will not regularly be released before the end of the school day.

State rules require parental consent before any student leaves campus for any part of the school day.

For students in elementary and middle school, a parent or authorized adult must come to the office and show identification to sign the student out. A campus representative will ask the student to report to the office. For safety purposes and stability of the learning environment, we cannot allow any unescorted adult to go to the classroom or other area to pick up the student. If the student returns to campus the same day, the parent or authorized adult must sign the student back in through the main office upon the student's return. Documentation regarding the reason for the absence will also be required.

The same process applies to students in high school if a parent picks the student up from campus. If the student's parent authorizes the student to leave campus unaccompanied, a note provided by the parent must be submitted to the main office no later than two hours prior to the student's need to leave campus. A phone call from the parent may be accepted, but the school may ultimately require a note for documentation purposes. The student must sign out through the main office and sign in upon his or her return if the student returns the same day.

If a student becomes ill during the school day and the school nurse or other district personnel determines that the student should go home, the nurse will contact the student's parent and document the parent's wishes regarding release from school.

Unless the parent directs district personnel to release the student unaccompanied, the parent or other authorized adult must follow the sign-out procedures listed above. If a student is permitted by his or her parent to leave campus unaccompanied, the nurse will document the time of day the student was released. Under no circumstances will a student in elementary or middle school be released unaccompanied.

If a student is 18 years of age or is an emancipated minor, the student may sign him- or herself out of school. Documentation regarding the reason for the absence will be required.

During Lunch

Lone Oak ISD is a closed campus and does not allow students to leave during lunch.

At Any Other Time during the School Day

Students are not authorized to leave campus during regular school hours for any other reason, except with the permission of the principal.

Students who leave campus in violation of these rules will be subject to disciplinary action in accordance with the Student Code of Conduct.

Lost and Found (All Grade Levels)

A lost and found collection box is located in the campus office. A student who loses an item should check the lost and found box. The district discourages bringing personal items of high monetary value to school, as the district is not responsible for lost or stolen items. The campus will dispose of lost and found items at the end of each semester.

Makeup Work

Makeup Work Because of Absence (All Grade Levels)

A teacher may assign makeup work to a student who misses class based on instructional objectives and the needs of the student in mastering the essential knowledge and skills or meeting subject or course requirements.

The student will be responsible for obtaining and completing the makeup work within the time specified by the teacher. A student who does not make up assigned work within the time allotted by the teacher will receive a grade of zero for the assignment.

The student is encouraged to speak with his or her teacher if the student knows of an absence ahead of time so that the teacher and student may plan any makeup work. Please remember the importance of student attendance at school. With limited exceptions, all absences count for the 90 percent threshold set in state law regarding attendance for credit or final grade. [See **Attendance for Credit or Final Grade** on page .]

A student involved in an extracurricular activity must notify his or her teachers ahead of time about any absences.

A student will be permitted to make up tests and turn in projects due in any class missed because of absence. Teachers may assign a late penalty to any long-term project in accordance with timelines approved by the principal and previously communicated to students.

DAEP Makeup Work

Elementary and Middle/Junior High School Grade Levels

Students placed in DAEP will have work provided by their classroom teachers, and must complete that work to advance in their grade.

Grades 9–12

If a high school student is enrolled in a foundation curriculum course at the time of removal to a disciplinary alternative education program (DAEP), he or she will have an opportunity to complete the course before the beginning of the next school year. The district may provide the opportunity to complete the course through an alternative method, including a correspondence course, another distance learning option, or summer school. The district will not charge the student for any method of completion provided by the district. [See policy FOCA(LEGAL) for more information.]

In-School Suspension (ISS) and Out-of-School Suspension (OSS) Makeup Work (All Grade Levels)

Alternative Means to Receive Coursework

While a student is in ISS or OSS, the district will provide the student with all course work for the student's foundation curriculum classes that the student misses as a result of the suspension.

Opportunity to Complete Courses

A student removed from the regular classroom to ISS or another setting, other than a DAEP, will have an opportunity to complete before the beginning of the next school year each course the student was enrolled in at the time of removal from the regular classroom. The district may provide the opportunity by any method available, including a correspondence course, another distance learning option, or summer school. The district will not charge the student for any method of completion provided by the district. [See policy FO(LEGAL) for more information.]

Nondiscrimination Statement (All Grade Levels)

In its efforts to promote nondiscrimination and as required by law, the district does not discriminate on the basis of race, religion, color, national origin, gender, sex, age, disability, or any other basis prohibited by law in providing education services, activities, and programs, including Career and Technical Education (CTE) programs. The district provides equal access to the Boy Scouts and other designated youth groups.

In accordance with Title IX, the district does not and is required not to discriminate on the basis of sex in its educational programs or activities. The requirement not to discriminate extends employment. Inquiries about the application of Title IX may be referred to the district's Title IX Coordinator (see below), to the Assistant Secretary for Civil Rights of the Department of Education, or both.

Other federal laws that prohibit discrimination include Title VI, Section 504, the Age Discrimination Act, the Boy Scouts Act, and Title II.

The district has designated and authorized the following employee as the Title IX Coordinator to address concerns or inquiries regarding discrimination on the basis of sex, including sexual harassment, sexual assault, dating violence, domestic violence, stalking, or gender-based harassment:

Beth Luhn
Director of Special and Federal Programs
8162 Highway 69 South, Lone Oak, TX 75453
bluhn@loisd.net
903-634-5286
Reports can be made at any time and by any person, including during non-business hours, by mail, phone, or email. During district business hours, reports may also be made in person. Upon the district receiving notice or an allegation of sex-based harassment, the Title IX Coordinator will promptly respond in accordance with the process described at FFH(LOCAL).

The following district representatives have been designated to address concerns or inquiries about other kinds of discrimination:

- For concerns regarding discrimination on the basis of disability, see the ADA/Section 504 Coordinator:

Mindy Hogue, Lone Oak Elementary	mhogue@loisd.net	903-634-
Joseph Riddle, Lone Oak Middle School	jriddle@loisd.net	903-634-5252
Elizabeth Tanoos, Lone Oak High School	etanoos@loisd.net	903-634-5266

- For all other concerns regarding discrimination, see the superintendent:

Janee' Carter

Superintendent

8162 Highway 69 South, Lone Oak, TX 75453

jcarter@loisd.net

903-634-5270

[See policies FB, FFH, and GKD for more information.]

Parent and Family Engagement (All Grade Levels)

Working Together

Experience and research tell us that a child succeeds in education with good communication and a strong partnership between home and school. A parent's involvement and engagement in this partnership may include:

- Encouraging your child to put a high priority on education and working with your child every day to make the most of the educational opportunities the school provides.
- Ensuring that your child completes all homework assignments and special projects and comes to school each day prepared, rested, and ready to learn.
- Becoming familiar with all your child's school activities and with the academic programs, including special programs, offered in the district.
- Discussing with the school counselor or principal any questions you may have about the options and opportunities available to your child.

- Reviewing the requirements and options for graduation with your child in middle school and again while your child is enrolled in high school.
- Monitoring your child's academic progress and contacting teachers as needed. [See **Academic Counseling** on page .]
- Attending scheduled conferences and requesting additional conferences as needed. To schedule a telephone or in-person conference with a teacher, school counselor, or principal, please call the school office for an appointment.
    - Lone Oak Elementary 903-634-5262
    - Lone Oak Middle School 903-634-5244
    - Lone Oak High School 903-634-5221

The teacher will usually return your call or meet with you during his or her conference period or before or after school. [See **Report Cards/Progress Reports and Conferences** on page .]

- Becoming a school volunteer. [See **Volunteers** on page and policy GKG for more information.]
- Participating in campus parent organizations. Parent organizations include: Elementary PTO.
- Serving as a parent representative on the district-level or campus-level planning committees that develop educational goals and plans to improve student achievement. For more information, see policies BQA and BQB and contact:

Jill Whitehead, Lone Oak Elementary School	jwhitehead@loisd.net	903-634-5262
Shannon Wilhite, Lone Oak Middle School	swilhite@loisd.net	903-634-5244
Nate Compton, Lone Oak High School	ncompton@loisd.net	903-634-5221

- Serving on the School Health Advisory Council (SHAC) and assisting the district in aligning local community values with health education instruction, human sexuality instruction, instruction on prevention of child abuse, family violence, dating violence, and sex trafficking, and other wellness issues. [See **School Health Advisory Council (SHAC)** on page and policies BDF, EHAA, FFA for more information.]
- Being aware of the school's ongoing bullying and harassment prevention efforts.
- Contacting school officials if you are concerned with your child's emotional or mental well-being.
- Attending board meetings to learn more about district operations. Regular board meetings are held on the 3rd Monday of each month at 6:00 p.m. at 8162 Highway 69 South, Lone Oak, TX 75453. An agenda for a regular or special meeting is posted no later than 72 hours before each meeting at 8162 Highway 69 South, Lone Oak, TX 75453 and online at www.loisd.net. [See policies BE and BED for more information.]

Parking and Parking Permits (Secondary Grade Levels Only)

A student must present a valid driver's license and proof of insurance to be eligible for a parking permit.

Students must request a parking permit ($20) to park in a school parking lot. So long as space is available, parking permits may be issued throughout the year.

Students will not be permitted to:

- Speed.
- Double-park.
- Park across a white or yellow line.
- Park in a fire lane.
- Sit in parked cars during school hours.

Students may be subject to disciplinary action for violation of these rules. The district may tow cars that are parked in violation of these rules.

Pledges of Allegiance and a Minute of Silence (All Grade Levels)

Each school day, students will recite the Pledge of Allegiance to the U.S. flag and the Pledge of Allegiance to the Texas flag. Parents may submit a written request to the principal to excuse their child from reciting a pledge. [See **Reciting the Pledges to the U.S. and Texas Flags** on page .]

State law requires that one minute of silence follow recitation of the pledges. Each student may choose to reflect, pray, meditate, or engage in any other silent activity during that minute so long as the silent activity does not interfere with or distract others.

In addition, state law requires that each campus provide for the observance of one minute of silence in remembrance of those who lost their lives on September 11, 2001, at the beginning of the first class period when September 11 falls on a regular school day.

[See policy EC for more information.]

Prayer (All Grade Levels)

Each student has a right to pray individually, voluntarily, and silently or to meditate in school in a manner that does not disrupt school activities. The school will not encourage, require, or coerce a student to engage in or refrain from such prayer or meditation during any school activity.

Promotion and Retention

A student will be promoted only on the basis of academic achievement or proficiency. In making promotion decisions, the district will consider:

- Teacher recommendation,
- Grades,
- Scores on criterion-referenced or state-mandated assessments, and
- Any other necessary academic information as determined by the district.

[Prekindergarten OR Kindergarten]—Grade 3

A parent may request in writing that a student repeat prekindergarten, kindergarten, or grade 1, 2, or 3. Before granting the request, the district may convene a retention committee to meet and discuss the request and will invite the parent to participate.

Elementary and Middle/Junior High Grade Levels

In grades 1-5, promotion to the next grade level shall be based on an overall average of 70 on a scale of 100 based on course-level, grade-level standards (essential knowledge and skills) for English language arts/reading (ELAR), mathematics, science, and social studies, and a grade of 70 or above in ELAR and mathematics.

In grades 6–8, promotion to the next grade level shall be based on an overall average of 70 on a scale of 100 based on course-level, grade-level standards (essential knowledge and skills) for ELAR, mathematics, science, and social studies, and a grade of 70 or above in three of the following areas: ELAR, mathematics, science, and social studies.

High School Grade Levels

To earn credit in a course, a student must receive a grade of at least 70 based on course-level standards.

A student in grades 9–12 will be advanced a grade level based on the number of course credits earned. [See **Grade-Level Classification** on page .]

Students will also have multiple opportunities to retake EOC assessments. [See **Graduation** on page and **Standardized Testing** on page .]

Release of Students from School

[See **Leaving Campus** on page .]

Remote Instruction

The district may offer remote instruction in accordance with TEA guidelines.

All district policies, procedures, guidelines, rules, and other expectations of student behavior will be enforced as applicable in a remote or virtual learning environment.

Report Cards/Progress Reports and Conferences (All Grade Levels)

Report cards with each student's performance and absences in each class or subject are issued at least once every nine weeks.

At the end of the during the fourth week of a nine-week grading period, parents will receive a progress report if their child's performance in any course/subject area is near or below 70 or is below the expected level of performance. If a student receives a grade lower than 70 in any class or subject at the end of a grading period, the parent will be asked to schedule a conference with the teacher. [See **Working Together** on page for how to schedule a conference.]

Teachers follow grading guidelines that have been approved by the principal pursuant to the board-adopted policy. Grading guidelines are designed to reflect each student's relative mastery of each assignment. State law provides that a test or course grade issued by a teacher cannot be changed unless the board determines that the grade was arbitrary or contains an error, or that the teacher did not follow the district's grading policy. [See **Grading Guidelines** on page and policy EIA(LOCAL) for more information.]

Questions about grade calculation should first be discussed with the teacher. If the question is not resolved, the student or parent may request a conference with the principal in accordance with FNG(LOCAL).

The report card or unsatisfactory progress report will state whether tutorials are required for a student who receives a grade lower than 70.

Report cards and unsatisfactory progress reports must be signed by the parent and returned to the school within three school days. The district may communicate academic information about a student electronically, including for progress reporting purposes. An electronic signature will be accepted by the district, but parents are entitled to request a handwritten signature of acknowledgment instead.

Retaliation

[See **Dating Violence, Discrimination, Harassment, and Retaliation** on page .]

Safety (All Grade Levels)

Student safety on campus, at school-related events, and in district vehicles is a high priority of the district. The cooperation of students is essential to ensuring school safety. A student is expected to:

- Avoid conduct that is likely to put the student or others at risk.
- Follow all behavioral standards in this handbook and the Student Code of Conduct or set by district employees.
- Remain alert to any safety hazards, such as intruders on campus or threats made by any person toward a student or staff member, and promptly report any incidents to a district employee. A student may make anonymous reports about safety concerns contacting Officer Hurst or the campus administrator.
- Know emergency evacuation routes and signals.
- Follow immediately the instructions of teachers, bus drivers, and other district employees who are overseeing the welfare of students.

Accident Insurance

Soon after the school year begins, parents will have the opportunity to purchase low-cost accident insurance that would help meet medical expenses in the event of injury to their child.

Insurance for Career and Technical Education (CTE) Programs

The district may purchase accident, liability, or automobile insurance coverage for students and businesses involved in the district's CTE programs.

Preparedness Drills: Evacuation, Severe Weather, and Other Emergencies

Periodically, the school will conduct preparedness drills of emergency procedures. When the command is given or alarm is sounded, students need to follow the direction of teachers or others in charge quickly, quietly, and in an orderly manner.

Preparedness Training: CPR and Stop the Bleed

The district will annually offer instruction in CPR at least once to students enrolled in grades 7–12. The instruction can be provided as part of any course and is not required to result in CPR certification.

The district will annually offer students in grades 7–12 instruction on the use of bleeding control stations to respond to traumatic injury. For more information, see:

- Homeland Security's Stop the Bleed (https://www.dhs.gov/stopthebleed)
- Stop the Bleed Texas (https://stopthebleedtexas.org/)

Emergency Medical Treatment and Information

All parents are asked each year to complete a medical care authorization form, providing written parental consent to obtain emergency treatment and information about allergies to medications or drugs. Parents should contact the school nurse to update emergency care information (name of doctor, emergency phone numbers, allergies, and the like).

The district may consent to medical treatment, which includes dental treatment, if necessary, for a student if:

- The district has received written authorization from a person having the right to consent;
- That person cannot be contacted; and
- That person has not given the district actual notice to the contrary.

The emergency care authorization form will be used by the district when a student's parent or authorized designee cannot be contacted. A student may provide consent if authorized by law or court order.

Regardless of parental authorization for the district to consent to medical treatment, district employees will contact emergency medical services to provide emergency care when required by law or when deemed necessary, such as to avoid a life-threatening situation.

Emergency School Closing Information

Each year, parents are asked to complete an emergency release form to provide contact information in the event that the district needs to notify parents of early dismissal, delayed opening, or restricted access to a campus because of severe weather, a security threat, or another emergency cause.

The district will rely on contact information on file with the district to communicate with parents in an emergency situation, which may include real-time or automated messages. It is crucial to notify your child's school when a phone number changes. State law requires parents to update contact information within two weeks after the date the information changes.

If the campus must close, delay opening, or restrict access to the building because of an emergency, the district will also alert the community in the following ways: by phone, text and email according to information in the parent portal for each student.

[See **Automated Emergency Communications** on page .]

SAT, ACT, and Other Standardized Tests

[See **Standardized Testing** on page .]

Schedule Changes (Middle School and High School Grade Levels)

Middle School: If there is an error on a student's schedule, it can be corrected during the first week of school. Student schedules will not be changed unless the school determines that it is necessary

High School: If a student would like to discuss a schedule change they will need to make an appointment with the school counselor for a date and time. Schedule changes are normally completed before each semester of school begins. Schedules will not be changed unless the school determines that it is necessary.

School Facilities

Asbestos Management Plan (All Grade Levels)

The district works diligently to maintain compliance with federal and state law governing asbestos in school buildings. A copy of the district's asbestos management plan is available in the central administrative office. If you have any questions or would like to examine the district's plan in more detail, please contact the district's designated asbestos coordinator:

Wayne Shepard
Director of Operations
8162 Highway 69 South Lone Oak, TX 75453
wshepard@loisd.net
903-634-5260

Food and Nutrition Services (All Grade Levels)

The district participates in the School Breakfast Program and National School Lunch Program and offers students nutritionally balanced meals daily in accordance with standards set forth in state and federal law.

Some students are eligible for free and reduced-price meals based on financial need. Information about a student's participation is confidential. The district may share information such as a student's name and eligibility status to help enroll eligible children in Medicaid or the state children's health insurance program (CHIP) unless the student's parent requests the student's information not be disclosed.

Participating students will be offered the same meal options as their peers and will not be treated differently from their peers.

To apply for free or reduced-price meal services, contact:

Gary Sorrells, Director of Finance/Food and Nutrition
8162 Highway 69 South Lone Oak, TX 75453
gsorrells@loisd.net
903-662-5121
[See policy CO for more information.]

Parents should continually monitor their child's meal account balance. When a student's meal account is depleted, the district will notify the parent. The student may continue to purchase meals according to the grace period set by the school board. The district will present the parent with a schedule of repayment for any outstanding account balance and an application for free or reduced meals.

If the district is unable to work out an agreement with the student's parent on replenishment of the meal account and payment of any outstanding balance, the student will receive a meal. The district will make every effort to avoid bringing attention to the student.

Vending Machines (All Grade Levels)

The district has adopted and implemented the state and federal policies for food service, including guidelines to restrict student access to vending machines. For more information

regarding these policies and guidelines, see the campus *the principal.* [See policy FFA for more information.]

Pest Management Plan (All Grade Levels)

The district is required to follow integrated pest management (IPM) procedures to control pests on school grounds. Although the district strives to use the safest and most effective methods to manage pests, including a variety of non-chemical control measures, periodic indoor and outdoor pesticide use is sometimes necessary to ensure a safe, pest-free school environment.

All pesticides used are registered for their intended use by the U.S. Environmental Protection Agency and are applied only by certified pesticide applicators. Except in an emergency, signs will be posted 48 hours before indoor application. All outdoor applications will be posted at the time of treatment, and signs will remain until it is safe to enter the area.

Parents who have questions or who want to be notified of the times and types of applications prior to pesticide application inside their child's school assignment area may contact the district's IPM coordinator:

Wayne Shepard
Director of Operations
8162 Highway 69 South Lone Oak, TX 75453
wshepard@loisd.net
903-634-5260

Conduct Before and After School (All Grade Levels)

Teachers and administrators have full authority over student conduct at before- or after-school activities. Whether a school activity is on or off district premises, students must follow the same rules of conduct that apply during the instructional day. Misbehavior will be subject to consequences established by the Student Code of Conduct or any stricter standards of behavior established by the sponsor for extracurricular participants.

Library (All Grade Levels)

The library is open for independent student use during the following times with a teacher permit:
Monday – Thursday 7:45 am – 4:00 pm

Use of Hallways during Class Time (All Grade Levels)

During class times, loitering or standing in the halls is not permitted, and a student must have a hall pass to be outside the classroom for any purpose. Failure to obtain a pass will result in disciplinary action in accordance with the Student Code of Conduct.

Use by Students before and After School (All Grade Levels)

Certain areas of the school will be accessible to students before and after school for specific purposes. Students are required to remain in the area where their activity is scheduled to take place.

The following areas are open to students before school, beginning at 7:20 a.m.

- Cafeteria
- Assigned holding areas

Unless the teacher or sponsor overseeing an activity gives permission, a student will not be permitted to go to another area of the building or campus.

Students must leave campus immediately after dismissal of school in the afternoon, unless the student is involved in an activity under the supervision of a teacher or other authorized employee or adult.

Meetings of Noncurriculum-Related Groups (Secondary Grade Levels Only)

Student-organized, student-led noncurriculum-related groups are permitted to meet during the hours designated by the principal before and after school. These groups must comply with the requirements of policy FNAB(LOCAL).

A list of these groups is available in the principal's office.

School-Sponsored Field Trips (All Grade Levels)

The district periodically takes students on field trips for educational purposes.

A parent must provide permission for a student to participate in a field trip.

The district may ask the parent to provide information about a student's medical provider and insurance coverage and may also ask the parent to sign a waiver allowing for emergency medical treatment in the case of a student accident or illness during the field trip.

The district may require a fee for student participation in a field trip that is not required as part of a basic educational program or course to cover expenses such as transportation, admission, and meals; however, a student will not be denied participation because of financial need. See **Fees (All Grade Levels)** on page for more information.

The district is not responsible for refunding fees paid directly to a third-party vendor.

Searches

Searches in General (All Grade Levels)

In the interest of promoting student safety and drug-free schools, district officials may occasionally conduct searches.

District officials may search students, their belongings, and their vehicles in accordance with law and district policy. Searches of students will be conducted without discrimination, based on, for example, reasonable suspicion or voluntary consent or pursuant to district policy providing for suspicionless security procedures, including the use of metal detectors.

In accordance with the Student Code of Conduct, students are responsible for prohibited items found in their possession, including items in their personal belongings or in vehicles parked on district property.

If there is reasonable suspicion to believe that searching a student's person, belongings, or vehicle will reveal evidence of a violation of the Student Code of Conduct, a district official may conduct a search in accordance with law and district regulations.

District Property (All Grade Levels)

Desks, lockers, district-provided technology, and similar items are the property of the district and are provided for student use as a matter of convenience. District property is subject to search or inspection at any time without notice. Students have no expectation of privacy in district property.

Students are responsible for any item found in district property provided to the student that is prohibited by law, district policy, or the Student Code of Conduct.

Metal Detectors (All Grade Levels)

To maintain a safe and disciplined learning environment, the district reserves the right to subject students to metal detector searches when entering a district campus and at off-campus, school-sponsored activities.

Telecommunications and Other Electronic Devices (All Grade Levels)

Use of district-owned equipment and its network systems is not private and will be monitored by the district. [See policy CQ for more information.]

Any searches of personal electronic devices will be conducted in accordance with law, and the device may be confiscated to perform a lawful search. A confiscated device may be turned over to law enforcement to determine whether a crime has been committed.

[See **Electronic Devices and Technology Resources** on page and policy FNF(LEGAL) for more information.]

Trained Dogs (All Grade Levels)

The district may use trained dogs to screen for concealed, prohibited items, including drugs and alcohol. Screenings conducted by trained dogs will not be announced in advance. The dogs will not be used with students, but students may be asked to leave personal belongings in an area that is going to be screened, such as a classroom, a locker, or a vehicle. If a dog alerts to an item or an area, it may be searched by district officials.

Drug Testing (Secondary Grade Levels Only)

The District requires the random drug-testing of any student in grades 7-12 who chooses to participate in school-sponsored extracurricular activities or request a permit to park a vehicle on school property.

The Superintendent shall develop regulations for the implementation of the District's random student drug-testing program that address the following:

1. Covered activities and purpose of the program;
2. Written consent and confidentiality of results;
3. Testing procedures and collection process; and
4. Applicable consequences.

Appeal: A student or parent may appeal a decision made under the random drug-testing program in accordance with FNG(LOCAL). The student shall be ineligible for participation in extracurricular activities or reinstatement of parking privileges while the appeal is pending.

[See **Steroids** on page .]

Vehicles on Campus (Secondary Grade Levels Only)

If a vehicle subject to search is locked, the student will be asked to unlock the vehicle. If the student refuses, the district will contact the student's parents. If the parents also refuse to permit the vehicle to be searched, the district may turn the matter over to law enforcement. The district may contact law enforcement even if permission to search is granted.

Sexual Harassment

[See **Dating Violence, Discrimination, Harassment, and Retaliation** on page .]

Special Programs (All Grade Levels)

The district provides special programs for gifted and talented students, students who are homeless, students in foster care, bilingual students, migrant students, English learners, students diagnosed with dyslexia, and students with disabilities. The coordinator of each program can answer questions about eligibility requirements, as well as programs and services offered in the district or by other organizations. A student or parent with questions about these programs should contact:

Lone Oak Elementary School ●8080 Highway 69 South Lone Oak, TX 75453●903-634-5262
Mindy Hogue, Special Populations Coordinator ● mhogue@loisd.net

Lone Oak Middle School ● 8160 Highway 69 South Lone Oak, TX 75453 ● 903-634-5244
Joseph Riddle, Special Populations Coordinator ● jriddle@loisd.net

Lone Oak High School ● 8204 Highway 69 South Lone Oak, TX 75453 ● 903-662-0980
Elizabeth Tanoos, Special Populations Coordinator ● etanoos@loisd.net

The Texas State Library and Archives Commission's Talking Book Program (https://www.tsl.texas.gov/tbp/index.html) provides audiobooks free of charge to qualifying Texans, including students with visual, physical, or reading disabilities such as dyslexia.

Standardized Testing

Secondary Grade Levels

SAT/ACT (Scholastic Aptitude Test and American College Test)

Many colleges require either the American College Test (ACT) or the Scholastic Aptitude Test (SAT) for admission. These assessments are usually taken at the end of the junior year. Students are encouraged to talk with the school counselor early during their junior year to learn about these assessments and determine the appropriate examination to take. The Preliminary SAT (PSAT) and ACT-Aspire are the corresponding preparatory and readiness assessments for the SAT and ACT.

Note: These assessments may qualify a student to receive a performance acknowledgment on the student's transcript under the foundation graduation program and may qualify as a substitute for an end-of-course testing requirement in certain circumstances. A student's performance at a certain level on the SAT or ACT also makes the student eligible for automatic admission to a Texas public institution of higher education.

TSI (Texas Success Initiative) Assessment

Prior to enrollment in a Texas public college or university, most students must take a standardized test called the Texas Success Initiative (TSI) assessment. The TSI assesses the reading, mathematics, and writing skills that first-year students need to perform effectively as undergraduates in Texas public colleges and universities. This assessment may also be required before a student enrolls in a dual credit course offered through the district. Achieving certain benchmark scores on this assessment may also waive certain end-of-course assessment requirements in limited circumstances.

STAAR (State of Texas Assessments of Academic Readiness)

Grades 3–8

In addition to routine tests and other measures of achievement, students at certain grade levels are required to take the state assessment, called STAAR, in the following subjects:

- Mathematics, annually in grades 3–8
- Reading, annually in grades 3–8
- Science in grades 5 and 8
- Social Studies in grade 8

STAAR Alternate 2 is available for eligible students receiving special education services who meet certain state-established criteria as determined by the student's ARD committee.

STAAR Spanish is available for eligible students for whom a Spanish version of STAAR is the most appropriate measure of their academic progress.

Failure to Perform Satisfactorily on STAAR Reading or Math

If a student in grades 3–8 does not perform satisfactorily on the state assessment, the district will provide accelerated instruction for the student. A student who does not attend accelerated instruction may violate school attendance requirements.

For a student who does not perform satisfactorily on the math or reading assessment in grades 3, 5, or 8, the district will establish an accelerated learning committee (ALC), which includes the student's parent, to develop an educational plan for accelerated instruction to enable the student to perform at the appropriate grade level by the conclusion of the next school year. The district will document the educational plan in writing and provide a copy to the student's parent.

The parent of a student in grades 3, 5, or 8 who fails to perform satisfactorily on the math or reading assessment may:

- Request that the district consider assigning the student to a particular classroom teacher in the applicable subject area, if more than one classroom teacher is available.
- File a grievance or complaint regarding the content or implementation of the ALC's educational plan. See **Complaints and Concerns (All Grade Levels)** on page and FNG(LOCAL).

Standardized Testing for a Student Enrolled Above Grade Level

If a student in grades 3–8 is enrolled in a class or course intended for students above his or her current grade level in which the student will be administered a state-mandated assessment, the student will be required to take an applicable state-mandated assessment only for the course in which he or she is enrolled, unless otherwise required to do so by federal law.

A student in grades 3–8 shall be assessed at least once in high school with the ACT or the SAT if the student completes the high school end-of-course assessments in mathematics, reading/language arts, or science prior to high school.

Standardized Testing for a Student in Special Programs

Certain students—some with disabilities and some classified as English learners—may be eligible for exemptions, accommodations, or deferred testing. For more information, see the principal, school counselor, or special education director.

Personal Graduation Plans - Middle or Junior High School Students

For a middle-school student who does not perform satisfactorily on a state-mandated examination, a school official will prepare a personal graduation plan (PGP).

School officials will also develop a PGP for a middle-school student who is determined by the district to be unlikely to earn a high school diploma within five years of high school enrollment. The plan will, among other items;

- Identify the student's educational goals,
- Address the parent's educational expectations for the student, and
- Outline an intensive instruction program for the student.

[See the principal] and policy EIF(LEGAL) for more information.]

For a student receiving special education services, the student's IEP may serve as the student's PGP and would therefore be developed by the student's ARD committee.

[See **Personal Graduation Plans** on page for information related to the development of personal graduation plans for high school students.]

High School Courses End-of-Course (EOC) Assessments

STAAR end-of-course (EOC) assessments are administered for the following courses:

- Algebra I
- English I and English II
- Biology
- U.S. History

Satisfactory performance on the applicable assessments is required for graduation, unless waived or substituted as allowed by state law and rules.

There are three testing windows during the year in which a student may take an EOC assessment. The windows occur in the fall, spring, and summer months. If a student does not meet satisfactory performance, the student will have opportunities to retake the assessment.

STAAR Alternate 2 is available for eligible students receiving special education services who meet certain criteria established by the state as determined by the student's ARD committee.

An admission, review, and dismissal (ARD) committee for a student receiving special education services will determine whether successful performance on the EOC assessments will be required for graduation within the parameters identified in state rules and the student's personal graduation plan (PGP).

[See **Graduation** on page .]

Failure to Perform Satisfactorily on an EOC

If a student does not perform satisfactorily on an EOC, the district will provide accelerated instruction.

Failure of a student to attend accelerated instruction may result in violations of required school attendance.

Students in Foster Care (All Grade Levels)

In an effort to provide educational stability, the district will provide enrollment and registration assistance, as well as other educational services throughout the student's enrollment, to any student who is currently placed or newly placed in foster care (temporary or permanent custody of the state, sometimes referred to as substitute care).

If you have questions, please contact the district's foster care liaison:

Janee' Carter
Superintendent
8162 Highway 69 South Lone Oak, TX 75453
jcarter@loisd.net
903-634-5270

[See **A Student in the Conservatorship of the State (Foster Care)** on page .]

Students Who are Homeless (All Grade Levels)

A parent is encouraged to inform the district if his or her child is experiencing homelessness. District staff can share resources that may be able to assist families.

Children who are homeless will be provided flexibility regarding certain district provisions, including:

· Proof of residency requirements;
· Immunization requirements;
· Educational program placement (if the student is unable to provide previous academic records or misses an application deadline during a period of homelessness);
· Credit-by-examination opportunities at any point during the year (if the student enrolled in the district after the beginning of the school year), per State Board of Education (SBOE) rules;
· Awarding partial credit when a student passes only one semester of a two-semester course;
· Eligibility requirements for participation in extracurricular activities; and
· Graduation requirements.

Federal law allows a homeless student to remain enrolled in the "school of origin" or to enroll in a new school in the attendance area where the student is currently residing. If a homeless student in grade 11 or 12 transfers to another district but does not meet the graduation requirements of the receiving district, state law allows the student to request a diploma from the previous district if the student meets the criteria to graduate from the previous district.

A student or parent who is dissatisfied by the district's eligibility, school selection, or enrollment decision may appeal through policy FNG(LOCAL). The district will expedite local timelines, when possible, for prompt dispute resolution.

For more information on services for students who are homeless, contact the district's homeless education liaison:

Beth Luhn

Director of Federal & Special Programs
8162 Highway 69 South Lone Oak, TX 75453
bluhn@loisd.net
903-634-5286

[See **A Student Who is Homeless** on page .]

Student Speakers (All Grade Levels)

The district provides students the opportunity to introduce the following school events: Veteran's Day Program, Pep Rallies, Jumpstart, etc.. If a student meets the eligibility criteria and wishes to introduce one of the school events listed above, the student should submit his or her name in accordance with policy FNA(LOCAL).

[See **Graduation** on page for information related to student speakers at graduation ceremonies and policy FNA(LOCAL) regarding other speaking opportunities.]

Summer School (All Grade Levels)

Students may be required to attend summer school if they have excessive absences (more than 10%), or if they do not pass a STAAR test and are required to do accelerated instruction. Tardies (All Grade Levels)

A student who is more than two (2) tardy to class may be assigned to detention hall or given another appropriate consequence.

Textbooks, Electronic Textbooks, Technological Equipment, and Other Instructional Materials (All Grade Levels)

Instructional materials are any resources used in classroom instruction as part of the required curriculum, such as textbooks, workbooks, computer software, or online services.

The district selects instructional materials in accordance with state law and policy EFA.

The district provides approved instructional materials to students free of charge for each subject or class. Students must treat instructional materials with care, as directed by the teacher.

If a student needs a graphing calculator for a course and the district does not provide one, the student may use a calculator application with graphing capabilities on a phone, laptop, tablet, or other computing device.

A student who is issued a damaged item should report the damage to the teacher.

Any student who does not return an item or returns an item in an unacceptable condition loses the right to free textbooks and technological equipment until the item is returned or the damage is paid for by the parent. However, the student will be provided the necessary instructional resources and equipment for use at school during the school day.

For information on library books and other resources students may access voluntarily, see **Library (All Grade Levels)** on page .

Transfers (All Grade Levels)

The principal is authorized to transfer a student from one classroom to another.

The superintendent is authorized to investigate and approve transfers between schools.

[See **Safety Transfers/Assignments** on page , **Bullying** on page , and **A Student Who Has Learning Difficulties or Who Needs Special Education or Section 504 Services** on page , for other transfer options.]

Transportation (All Grade Levels)

School-Sponsored Trips

Students who participate in school-sponsored trips are required to use school-provided transportation to and from the event. However, in accordance with campus procedures, a parent may provide written consent for his or her child to ride with or be released after the event to the parent or another adult designated by the parent. [See **School-Sponsored Field Trips** on page .]

Buses and Other School Vehicles

The district makes school bus transportation available to all students living two or more miles from school and to any students who are experiencing homelessness. This service is provided at no cost to students.

Bus routes and stops will be designated annually. Any subsequent changes will be posted at the school and on the district's website. For the safety of the driver and all passengers, students must board district vehicles only at authorized stops and drivers must unload passengers only at authorized stops.

A parent may designate a child-care facility or grandparent's residence as the regular pickup and drop-off location for his or her child. The designated location must be an approved stop on an approved route. For information on bus routes and stops or to designate an alternate pickup or drop-off location, contact the Director or Assistant Director of Transportation 903-634-5260.

Students are expected to assist district staff in ensuring that buses and other district vehicles are clean and safe. When riding in district vehicles, students are held to behavioral standards established in this handbook and the Student Code of Conduct. Students must:

- Follow the driver's directions at all times.
- Enter and leave the vehicle in an orderly manner at the designated stop.
- Keep feet, books, instrument cases, and other objects out of the aisle.
- Not deface the vehicle or its equipment.
- Not put head, hands, arms, or legs out of the window, hold any object out of the window, or throw objects within or out of the vehicle.
- Not possess or use any form of tobacco or e-cigarettes in any district vehicle.
- Observe all usual classroom rules.
- Be seated while the vehicle is moving.
- Fasten their seat belts, if available.
- Wait for the driver's signal upon leaving the vehicle and before crossing in front of the vehicle.
- Follow any other rules established by the operator of the vehicle.

Misconduct will be punished in accordance with the Student Code of Conduct, including loss of the privilege to ride in a district vehicle. When a student violates the rules of conduct on school transportation, parent/guardians will be notified; and the student will be disciplined as follows:

- The first offense will result in a conference with the principal and a written notice sent to parent/guardian.
- The second offense results in a 1-day loss of bus privileges.
- The third offense results in a 3-day loss of bus privileges.

- The fourth offense results in a 5-day loss of bus privileges.
- The fifth offense results in a 10-day loss of bus privileges.
- The sixth offense results in a 20-day loss of bus privileges.
- The seventh offense results in a 30-day loss of bus privileges.
- The eighth offense results in loss of bus privileges for the remainder of the school year.
- Serious misconduct (including but not limited to fighting and safety violations) will result in an automatic removal from the bus.
- In the case of serious misconduct that endangers the safety of other passengers or the driver, the driver shall have the authority to stop the bus and call school authorities or law enforcement officials; and the parent/guardians shall be notified of the situation as soon as possible. The student shall not be provided bus service again until a conference involving the student, his or her parent/guardians, and school personnel has been held.

If a student is riding a bus that is not their normal mode of transportation, the student must have a note from their parent/guardian that is approved by the principal in order to board the bus. The note must be given to the bus driver upon loading the bus. [See the Student Code of Conduct for provisions regarding transportation to the DAEP.]

The district has identified the following areas where hazardous traffic conditions and/or a high risk of violence exist for students who live within two miles of the campus:

- Highway 69
- FM 1567
- FM 513

Because students in these areas might encounter hazardous traffic conditions or be subject to a high risk of violence when walking to and from school, the district will provide transportation to these students. For additional information, please contact:

Wayne Shepard
Director of Operations
8162 Highway 69 South Lone Oak, TX 75453
wshepard@loisd.net
903-634-5260

A parent may designate a child-care facility or grandparent's residence as the regular pickup and drop-off location for his or her child. The designated location must be an approved stop on an approved route. For information on bus routes and stops or to designate an alternate pickup or drop-off location, contact:

Wayne Shepard
wshepard@loisd.net
903-634-5260

[See the Student Code of Conduct for provisions regarding transportation to the DAEP.]

Vandalism (All Grade Levels)

Littering, defacing, or damaging school property is not tolerated. Students will be required to pay for damages they cause and will be subject to criminal proceedings as well as disciplinary consequences in accordance with the Student Code of Conduct.

Video Cameras (All Grade Levels)

For safety purposes, the district uses video and audio recording equipment to monitor student behavior, including on buses and in common areas on campus. Students will not be told when the equipment is being used.

The principal will review the video and audio recordings as needed and document student misconduct. Discipline will be in accordance with the Student Code of Conduct.

In accordance with state law, a parent of a student who receives special education services, a staff member (as this term is defined by law), a principal or assistant principal, or the board may make a written request for the district to place video and audio recording equipment in certain self-contained special education classrooms. The district will provide notice before placing a video camera in a classroom or other setting in which a child receives special education services. For more information or to request the installation and operation of this equipment, contact the principal or Superintendent that the district has designated to coordinate the implementation of and compliance with this law.

[See policy EHBAF(LOCAL) for more information.]

[See **Consent to Video or Audio Record a Student when Not Already Permitted by Law** on page for video and other recording by parents or visitors to virtual or in-person classrooms.]

Visitors to the School (All Grade Levels)

General Visitors

Parents and others are welcome to visit district schools. For the safety of those within the school and to avoid disruption of instructional time, all visitors must first report to the main office and comply with all applicable district policies and procedures. All visitors should be prepared to show identification.

Individuals may visit classrooms or observe virtual instruction during instructional time only with approval of the principal and teacher. Visitors may not interfere with instruction or disrupt the normal school environment.

All visitors are expected to demonstrate the highest standards of courtesy and conduct. Disruptive behavior or violations of student privacy will not be permitted.

[See **Consent to Video or Audio Record a Student when Not Already Permitted by Law** on page for video and other recording by parents or visitors to virtual or in-person classrooms.]

Unauthorized Persons

In accordance with Education Code 37.105, a school administrator, school resource officer (SRO), or district police officer has the authority to refuse entry to or eject a person from district property if the person refuses to leave peaceably on request and:

- The person poses a substantial risk of harm to any person; or

- The person behaves in a manner that is inappropriate for a school setting and persists in the behavior after being given a verbal warning that the behavior is inappropriate and may result in refusal of entry or ejection.

Appeals regarding refusal of entry or ejection from district property may be filed in accordance with policies FNG(LOCAL) or GF(LOCAL).

[See the Student Code of Conduct.]

Visitors Participating in Special Programs for Students

Business, Civic, and Youth Groups

The district may invite representatives from patriotic societies listed in Title 36 of the United States Code to present information to interested students about membership in the society.

Career Day

LOHS invites representatives from colleges and universities and other higher education institutions, prospective employers, and military recruiters to present information to interested students.

Volunteers (All Grade Levels)

The district invites and appreciates the efforts of volunteers who are willing to serve our district and students.

If you are interested in volunteering, please contact:

Lone Oak Elementary School ●8080 Highway 69 South Lone Oak, TX 75453●903-634-5262
Jill Whitehead, Principal ● jwhitehead@loisd.net
Lone Oak Middle School ● 8160 Highway 69 South Lone Oak, TX 75453 ● 903-634-5244
Shannon Wilhite, Principal ● swilhite@loisd.net
Lone Oak High School ● 8204 Highway 69 South Lone Oak, TX 75453 ● 903-634-0980
Nate Compton, Principal ● ncompton@loisd.net

Subject to exceptions in accordance with state law and district procedures, the district requires a state criminal history background check for each volunteer, including parents, guardians, or grandparents of a child enrolled in the district. The volunteer must pay all costs for the background check.

Voter Registration (Secondary Grade Levels Only)

A student who is eligible to vote in any local, state, or federal election may obtain a voter registration application at the main campus office.

Withdrawing from School (All Grade Levels)

To withdraw a student under age 18 from school, the parent or guardian must submit a written request to the principal specifying the reasons for withdrawal and the final day the student will be in attendance. Withdrawal forms are available from the principal's office.

A student who is age 18 or older, who is married, or who has been declared by a court to be an emancipated minor may withdraw without parental signature.

Please provide the school at least three days' notice of withdrawal so that records and documents may be prepared.

Glossary

Accelerated instruction, also referred to as supplemental instruction, is an intensive supplemental program designed to help an individual student acquire the knowledge and skills required at his or her grade level. It is required when a student does not meet the passing standard on a state-mandated assessment.

Accelerated learning committee (ALC) is a committee that must be established when a student does not perform satisfactorily on the math or reading assessment in grades 3, 5, or 8. The committee includes district personnel and the student's parent and develops an educational plan for accelerated instruction to enable the student to perform at the appropriate grade level by the end of the next school year.

ACT, or the American College Test, is one of the two most frequently used college or university admissions examinations. The test may be required for admission to certain colleges or universities.

ACT-Aspire is designed as a preparatory and readiness assessment for the ACT. This is usually taken by students in grade 10.

ARD stands for admission, review, and dismissal. The ARD committee convenes for each student who is identified as needing a full and individual evaluation for special education services. The eligible student and his or her parents are members of the committee.

Attendance review committee is responsible for reviewing a student's absences when the student's attendance drops below 90 percent, or in some cases 75 percent, of the days the class is offered. Under guidelines adopted by the board, the committee will determine whether there were extenuating circumstances for the absences and whether the student needs to complete certain conditions to master the course and regain credit or a final grade lost because of absences.

CPS stands for Child Protective Services.

DAEP stands for disciplinary alternative education program, a placement for students who have violated certain provisions of the Student Code of Conduct.

DFPS stands for the Texas Department of Family and Protective Services.

DPS stands for the Texas Department of Public Safety.

DSHS stands for the Texas Department of State Health Services.

ED stands for the U.S. Department of Education.

EOC (end-of-course) assessments are state-mandated and are part of the STAAR program. Successful performance on EOC assessments is required for graduation. These examinations will be given in English I, English II, Algebra I, Biology, and U.S. History.

ESSA is the federal Every Student Succeeds Act.

FERPA refers to the federal Family Educational Rights and Privacy Act, which grants specific privacy protections to student records. The law contains certain exceptions, such as for directory information, unless a student's parent or a student 18 years of age or older directs the school not to release directory information.

IEP stands for individualized education program and is the written record prepared by the ARD committee for a student with disabilities who is eligible for special education services.

IGC is the individual graduation committee, formed in accordance with state law, to determine a student's eligibility to graduate when the student has failed to demonstrate satisfactory performance on no more than two of the required state assessments.

ISS refers to in-school suspension, a disciplinary technique for misconduct found in the Student Code of Conduct. Although different from out-of-school suspension and placement in a DAEP, ISS removes the student from the regular classroom.

PGP stands for personal graduation plan, which is required for high school students and for any student in middle school who fails a section on a state-mandated test or is identified by the district as not likely to earn a high school diploma before the fifth school year after he or she begins grade 9.

PSAT is the preparatory and readiness assessment for the SAT. It also serves as the basis for the awarding of National Merit Scholarships.

SAT refers to the Scholastic Aptitude Test, one of the two most frequently used college or university admissions examinations. The test may be required for admissions to certain colleges or universities.

SHAC stands for School Health Advisory Council, a group of at least five members, a majority of whom must be parents, appointed by the school board to help ensure that local community values and health issues are reflected in the district's health education instruction, as well as assist with other student and employee wellness issues.

Section 504 is the federal law that prohibits discrimination against a student with a disability, requiring schools to provide opportunities for equal services, programs, and participation in activities. Unless the student is determined to be eligible for special education services under the Individuals with Disabilities Education Act (IDEA), general education with appropriate instructional accommodations will be provided.

STAAR is the State of Texas Assessments of Academic Readiness, the state's system of standardized academic achievement assessments.

STAAR Alternate 2 is an alternative state-mandated assessment designed for students with severe cognitive disabilities receiving special education services who meet the participation requirements, as determined by the student's ARD committee.

STAAR Spanish is an alternative state-mandated assessment administered to eligible students for whom a Spanish version of STAAR is the most appropriate measure of their academic progress.

State-mandated assessments are required of students at certain grade levels and in specified subjects. Except under limited circumstances, students must pass the STAAR EOC assessments to graduate. Students have multiple opportunities to take the tests, if necessary, for graduation.

Student Code of Conduct is developed with the advice of the district-level committee and adopted by the board and identifies the circumstances, consistent with law, when a student may be removed from a classroom, campus, or district vehicle; sets out the conditions that authorize or require the principal or another administrator to place the student in a DAEP; and outlines

conditions for out-of-school suspension and for expulsion. The Student Code of Conduct also addresses notice to the parent regarding a student's violation of one of its provisions.

TAC stands for the Texas Administrative Code.

TEA stands for the Texas Education Agency, which oversees primary and secondary public education in Texas.

TELPAS stands for the Texas English Language Proficiency Assessment System, which assesses the progress that English learners make in learning the English language and is administered for those who meet the participation requirements in kindergarten–grade 12.

TSI stands for the Texas Success Initiative, an assessment designed to measure the reading, mathematics, and writing skills that entering college-level freshmen students should have if they are to be successful in undergraduate programs in Texas public colleges and universities.

TXVSN stands for the Texas Virtual School Network, which provides online courses for Texas students to supplement the instructional programs of public school districts. Courses are taught by qualified instructors and are equivalent in rigor and scope to a course taught in a traditional classroom setting.

UIL refers to the University Interscholastic League, the statewide, voluntary nonprofit organization that oversees educational extracurricular academic, athletic, and music contests.

Appendix: Freedom from Bullying Policy

Note: School board policies may be revised at any time. For legal context and the most current copy of the local policy, visit www.loisd.net

Below is the text of *Lone Oak*'s policy FFI(LOCAL) as of the date this handbook was finalized for this school year.

Student Welfare: Freedom from Bullying

Policy FFI(LOCAL) adopted on *10/13/2021*

Note: This policy addresses bullying of District students. For purposes of this policy, the term bullying includes cyberbullying.

For provisions regarding discrimination and harassment involving District students, see FFH. Note that FFI shall be used in conjunction with FFH for certain prohibited conduct. For reporting requirements related to child abuse and neglect, see FFG.

The District prohibits bullying, including cyberbullying, as defined by state law. Retaliation against anyone involved in the complaint process is a violation of District policy and is prohibited.

Bullying of a student could occur by physical contact or through electronic means and may include hazing, threats, taunting, teasing, confinement, assault, demands for money, destruction of property, theft of valued possessions, name calling, rumor spreading, or ostracism.

The District prohibits retaliation by a student or District employee against any person who in good faith makes a report of bullying, serves as a witness, or participates in an investigation.

Examples of retaliation may include threats, rumor spreading, ostracism, assault, destruction of property, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances.

A student who intentionally makes a false claim, offers false statements, or refuses to cooperate with a District investigation regarding bullying shall be subject to appropriate disciplinary action.

Reports of bullying shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to immediately report may impair the District's ability to investigate and address the prohibited conduct.

To obtain assistance and intervention, any student who believes that he or she has experienced bullying or believes that another student has experienced bullying should immediately report the alleged acts to a teacher, school counselor, principal, or other District employee. The Superintendent shall develop procedures allowing a student to anonymously report an alleged incident of bullying.

Any District employee who suspects or receives notice that a student or group of students has or may have experienced bullying shall immediately notify the principal or designee.

A report may be made orally or in writing. The principal or designee shall reduce any oral reports to written form.

When an allegation of bullying is reported, the principal or designee shall notify a parent of the alleged victim on or before the third business day after the incident is reported. The principal or designee shall also notify a parent of the student alleged to have engaged in the conduct within a reasonable amount of time after the incident is reported.

The principal or designee shall determine whether the allegations in the report, if proven, would constitute prohibited conduct as defined by policy FFH, including dating violence and harassment or discrimination on the basis of race, color, religion, sex, gender, national origin, or disability. If so, the District shall proceed under policy FFH. If the allegations could constitute both prohibited conduct and bullying, the investigation under FFH shall include a determination on each type of conduct.

The principal or designee shall conduct an appropriate investigation based on the allegations in the report. The principal or designee shall promptly take interim action calculated to prevent bullying during the course of an investigation, if appropriate.

Absent extenuating circumstances, the investigation should be completed within ten District business days from the date of the initial report alleging bullying; however, the principal or designee shall take additional time if necessary to complete a thorough investigation.

The principal or designee shall prepare a final, written report of the investigation. The report shall include a determination of whether bullying occurred, and if so, whether the victim used reasonable self-defense. A copy of the report shall be sent to the Superintendent or designee.

If an incident of bullying is confirmed, the principal or designee shall promptly notify the parents of the victim and of the student who engaged in bullying.

If the results of an investigation indicate that bullying occurred, the District shall promptly respond by taking appropriate disciplinary action in accordance with the District's Student Code of Conduct and may take corrective action reasonably calculated to address the conduct. The District may notify law enforcement in certain circumstances.

A student who is a victim of bullying and who used reasonable self-defense in response to the bullying shall not be subject to disciplinary action.

The discipline of a student with a disability is subject to applicable state and federal law in addition to the Student Code of Conduct.

Examples of corrective action may include a training program for the individuals involved in the complaint, a comprehensive education program for the school community, follow-up inquiries to determine whether any new incidents or any instances of retaliation have occurred, involving parents and students in efforts to identify problems and improve the school climate, increasing staff monitoring of areas where bullying has occurred, and reaffirming the District's policy against bullying.

The principal or designee shall refer to FDB for transfer provisions.

The principal or designee shall notify the victim, the student who engaged in bullying, and any students who witnessed the bullying of available counseling options.

If the investigation reveals improper conduct that did not rise to the level of prohibited conduct or bullying, the District may take action in accordance with the Student Code of Conduct or any other appropriate corrective action.

To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation.

A student who is dissatisfied with the outcome of the investigation may appeal through FNG(LOCAL), beginning at the appropriate level.

Retention of records shall be in accordance with CPC(LOCAL).

This policy and any accompanying procedures shall be distributed annually in the employee and student handbooks. Copies of the policy and procedures shall be posted on the District's website, to the extent practicable, and shall be readily available at each campus and the District's administrative offices.

Lone Oak Independent School District
Student Code of Conduct

2022-2023 School Year



If you have difficulty accessing the information in this document because of disability, please contact Katy Turner at ktuner@loisd.net (903)-634-5270.

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Student Code of Conduct

Accessibility

If you have difficulty accessing the information in this document because of disability, please contact Katy Turner at ktuner@loisd.net (903)-634-5270.

Purpose

The Student Code of Conduct ("Code"), as required by Chapter 37 of the Texas Education Code, provides methods and options for managing student behavior, preventing and intervening in student discipline problems, and imposing discipline.

The law requires the district to define misconduct that may—or must—result in a range of specific disciplinary consequences, including removal from a regular classroom or campus, out-of-school suspension, placement in a disciplinary alternative education program (DAEP), placement in a juvenile justice alternative education program (JJAEP), or expulsion from school.

This Student Code of Conduct has been adopted by the Lone Oak ISD board of trustees and developed with the advice of the district-level planning and decision-making committee. It provides information to parents and students regarding standards of conduct, consequences of misconduct, and procedures for administering discipline. This Code remains in effect during summer school and at all school-related events and activities outside the school year until the board adopts an updated version for the next school year.

In accordance with state law, the Code shall be posted at each school campus or shall be available for review at the campus principal's office. Additionally, the Code shall be available at the campus behavior coordinator's office and posted on the district's website at www.loisd.net. Parents shall be notified of any conduct violation that may result in a student being suspended, placed in a DAEP or JJAEP, expelled, or taken into custody by a law enforcement officer under Chapter 37 of the Education Code.

Because the Student Code of Conduct is adopted by the district's board of trustees, it has the force of policy. In the event of a conflict between the Code and the Student Handbook, the Code shall prevail.

Please note: The discipline of students with disabilities who are eligible for services under federal law (Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973) is subject to the provisions of those laws.

School District Authority and Jurisdiction

School rules and the district's authority to administer discipline apply whenever the interest of the district is involved, on or off school grounds, in conjunction with or independent of classes and school-sponsored activities.

The district has disciplinary authority over a student:

1. During the regular school day;
2. While the student is traveling on district transportation;
3. During lunch periods in which a student is allowed to leave campus;
4. At any school-related activity, regardless of time or location;
5. For any school-related misconduct, regardless of time or location;
6. When retaliation against a school employee, board member, or volunteer occurs or is threatened, regardless of time or location;
7. When a student engages in cyberbullying, as defined by Education Code 37.0832;
8. When criminal mischief is committed on or off school property or at a school-related event;
9. For certain offenses committed within 300 feet of school property as measured from any point on the school's real property boundary line;
10. For certain offenses committed while on school property or while attending a school-sponsored or school-related activity of another district in Texas;
11. When the student commits a felony, as provided by Education Code 37.006 or 37.0081; and
12. When the student is required to register as a sex offender.

Campus Behavior Coordinator

As required by law, a person at each campus must be designated to serve as the campus behavior coordinator. The designated person may be the principal or any other campus administrator selected by the principal. The campus behavior coordinator is primarily responsible for maintaining student discipline. The district shall post on its website and in the Student Handbook, for each campus, the email address and telephone number of the person serving as campus behavior coordinator. Contact information may be found at www.loisd.net.

Threat Assessment and Safe and Supportive School Team

The campus behavior coordinator or other appropriate administrator will work closely with the campus threat assessment safe and supportive school team to implement the district's threat assessment policy and procedures, as required by law, and shall take appropriate disciplinary action in accordance with the Code.

Searches

District officials may conduct searches of students, their belongings, and their vehicles in accordance with state and federal law and district policy. Searches of students shall be conducted in a reasonable and nondiscriminatory manner. Refer to the district's policies at FNF(LEGAL) and FNF(LOCAL) for more information regarding investigations and searches.

The district has the right to search a vehicle driven to school by a student and parked on school property whenever there is reasonable suspicion to believe it contains articles or materials prohibited by the district.

Desks, lockers, district-provided technology, and similar items are the property of the district and are provided for student use as a matter of convenience. District property is subject to search or inspection at any time without notice.

Reporting Crimes

The principal *or* campus behavior coordinator and other school administrators as appropriate shall report crimes as required by law and shall call local law enforcement when an administrator suspects that a crime has been committed on campus.

Security Personnel

To ensure the security and protection of students, staff, and property, the board employs a school resource officer (SRO). In accordance with law, the board has coordinated with the campus behavior coordinator and other district employees to ensure appropriate law enforcement duties are assigned to security staff. The law enforcement duties of district peace officers are listed in policy CKE(LOCAL).

The law enforcement duties of school resource officers are: to implement the District's comprehensive safety programs, the District has entered into an agreement with a local law enforcement agency for school resource officers. School resource officers shall provide services consistent with the terms of the agreement, the comprehensive safety programs, and Board policy.

A school resource officer shall perform duties as described in the agreement and as included in the District improvement plan and the Student Code of Conduct. A school resource officer shall not be assigned routine classroom discipline or administrative tasks.

All school resource officers shall receive at least the minimum amount of education and training required by law.

"Parent" Defined

Throughout the Code of Conduct and related discipline policies, the term "parent" includes a parent, legal guardian, or other person having lawful control of the child.

Participating in Graduation Activities

The district has the right to limit a student's participation in graduation activities for violating the district's Code.

Participation might include a speaking role, as established by district policy and procedures.

Students eligible to give the opening and closing remarks at graduation shall be notified by the campus principal. Notwithstanding any other eligibility requirements, in order to be considered eligible, a student shall not have engaged in any misconduct that resulted in an out-of-school suspension, removal to a DAEP, or expulsion during the semester immediately preceding graduation.

The valedictorian and salutatorian may also have speaking roles at graduation. No student shall be eligible to have such a speaking role if he or she engaged in any misconduct that resulted in an out-of-school suspension, removal to a DAEP, or expulsion during the semester immediately preceding graduation.

Unauthorized Persons

In accordance with Education Code 37.105, a school administrator, school resource officer (SRO), or district police officer shall have the authority to refuse entry to or eject a person from district property if the person refuses to leave peaceably on request and:

13. The person poses a substantial risk of harm to any person; or
14. The person behaves in a manner that is inappropriate for a school setting and persists in the behavior after being given a verbal warning that the behavior is inappropriate and may result in refusal of entry or ejection.

Appeals regarding refusal of entry or ejection from district property may be filed in accordance with policies FNG(LOCAL) or GF(LOCAL), as appropriate. However, the timelines for the district's grievance procedures shall be adjusted as necessary to permit the person to address the board in person within 90 calendar days, unless the complaint is resolved before a board hearing.

See **DAEP—Restrictions During Placement** on page for information regarding a student assigned to DAEP at the time of graduation.

Standards for Student Conduct

Each student is expected to:

- Demonstrate courtesy, even when others do not.
- Behave in a responsible manner.
- Exercise self-discipline.
- Attend all classes regularly and on time.
- Bring appropriate materials and assignments to class.
- Meet district and campus standards of grooming and dress.
- Obey all campus and classroom rules.
- Respect the rights and privileges of students, teachers, and other district staff and volunteers.
- Respect the property of others, including district property and facilities.
- Cooperate with and assist the school staff in maintaining safety, order, and discipline.
- Adhere to the requirements of the Student Code of Conduct.

General Conduct Violations

The categories of conduct below are prohibited at school, in vehicles owned or operated by the district, and at all school-related activities, but the list does not include the most severe offenses. In the subsequent sections on **Out-of-School Suspension** on page , **DAEP Placement** on page , **Placement and/or Expulsion for Certain Offenses** on page **,** and **Expulsion** on page , those offenses that require or permit specific consequences are listed. Any offense, however, may be severe enough to result in **Removal from the Regular Educational Setting** as detailed on page .

Disregard for Authority

Students shall not:

- Fail to comply with directives given by school personnel.
- Leave school grounds or school-sponsored events without permission.
- Disobey rules for conduct in district vehicles.
- Refuse to accept discipline or consequence assigned by a teacher or principal.

Mistreatment of Others

Students shall not:

- Use profanity or vulgar language or make obscene gestures.
- Fight or scuffle. (For assault, see **DAEP—Placement and/or Expulsion for Certain Offenses** on page .)
- Threaten a district student, employee, or volunteer, including off school property if the conduct causes a substantial disruption to the educational environment.
- Engage in bullying, cyberbullying, harassment, or making hit lists. (See **glossary** for all four terms.)
- Release or threaten to release intimate visual material of a minor or a student who is 18 years of age or older without the student's consent.
- Engage in sexual or gender-based harassment or sexual abuse, whether by word, gesture, or any other conduct directed toward another person, including a district student, employee, board member, or volunteer.
- Engage in conduct that constitutes dating violence. (See **glossary**.)
- Engage in inappropriate or indecent exposure of private body parts.
- Participate in hazing. (See **glossary**.)
- Coerce an individual to act through the use or threat of force.
- Commit extortion or blackmail.
- Engage in inappropriate verbal, physical, or sexual conduct directed toward another person, including a district student, employee, or volunteer.
- Record the voice or image of another without the prior consent of the individual being recorded or in any way that disrupts the educational environment or invades the privacy of others.

Property Offenses

Students shall not:

- Damage or vandalize property owned by others. (For felony criminal mischief, see **DAEP—Placement and/or Expulsion for Certain Offenses** on page .)
- Deface or damage school property, including textbooks, technology and electronic resources, lockers, furniture, and other equipment, with graffiti or by other means.
- Steal from students, staff, or the school.
- Commit or assist in a robbery or theft, even if it does not constitute a felony according to the Penal Code. (For felony robbery, aggravated robbery, and theft, see **DAEP— Placement and/or Expulsion for Certain Offenses** on page .)
- Enter, without authorization, district facilities that are not open for operations.

Possession of Prohibited Items

Students shall not possess or use:

- Fireworks of any kind, smoke or stink bombs, or any other pyrotechnic device;
- A razor, box cutter, chain, or any other object used in a way that threatens or inflicts bodily injury to another person;
- A “look-alike” weapon that is intended to be used as a weapon or could reasonably be perceived as a weapon;
- An air gun or BB gun;
- Ammunition;
- A hand instrument designed to cut or stab another by being thrown;
- A firearm silencer or suppressor;
- *A location-restricted knife;
- *A club;
- *A firearm;
- A stun gun;
- Knuckles;
- A pocketknife or any other small knife;
- Mace or pepper spray;
- Pornographic material;
- Tobacco products, cigarettes, e-cigarettes, and any component, part, or accessory for an e-cigarette device;
- Matches or a lighter;
- A laser pointer, unless it is for an approved use; or
- Any articles not generally considered to be weapons, including school supplies, when the principal or designee determines that a danger exists.

*For weapons and firearms, see **DAEP—Placement and/or Expulsion for Certain Offenses** on page . In many circumstances, possession of these items is punishable by mandatory expulsion under federal or state law.

Possession of Telecommunications or Other Electronic Devices

Students shall not:

- Use a telecommunications device, including a cell phone, or other electronic device in violation of district and campus rules.

Illegal, Prescription, and Over-the-Counter Drugs

Students shall not:

- Possess, use, give, or sell alcohol or an illegal drug. (Also see **DAEP Placement** on page and **Expulsion** on page for mandatory and permissive consequences under state law.)
- Possess or sell seeds or pieces of marijuana in less than a usable amount.
- Possess, use, give, or sell paraphernalia related to any prohibited substance. (See **glossary** for “paraphernalia.”)
- Possess, use, abuse, or sell look-alike drugs or attempt to pass items off as drugs or contraband.
- Abuse the student’s own prescription drug, give a prescription drug to another student, or possess or be under the influence of another person’s prescription drug on school property or at a school-related event. (See **glossary** for “abuse.”)
- Abuse over-the-counter drugs. (See **glossary** for “abuse.”)
- Be under the influence of prescription or over-the-counter drugs that cause impairment to body or mind. (See **glossary** for “under the influence.”)
- Have or take prescription drugs or over-the-counter drugs at school other than as provided by district policy.

Misuse of Technology Resources and the Internet

Students shall not:

- Violate policies, rules, or agreements signed by the student or the student’s parent regarding the use of technology resources.
- Attempt to access or circumvent passwords or other security-related information of the district, students, or employees or upload or create computer viruses, including off school property if the conduct causes a substantial disruption to the educational environment.
- Attempt to alter, destroy, or disable district technology resources including, but not limited to, computers and related equipment, district data, the data of others, or other networks connected to the district’s system, including off school property if the conduct causes a substantial disruption to the educational environment.
- Use the internet or other electronic communications to threaten or harass district students, employees, board members, or volunteers, including off school property if the conduct causes a substantial disruption to the educational environment or infringes on the rights of another student at school.

- Send, post, deliver, or possess electronic messages that are abusive, obscene, sexually oriented, threatening, harassing, damaging to another's reputation, or illegal, including cyberbullying and "sexting," either on or off school property, if the conduct causes a substantial disruption to the educational environment or infringes on the rights of another student at school.
- Use the internet or other electronic communication to engage in or encourage illegal behavior or threaten school safety, including off school property if the conduct causes a substantial disruption to the educational environment or infringes on the rights of another student at school.

Safety Transgressions

Students shall not:

- Possess published or electronic material that is designed to promote or encourage illegal behavior or that could threaten school safety.
- Engage in verbal (oral or written) exchanges that threaten the safety of another student, a school employee, or school property.
- Make false accusations or perpetrate hoaxes regarding school safety.
- Engage in any conduct that school officials might reasonably believe will substantially disrupt the school program or incite violence.
- Throw objects that can cause bodily injury or property damage.
- Discharge a fire extinguisher without valid cause.

Miscellaneous Offenses

Students shall not:

- Violate dress and grooming standards as communicated in the Student Handbook.
- Engage in academic dishonesty, which includes cheating or copying the work of another student, plagiarism, and unauthorized communication between students during an examination.
- Gamble.
- Falsify records, passes, or other school-related documents.
- Engage in actions or demonstrations that substantially disrupt or materially interfere with school activities.
- Repeatedly violate other communicated campus or classroom standards of conduct.

The district may impose campus or classroom rules in addition to those found in the Code. These rules may be posted in classrooms or given to the student and may or may not constitute violations of the Code.

Discipline Management Techniques

Discipline shall be designed to improve conduct and encourage students to be responsible members of the school community. Disciplinary action shall draw on the professional judgment of teachers and administrators and on a range of discipline management techniques, including restorative practices. Discipline shall be based on the seriousness of the offense, the student's age and grade level, the frequency of misbehavior, the student's attitude, the effect of the misconduct on the school environment, and statutory requirements.

Students with Disabilities

The discipline of students with disabilities is subject to applicable state and federal law in addition to the Student Code of Conduct. In the event of any conflict, the district shall comply with federal law. For more information regarding discipline of students with disabilities, see policy FOF(LEGAL).

In accordance with the Education Code, a student who receives special education services may not be disciplined for conduct meeting the definition of bullying, cyberbullying, harassment, or making hit lists (see **glossary**) until an ARD committee meeting has been held to review the conduct.

In deciding whether to order suspension, DAEP placement, or expulsion, regardless of whether the action is mandatory or discretionary, the district shall take into consideration a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct.

Techniques

The following discipline management techniques may be used alone, in combination, or as part of progressive interventions for behavior prohibited by the Student Code of Conduct or by campus or classroom rules:

- Verbal correction, oral or written.
- Cooling-off time or a brief "time-out" period, in accordance with law.
- Seating changes within the classroom or vehicles owned or operated by the district.
- Temporary confiscation of items that disrupt the educational process.
- Rewards or demerits.
- Behavioral contracts.
- Counseling by teachers, school counselors, or administrative personnel.
- Parent-teacher conferences.
- Behavior coaching.
- Anger management classes.
- Mediation (victim-offender).
- Classroom circles.
- Family group conferencing.
- Grade reductions for cheating, plagiarism, and as otherwise permitted by policy.

- Detention, including outside regular school hours.
- Sending the student to the office, another assigned area, or to in-school suspension.
- Assignment of school duties, such as cleaning or picking up litter.
- Withdrawal of privileges, such as participation in extracurricular activities, eligibility for seeking and holding honorary offices, or membership in school-sponsored clubs and organizations.
- Penalties identified in student organizations' extracurricular standards of behavior.
- Restriction or revocation of district transportation privileges.
- School-assessed and school-administered probation.
- Corporal punishment, unless the student's parent or guardian has provided a signed statement prohibiting its use.
- Out-of-school suspension, as specified in **Out-of-School Suspension** on page .
- Placement in a DAEP, as specified in **DAEP** on page .
- Expulsion and/or placement in an alternative educational setting, as specified in **Placement and/or Expulsion for Certain Offenses** on page .
- Expulsion, as specified in **Expulsion** on page .
- Referral to an outside agency or legal authority for criminal prosecution in addition to disciplinary measures imposed by the district.
- Other strategies and consequences as determined by school officials.

Prohibited Aversive Techniques

Aversive techniques are prohibited for use with students and are defined as techniques or interventions intended to reduce the reoccurrence of a behavior by intentionally inflicting significant physical or emotional discomfort or pain. Aversive techniques include:

- Using techniques designed or likely to cause physical pain, other than corporal punishment as permitted by district policy. [See policy FO(LOCAL).]
- Using techniques designed or likely to cause physical pain by electric shock or any procedure involving pressure points or joint locks.
- Directed release of noxious, toxic, or unpleasant spray, mist, or substance near a student's face.
- Denying adequate sleep, air, food, water, shelter, bedding, physical comfort, supervision, or access to a restroom facility.
- Ridiculing or demeaning a student in a manner that adversely affects or endangers the learning or mental health of the student or constitutes verbal abuse.
- Employing a device, material, or object that immobilizes all four of a student's extremities, including prone or supine floor restraint.
- Impairing the student's breathing, including applying pressure to the student's torso or neck or placing something in, on, or over the student's mouth or nose or covering the student's face.
- Restricting the student's circulation.

- Securing the student to a stationary object while the student is standing or sitting.
- Inhibiting, reducing, or hindering the student's ability to communicate.
- Using chemical restraints.
- Using time-out in a manner that prevents the student from being able to be involved in and progress appropriately in the required curriculum or any applicable individualized education program (IEP) goals, including isolating the student using physical barriers.
- Depriving the student of one or more of the student's senses, unless the technique does not cause the student discomfort or complies with the student's IEP or behavior intervention plan (BIP).

Notification

The campus behavior coordinator shall promptly notify a student's parent by phone or in person of any violation that may result in in-school or out-of-school suspension, placement in a DAEP, placement in a JJAEP, or expulsion. The campus behavior coordinator shall also notify a student's parent if the student is taken into custody by a law enforcement officer under the disciplinary provisions of the Education Code.

A good-faith effort shall be made to provide written notice of the disciplinary action to the student, on the day the action was taken, for delivery to the student's parent. If the parent has not been reached by telephone or in person by 5:00 p.m. of the first business day after the day the disciplinary action was taken, the campus behavior coordinator shall send written notification by U.S. Mail. If the campus behavior coordinator is not able to provide notice to the parent, the principal or designee shall provide the notice.

Before the principal or appropriate administrator assigns a student under age 18 to detention outside regular school hours, notice shall be given to the student's parent to inform him or her of the reason for the detention and permit arrangements for necessary transportation.

Appeals

Questions from parents regarding disciplinary measures should be addressed to the teacher, campus administration, or campus behavior coordinator, as appropriate. Appeals or complaints regarding the use of specific discipline management techniques should be addressed in accordance with policy FNG(LOCAL). A copy of the policy may be obtained from the principal's office, the campus behavior coordinator's office, or the central administration office or through Policy On Line at the following address:www.loisd.net.

The district shall not delay a disciplinary consequence while a student or parent pursues a grievance. In the instance of a student who is accused of conduct that meets the definition of sexual harassment as defined by Title IX, the district will comply with applicable federal law, including the Title IX formal complaint process. See policies FFH(LEGAL) and (LOCAL).

Removal from the School Bus

A bus driver may refer a student to the principal's office or the campus behavior coordinator's office to maintain effective discipline on the bus. The principal or campus behavior coordinator must employ additional discipline management techniques, as appropriate, which can include restricting or revoking a student's bus riding privileges.

To transport students safely, the vehicle operator must focus on driving and not be distracted by student misbehavior. Therefore, when appropriate disciplinary management techniques fail to improve student behavior or when specific misconduct warrants immediate removal, the principal or the campus behavior coordinator may restrict or revoke a student's transportation privileges, in accordance with law.

Removal from the Regular Educational Setting

In addition to other discipline management techniques, misconduct may result in removal from the regular educational setting in the form of a routine referral or a formal removal.

Routine Referral

A routine referral occurs when a teacher sends a student to the campus behavior coordinator's office as a discipline management technique. The campus behavior coordinator shall employ alternative discipline management techniques, including progressive interventions. A teacher or administrator may remove a student from class for behavior that violates this Code to maintain effective discipline in the classroom.

Formal Removal

A teacher may initiate a formal removal from class if:

15. A student's behavior has been documented by the teacher as repeatedly interfering with the teacher's ability to teach the class or with other students' ability to learn; or
16. The behavior is so unruly, disruptive, or abusive that the teacher cannot teach, and the students in the classroom cannot learn.

Within three school days of the formal removal, the campus behavior coordinator or appropriate administrator shall schedule a conference with the student's parent, the student, the teacher who removed the student from class, and any other appropriate administrator.

At the conference, the campus behavior coordinator or appropriate administrator shall inform the student of the alleged misconduct and the proposed consequences. The student shall have an opportunity to respond to the allegations.

When a student is removed from the regular classroom by a teacher and a conference is pending, the campus behavior coordinator or other administrator may place the student in:

- Another appropriate classroom.
- In-school suspension.
- Out-of-school suspension.
- DAEP.

A teacher or administrator must remove a student from class if the student engages in behavior that under the Education Code requires or permits the student to be placed in a DAEP or expelled. When removing for those reasons, the procedures in the subsequent sections on DAEP or expulsion shall be followed.

Returning a Student to the Classroom

A student who has been formally removed from class by a teacher for conduct against the teacher containing the elements of assault, aggravated assault, sexual assault, or aggravated sexual assault may not be returned to the teacher's class without the teacher's consent.

A student who has been formally removed by a teacher for any other conduct may be returned to the teacher's class without the teacher's consent if the placement review committee determines that the teacher's class is the best or only alternative available.

Out-of-School Suspension

Misconduct

Students may be suspended for behavior listed in the Code as a general conduct violation, DAEP offense, or expellable offense.

The district shall not use out-of-school suspension for students in grade 2 or below unless the conduct meets the requirements established in law.

A student below grade 3 or a student who is homeless shall 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 school property, the student engages in:

- Conduct that contains the elements of a weapons offense, as provided in Penal Code sections 46.02 or 46.05;
- Conduct that contains the elements of assault, sexual assault, aggravated assault, or aggravated sexual assault, as provided by the Penal Code; or
- Selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of marijuana, an alcoholic beverage, or a controlled substance or dangerous drug as defined by federal or state law.

The district shall use a positive behavior program as a disciplinary alternative for students below grade 3 who commit general conduct violations instead of suspension or placement in a DAEP. The program shall meet the requirements of law.

Process

State law allows a student to be suspended for no more than three school days per behavior violation, with no limit on the number of times a student may be suspended in a semester or school year.

Before being suspended a student shall have an informal conference with the campus behavior coordinator or appropriate administrator, who shall inform the student of the alleged misconduct and give the student an opportunity to respond to the allegation before the administrator makes a decision.

The campus behavior coordinator shall determine the number of days of a student's suspension, not to exceed three school days.

In deciding whether to order out-of-school suspension, the campus behavior coordinator shall take into consideration:

17. Self-defense (see **glossary**),
18. Intent or lack of intent at the time the student engaged in the conduct,
19. The student's disciplinary history,
20. A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct,
21. A student's status in the conservatorship of the Department of Family and Protective Services (foster care), or

22. A student's status as homeless.

The appropriate administrator shall determine any restrictions on participation in school-sponsored or school-related extracurricular and cocurricular activities.

Coursework During Suspension

The district shall ensure a student receives access to coursework for foundation curriculum courses while the student is placed in in-school or out-of-school suspension, including at least one method of receiving this coursework that doesn't require the use of the internet.

A student removed from the regular classroom to in-school suspension or another setting, other than a DAEP, will have an opportunity before the beginning of the next school year to complete each course the student was enrolled in at the time of removal. The district may provide the opportunity by any method available, including a correspondence course, another distance learning option, or summer school. The district will not charge the student for any method of completion provided by the district.

Disciplinary Alternative Education Program (DAEP) Placement

The DAEP shall be provided in a setting other than the student's regular classroom. An elementary school student may not be placed in a DAEP with a student who is not an elementary school student.

For purposes of DAEP, elementary classification shall be kindergarten–grade 5 and secondary classification shall be grades 6–12.

A student who is expelled for an offense that otherwise would have resulted in a DAEP placement does not have to be placed in a DAEP in addition to the expulsion.

In deciding whether to place a student in a DAEP, regardless of whether the action is mandatory or discretionary, the campus behavior coordinator shall take into consideration:

23. Self-defense (see **glossary**),
24. Intent or lack of intent at the time the student engaged in the conduct,
25. The student's disciplinary history,
26. A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct,
27. A student's status in the conservatorship of the Department of Family and Protective Services (foster care), or
28. A student's status as homeless.

Discretionary Placement: Misconduct That May Result in DAEP Placement

A student may be placed in a DAEP for behaviors prohibited in the General Conduct Violations section of this Code.

Misconduct Identified in State Law

In accordance with state law, a student **may** be placed in a DAEP for any of the following offenses:

- Engaging in bullying that encourages a student to commit or attempt to commit suicide.
- Inciting violence against a student through group bullying.
- Releasing or threatening to release intimate visual material of a minor or of a student who is 18 years of age or older without the student's consent.
- Involvement in a public school fraternity, sorority, or secret society, or gang including participating as a member or pledge, or soliciting another person to become a pledge or member of a public school fraternity, sorority, secret society, or gang. (See **glossary**.)
- Involvement in criminal street gang activity. (See **glossary**.)
- Any criminal mischief, including a felony.
- Assault (no bodily injury) with threat of imminent bodily injury.
- Assault by offensive or provocative physical contact.

In accordance with state law, a student **may** be placed in a DAEP if the superintendent or the superintendent's designee has reasonable belief (see **glossary**) that the student engaged in

conduct punishable as a felony, other than aggravated robbery or those listed as offenses in Title 5 (see **glossary**) of the Penal Code, that occurs off school property and not at a school-sponsored or school-related event, if the student's presence in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

The campus behavior coordinator **may** place a student in a DAEP for off-campus conduct for which DAEP placement is required by state law if the administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.

Mandatory Placement: Misconduct That Requires DAEP Placement

A student **must** be placed in a DAEP if the student:

- Engages in conduct relating to a false alarm or report (including a bomb threat) or a terroristic threat involving a public school. (See **glossary**.)
- Commits the following offenses on school property, 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:
    - Engages in conduct punishable as a felony.
    - Commits an assault (see **glossary**) under Penal Code 22.01(a)(1).
    - Sells, gives, or delivers to another person or possesses, uses, or is under the influence of marijuana, a controlled substance, or a dangerous drug in an amount not constituting a felony offense. A student with a valid prescription for low-THC cannabis as authorized by Chapter 487 of the Health and Safety Code does not violate this provision. (School-related felony drug offenses are addressed in **Expulsion** on page .) (See **glossary** for "under the influence" "controlled substance," and "dangerous drug.")
    - Sells, gives, or delivers to another person an alcoholic beverage; commits a serious act or offense while under the influence of alcohol; or possesses, uses, or is under the influence of alcohol, if the conduct is not punishable as a felony offense. (School-related felony alcohol offenses are addressed in **Expulsion** on page .)
    - Behaves in a manner that contains the elements of an offense relating to abusable volatile chemicals.
    - Behaves in a manner that contains the elements of the offense of public lewdness or indecent exposure. (See **glossary**.)
    - Engages in conduct that contains the elements of an offense of harassment against an employee under Penal Code 42.07(a)(1), (2), (3), or (7).
- Engages in expellable conduct and is between six and nine years of age.
- Commits a federal firearms violation and is younger than six years of age.
- Engages in conduct that contains the elements of the offense of retaliation against any school employee or volunteer on or off school property. (Committing retaliation in combination with another expellable offense is addressed in **Expulsion** on page .)

- Engages in conduct punishable as aggravated robbery or a felony listed under Title 5 (see **glossary**) of the Penal Code when the conduct occurs off school property and not at a school-sponsored or school-related event and:

29. The student receives deferred prosecution (see **glossary**),
30. A court or jury finds that the student has engaged in delinquent conduct (see **glossary**), or
31. The superintendent or designee has a reasonable belief (see **glossary**) that the student engaged in the conduct.

Sexual Assault and Campus Assignments

A student shall be transferred to another campus if:

- The student has been convicted of continuous sexual abuse of a young child or disabled individual or convicted of or placed on deferred adjudication for sexual assault or aggravated sexual assault against another student on the same campus; and
- The victim's parent or another person with the authority to act on behalf of the victim requests that the board transfer the offending student to another campus.

If there is no other campus in the district serving the grade level of the offending student, the offending student shall be transferred to a DAEP.

Process

Removals to a DAEP shall be made by the campus behavior coordinator.

Conference

When a student is removed from class for a DAEP offense, the campus behavior coordinator or appropriate administrator shall schedule a conference within three school days with the student's parent, the student, and, in the case of a teacher removal, the teacher.

At the conference, the campus behavior coordinator or appropriate administrator shall provide the student:

- Information, orally or in writing, 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.

Following valid attempts to require attendance, the district may hold the conference and make a placement decision regardless of whether the student or the student's parents attend the conference.

Consideration of Mitigating Factors

In deciding whether to place a student in a DAEP, regardless of whether the action is mandatory or discretionary, the campus behavior coordinator shall take into consideration:

32. Self-defense (see **glossary**),
33. Intent or lack of intent at the time the student engaged in the conduct,
34. The student's disciplinary history,

35. A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct,
36. A student's status in the conservatorship of the Department of Family and Protective Services (foster care), or
37. A student's status as homeless.

Placement Order

After the conference, if the student is placed in a DAEP, the campus behavior coordinator shall write a placement order. A copy of the DAEP placement order shall be sent to the student and the student's parent.

Not later than the second business day after the conference, the board's designee shall deliver to the juvenile court a copy of the placement order and all information required by Section 52.04 of the Family Code.

If the student is placed in a DAEP and the length of placement is inconsistent with the guidelines included in this Code, the placement order shall give notice of the inconsistency.

Coursework Notice

The parent or guardian of a student placed in DAEP shall be given written notice of the student's opportunity to complete, at no cost to the student, a foundation curriculum course in which the student was enrolled at the time of removal and which is required for graduation. The notice shall include information regarding all methods available for completing the coursework.

Length of Placement

The campus behavior coordinator shall determine the duration of a student's placement in a DAEP.

The duration of a student's placement shall be determined case by case based on the seriousness of the offense, the student's age and grade level, the frequency of misconduct, the student's attitude, and statutory requirements.

The maximum period of DAEP placement shall be one calendar year, except as provided below.

Unless otherwise specified in the placement order, days absent from a DAEP shall not count toward fulfilling the total number of days required in a student's DAEP placement order.

The district shall administer the required pre- and post-assessments for students assigned to DAEP for a period of 90 days or longer in accordance with established district administrative procedures for administering other diagnostic or benchmark assessments.

Exceeds One Year

Placement in a DAEP may exceed one year when a review by the district determines that the student is a threat to the safety of other students or to district employees.

The statutory limitations on the length of a DAEP placement do not apply to a placement resulting from the board's decision to place a student who engaged in the sexual assault of another student so that the students are not assigned to the same campus.

Exceeds School Year

Students who are in a DAEP placement at the end of one school year may be required to continue that placement at the start of the next school year to complete the assigned term of placement.

For placement in a DAEP to extend beyond the end of the school year, the campus behavior coordinator or the board's designee must determine that:

38. The student's presence in the regular classroom or campus presents a danger of physical harm to the student or others, or
39. The student has engaged in serious or persistent misbehavior (see **glossary**) that violates the district's Code.

Exceeds 60 Days

For placement in a DAEP to extend beyond 60 days or the end of the next grading period, whichever is sooner, a student's parent shall be given notice and the opportunity to participate in a proceeding before the board or the board's designee.

Appeals

Questions from parents regarding disciplinary measures should be addressed to the campus administration.

Student or parent appeals regarding a student's placement in a DAEP should be addressed in accordance with policy FNG(LOCAL). A copy of this policy may be obtained from the principal's office, the campus behavior coordinator's office, the central administration office, or through Policy On Line at the following address: *www.loisd.net*

Appeals shall begin at Level One with the campus administrator and *Level Two* with the *superintendent).*

The district shall not delay disciplinary consequences pending the outcome of an appeal. The decision to place a student in a DAEP cannot be appealed beyond the board.

Restrictions During Placement

The district does not permit a student who is placed in a DAEP to participate in any school-sponsored or school-related extracurricular or cocurricular activity, including seeking or holding honorary positions and/or membership in school-sponsored clubs and organizations.

A student placed in a DAEP shall not be provided transportation unless he or she is a student with a disability who is entitled to transportation in accordance with the student's individualized education program (IEP) or Section 504 plan.

For seniors who are eligible to graduate and are assigned to a DAEP at the time of graduation, the last day of placement in the program shall be the last instructional day, and the student shall be allowed to participate in the graduation ceremony and related graduation activities unless otherwise specified in the DAEP placement order.

Placement Review

A student placed in a DAEP shall be provided a review of his or her status, including academic status, by the campus behavior coordinator or the board's designee at intervals not to exceed 120 days. In the case of a high school student, the student's progress toward graduation and the student's graduation plan shall also be reviewed. At the review, the student or the student's parent shall 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 a teacher who removed the student without that teacher's consent.

Additional Misconduct

If during the term of placement in a DAEP the student engages in additional misconduct for which placement in a DAEP or expulsion is required or permitted, additional proceedings may be conducted, and the campus behavior coordinator may enter an additional disciplinary order as a result of those proceedings.

Notice of Criminal Proceedings

When a student is placed in a DAEP for certain offenses, the office of the prosecuting attorney shall notify the district if:

40. Prosecution of a student's case was refused for lack of prosecutorial merit or insufficient evidence, and no formal proceedings, deferred adjudication (see **glossary**), or deferred prosecution will be initiated; or
41. The court or jury found a student not guilty or made a finding that the student did not engage in delinquent conduct or conduct indicating a need for supervision, and the case was dismissed with prejudice.

If a student was placed in a DAEP for such conduct, on receiving the notice from the prosecutor, the superintendent or designee shall review the student's placement and schedule a review with the student's parent not later than the third day after the superintendent or designee receives notice from the prosecutor. The student may not be returned to the regular classroom pending the review.

After reviewing the notice and receiving information from the student's parent, the superintendent or designee may continue the student's placement if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

The student or the student's parent may appeal the superintendent's decision to the board. The student may not be returned to the regular classroom pending the appeal. In the case of an appeal, the board shall, at the next scheduled meeting, review the notice from the prosecutor and receive information from the student, the student's parent, and the superintendent or designee, and confirm or reverse the decision of the superintendent or designee. The board shall make a record of the proceedings.

If the board confirms the decision of the superintendent or designee, the student and the student's parent may appeal to the Commissioner of Education. The student may not be returned to the regular classroom pending the appeal.

Withdrawal During Process

When a student violates the district's Code in a way that requires or permits the student to be placed in a DAEP and the student withdraws from the district before a placement order is completed, the campus behavior coordinator may complete the proceedings and issue a placement order. If the student then re-enrolls in the district during the same or a subsequent school year, the district may enforce the order at that time, less any period of the placement that has been served by the student during enrollment in another district. If the campus behavior coordinator or the board fails to issue a placement order after the student withdraws, the next district in which the student enrolls may complete the proceedings and issue a placement order.

Newly Enrolled Students

The district shall decide on a case-by-case basis whether to continue the placement of a student who enrolls in the district and was assigned to a DAEP in an open-enrollment charter school or another district including a district in another state. The district may place the student in the district's DAEP or a regular classroom setting.

When a student enrolls in the district with a DAEP placement from a district in another state, the district has the right to place the student in DAEP to the same extent as any other newly enrolled student if the behavior committed is a reason for DAEP placement in the receiving district.

State law requires the district to reduce a placement imposed by a district in another state that exceeds one year so that the total placement does not exceed one year. After a review, however, the placement may be extended beyond a year if the district determines that the student is a threat to the safety of other students or employees or the extended placement is in the best interest of the student.

Emergency Placement Procedure

When an emergency placement is necessary because the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with classroom or school operations, the student shall be given oral notice of the reason for the action. Not later than the tenth day after the date of the placement, the student shall be given the appropriate conference required for assignment to a DAEP.

Transition Services

In accordance with law and district procedures, campus staff shall provide transition services to a student returning to the regular classroom from an alternative education program, including a DAEP. See policy FOCA(LEGAL) for more information.

Placement and/or Expulsion for Certain Offenses

This section includes two categories of offenses for which the Education Code provides unique procedures and specific consequences.

Registered Sex Offenders

Upon receiving notification in accordance with state law that a student is currently required to register as a sex offender, the district must remove the student from the regular classroom and determine appropriate placement unless the court orders JJAEP placement.

If the student is under any form of court supervision, including probation, community supervision, or parole, the student shall be placed in either DAEP or JJAEP for at least one semester.

If the student is not under any form of court supervision, the student may be placed in DAEP or JJAEP for one semester or placed in a regular classroom. The student may not be placed in the regular classroom if the board or its designee determines that the student's presence:

42. Threatens the safety of other students or teachers,
43. Will be detrimental to the educational process, or
44. Is not in the best interests of the district's students.

Review Committee

At the end of the first semester of a student's placement in an alternative educational setting and before the beginning of each school year for which the student remains in an alternative placement, the district shall convene a committee, in accordance with state law, to review the student's placement. The committee shall recommend whether the student should return to the regular classroom or remain in the placement. Absent a special finding, the board or its designee must follow the committee's recommendation.

The placement review of a student with a disability who receives special education services must be made by the ARD committee.

Newly Enrolled Students

If a student enrolls in the district during a mandatory placement as a registered sex offender, the district may count any time already spent by the student in a placement or may require an additional semester in an alternative placement without conducting a review of the placement.

Appeal

A student or the student's parent may appeal the placement by requesting a conference between the board or its designee, the student, and the student's parent. The conference is limited to the factual question of whether the student is required to register as a sex offender. Any decision of the board or its designee under this section is final and may not be appealed.

Certain Felonies

Regardless of whether placement or expulsion is required or permitted by one of the reasons in the DAEP Placement or Expulsion sections, in accordance with Education Code 37.0081, a student may be expelled and placed in either DAEP or JJAEP if the board or campus behavior

coordinator makes certain findings and the following circumstances exist in relation to aggravated robbery or a felony offense under Title 5 (see **glossary**) of the Penal Code. The student must:

- Have received deferred prosecution for conduct defined as aggravated robbery or a Title 5 felony offense;
- Have been found by a court or jury to have engaged in delinquent conduct for conduct defined as aggravated robbery or a Title 5 felony offense;
- Have been charged with engaging in conduct defined as aggravated robbery or a Title 5 felony offense;
- Have been referred to a juvenile court for allegedly engaging in delinquent conduct for conduct defined as aggravated robbery or a Title 5 felony offense; or
- Have received probation or deferred adjudication or have been arrested for, charged with, or convicted of aggravated robbery or a Title 5 felony offense.

The district may expel the student and order placement under these circumstances regardless of:

45. The date on which the student's conduct occurred,
46. The location at which the conduct occurred,
47. Whether the conduct occurred while the student was enrolled in the district, or
48. Whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.

Hearing and Required Findings

The student must first have a hearing before the board or its designee, who must determine that in addition to the circumstances above that allow for the expulsion, the student's presence in the regular classroom:

49. Threatens the safety of other students or teachers,
50. Will be detrimental to the educational process, or
51. Is not in the best interest of the district's students.

Any decision of the board or the board's designee under this section is final and may not be appealed.

Length of Placement

The student is subject to the placement until:

52. The student graduates from high school,
53. The charges are dismissed or reduced to a misdemeanor offense, or
54. The student completes the term of the placement or is assigned to another program.

Placement Review

A student placed in a DAEP or JJAEP under this section is entitled to a review of his or her status, including academic status, by the campus behavior coordinator or board's designee at intervals not to exceed 120 days. In the case of a high school student, the student's progress

toward graduation and the student's graduation plan shall also be reviewed. At the review, the student or the student's parent shall have the opportunity to present arguments for the student's return to the regular classroom or campus.

Newly Enrolled Students

A student who enrolls in the district before completing a placement under this section from another school district must complete the term of the placement.

Expulsion

In deciding whether to order expulsion, regardless of whether the action is mandatory or discretionary, the campus behavior coordinator shall take into consideration:

55. Self-defense (see **glossary**),
56. Intent or lack of intent at the time the student engaged in the conduct,
57. The student's disciplinary history,
58. A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct,
59. A student's status in the conservatorship of the Department of Family and Protective Services (foster care), or
60. A student's status as homeless.

Discretionary Expulsion: Misconduct That May Result in Expulsion

Some of the following types of misconduct may result in mandatory placement in a DAEP, whether or not a student is expelled. (See **DAEP Placement** on page .)

Any Location

A student **may** be expelled for:

- Engaging in bullying that encourages a student to commit or attempt to commit suicide.
- Inciting violence against a student through group bullying.
- Releasing or threatening to release intimate visual material of a minor or of a student who is 18 years of age or older without the student's consent.
- Conduct that contains the elements of assault under Penal Code 22.01(a)(1) in retaliation against a school employee or volunteer.
- Criminal mischief, if punishable as a felony.
- Engaging in conduct that contains the elements of one of the following offenses against another student:
    - Aggravated assault.
    - Sexual assault.
    - Aggravated sexual assault.
    - Murder.
    - Capital murder.
    - Criminal attempt to commit murder or capital murder.
    - Aggravated robbery.
- Breach of computer security. (See **glossary**.)
- Engaging in conduct relating to a false alarm or report (including a bomb threat) or a terroristic threat involving a public school.

At School, Within 300 Feet, or at a School Event

A student **may** be expelled for committing any of the following offenses 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:

- Selling, giving, or delivering to another person, or possessing, using, or being under the influence of marijuana, a controlled substance, or a dangerous drug, if the conduct is not punishable as a felony. A student with a valid prescription for low-THC cannabis as authorized by Chapter 487 of the Health and Safety Code does not violate this provision. (See **glossary** for "under the influence.")
- Selling, giving, or delivering another person, or possessing, using, or being under the influence of alcohol; or committing a serious act or offense while under the influence of alcohol, if the conduct is not punishable as a felony.
- Engaging in conduct that contains the elements of an offense relating to abusable volatile chemicals.
- Engaging in conduct that contains the elements of assault under Penal Code 22.01(a)(1) against an employee or a volunteer.
- Engaging in deadly conduct. (See **glossary**.)

Within 300 Feet of School

A student **may** be expelled for engaging in the following conduct while within 300 feet of school property, as measured from any point on the school's real property boundary line:

- Aggravated assault, sexual assault, or aggravated sexual assault.
- Arson. (See **glossary**.)
- Murder, capital murder, or criminal attempt to commit murder or capital murder.
- Indecency with a child.
- Aggravated kidnapping.
- Manslaughter.
- Criminally negligent homicide.
- Aggravated robbery.
- Continuous sexual abuse of a young child or disabled individual.
- Felony drug- or alcohol-related offense.
- Unlawfully carrying on or about the student's person a handgun or a location-restricted knife, as these terms are defined by state law. (See **glossary**.)
- Possessing, manufacturing, transporting, repairing, or selling a prohibited weapon, as defined by state law. (See **glossary**.)
- Possession of a firearm, as defined by federal law. (See **glossary**.)

Property of Another District

A student **may** be expelled for committing any offense that is a state-mandated expellable offense if the offense is committed on the property of another district in Texas or while the

student is attending a school-sponsored or school-related activity of a school in another district in Texas.

While in a DAEP

A student may be expelled for engaging in documented serious misbehavior that violates the district's Code, despite documented behavioral interventions while placed in a DAEP. For purposes of discretionary expulsion from a DAEP, serious misbehavior means:

61. Deliberate violent behavior that poses a direct threat to the health or safety of others;
62. Extortion, meaning the gaining of money or other property by force or threat;
63. Conduct that constitutes coercion, as defined by Penal Code 1.07; or
64. 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. Hazing under Education Code 37.152; or
    e. Harassment under Penal Code 42.07(a)(1) of a student or district employee.

Mandatory Expulsion: Misconduct That Requires Expulsion

A student **must** be expelled under federal or state law for any of the following offenses that occur on school property or while attending a school-sponsored or school-related activity on or off school property:

Under Federal Law

- Bringing to school or possessing at school, including any setting that is under the district's control or supervision for the purpose of a school activity, a firearm, as defined by federal law. (See **glossary**.)

Note*:* Mandatory expulsion under the federal Gun Free Schools Act does not apply to a firearm that is lawfully stored inside a locked vehicle or to firearms used in activities approved and authorized by the district when the district has adopted appropriate safeguards to ensure student safety.

Under the Penal Code

- Unlawfully carrying on or about the student's person the following, in the manner prohibited by Penal Code 46.02:
    - A handgun, defined by state law as any firearm designed, made, or adapted to be used with one hand. (See **glossary**.) *Note*: A student may not be expelled solely on the basis of the student's use, exhibition, or possession of a firearm that occurs at an approved target range facility that is not located on a school campus; 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. [See policy FNCG(LEGAL).]
    - A location-restricted knife, as defined by state law. (See **glossary**.)

- Possessing, manufacturing, transporting, repairing, or selling a prohibited weapon, as defined in state law. (See **glossary**.)
- Behaving in a manner that contains elements of the following offenses under the Penal Code:
    - Aggravated assault, sexual assault, or aggravated sexual assault.
    - Arson. (See **glossary**.)
    - Murder, capital murder, or criminal attempt to commit murder or capital murder.
    - Indecency with a child.
    - Aggravated kidnapping.
    - Aggravated robbery.
    - Manslaughter.
    - Criminally negligent homicide.
    - Continuous sexual abuse of a young child or disabled individual.
    - Behavior punishable as a felony that involves selling, giving, or delivering to another person or possessing, using, or being under the influence of marijuana, a controlled substance, a dangerous drug, or alcohol, or committing a serious act or offense while under the influence of alcohol.
- Engaging in retaliation against a school employee or volunteer combined with one of the above-listed mandatory expulsion offenses

Under Age Ten

When a student under the age of ten engages in behavior that is expellable behavior, the student shall not be expelled, but shall be placed in a DAEP. A student under age six shall not be placed in a DAEP unless the student commits a federal firearm offense.

Process

If a student is believed to have committed an expellable offense, the campus behavior coordinator or other appropriate administrator shall schedule a hearing within a reasonable time. The student's parent shall be invited in writing to attend the hearing.

Until a hearing can be held, the campus behavior coordinator or other administrator may place the student in:

- Another appropriate classroom.
- In-school suspension.
- Out-of-school suspension.
- DAEP.

Hearing

A student facing expulsion shall be given a hearing with appropriate due process. The student is entitled to:

65. Representation by the student's parent or another adult who can provide guidance to the student and who is not an employee of the district,

66. An opportunity to testify and to present evidence and witnesses in the student's defense, and
67. An opportunity to question the witnesses called by the district at the hearing.

After providing notice to the student and parent of the hearing, the district may hold the hearing regardless of whether the student or the student's parent attends.

The board of trustees delegates to the Superintendent authority to conduct hearings and expel students.

Board Review of Expulsion

After the due process hearing, the expelled student may request that the board review the expulsion decisions. The student or parent must submit a written request to the superintendent within seven days after receipt of the written decision. The superintendent must provide the student or parent written notice of the date, time, and place of the meeting at which the board will review the decision.

The board shall review the record of the expulsion hearing in a closed meeting unless the parent requests in writing that the matter be held in an open meeting. The board may also hear a statement from the student or parent and from the board's designee.

The board shall consider and base its decision on evidence reflected in the record and any statements made by the parties at the review. The board shall make and communicate its decision orally at the conclusion of the presentation. Consequences shall not be deferred pending the outcome of the hearing.

Expulsion Order

Before ordering the expulsion, the board or campus behavior coordinator shall take into consideration:

68. Self-defense (see **glossary**),
69. Intent or lack of intent at the time the student engaged in the conduct,
70. The student's disciplinary history,
71. A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct,
72. A student's status in the conservatorship of the Department of Family and Protective Services (foster care), or
73. A student's status as homeless.

If the student is expelled, the board or its designee shall deliver to the student and the student's parent a copy of the order expelling the student.

Not later than the second business day after the hearing, the *School Resource Officer* shall deliver to the juvenile court a copy of the expulsion order and the information required by Section 52.04 of the Family Code.

If the length of the expulsion is inconsistent with the guidelines included in the Student Code of Conduct, the expulsion order shall give notice of the inconsistency.

Length of Expulsion

The length of an expulsion shall be based on the seriousness of the offense, the student's age and grade level, the frequency of misbehavior, the student's attitude, and statutory requirements.

The duration of a student's expulsion shall be determined on a case-by-case basis. The maximum period of expulsion is one calendar year, except as provided below.

An expulsion may not exceed one year unless, after review, the district determines that:

74. The student is a threat to the safety of other students or to district employees, or
75. Extended expulsion is in the best interest of the student.

State and federal law require a student to be expelled from the regular classroom for a period of at least one calendar year for bringing a firearm, as defined by federal law, to school. However, the superintendent may modify the length of the expulsion on a case-by-case basis.

Students who commit offenses that require expulsion at the end of one school year may be expelled into the next school year to complete the term of expulsion.

Withdrawal During Process

When a student's conduct requires or permits expulsion from the district and the student withdraws from the district before the expulsion hearing takes place, the district may conduct the hearing after sending written notice to the parent and student.

If the student then re-enrolls in the district during the same or subsequent school year, the district may enforce the expulsion order at that time, less any expulsion period that has been served by the student during enrollment in another district.

If the campus behavior coordinator or the board fails to issue an expulsion order after the student withdraws, the next district in which the student enrolls may complete the proceedings.

Additional Misconduct

If during the expulsion, the student engages in additional conduct for which placement in a DAEP or expulsion is required or permitted, additional proceedings may be conducted, and the campus behavior coordinator or the board may issue an additional disciplinary order as a result of those proceedings.

Restrictions During Expulsion

Expelled students are prohibited from being on school grounds or attending school-sponsored or school-related activities during the period of expulsion.

No district academic credit shall be earned for work missed during the period of expulsion unless the student is enrolled in a JJAEP or another district-approved program.

Newly Enrolled Students

The district shall decide on a case-by-case basis the placement of a student who is subject to an expulsion order from another district or an open-enrollment charter school upon enrollment in the district.

If a student expelled in another state enrolls in the district, the district may continue the expulsion under the terms of the expulsion order, may place the student in a DAEP for the period specified in the order, or may allow the student to attend regular classes if:

76. The out-of-state district provides the district with a copy of the expulsion order, and
77. The offense resulting in the expulsion is also an expellable offense in the district in which the student is enrolling.

If a student is expelled by a district in another state for a period that exceeds one year and the district continues the expulsion or places the student in a DAEP, the district shall reduce the period of the expulsion or DAEP placement so that the entire period does not exceed one year, unless after a review it is determined that:

78. The student is a threat to the safety of other students or district employees, or
79. Extended placement is in the best interest of the student.

Emergency Expulsion Procedures

When an emergency expulsion is necessary to protect persons or property from imminent harm, the student shall be given verbal notice of the reason for the action. Within ten days after the date of the emergency expulsion, the student shall be given appropriate due process required for a student facing expulsion.

DAEP Placement of Expelled Students

The district may provide educational services to any expelled student in a DAEP; however, educational services in the DAEP must be provided if the student is less than ten years of age.

Transition Services

In accordance with law and district procedures, campus staff shall provide transition services for a student returning to the regular classroom from placement in an alternative education program, including a DAEP or JJAEP. See policies FOCA(LEGAL) and FODA(LEGAL) for more information.

Glossary

Abuse is improper or excessive use.

Aggravated robbery is defined in part by Penal Code 29.03(a) as when a person commits robbery and:

80. Causes serious bodily injury to another;
81. Uses or exhibits a deadly weapon; or
82. Causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is:
    a. 65 years of age or older, or
    b. A disabled person.

Armor-piercing ammunition is defined by Penal Code 46.01 as handgun ammunition used in pistols and revolvers and designed primarily for the purpose of penetrating metal or body armor.

Arson is defined in part by Penal Code 28.02 as a crime that involves:

83. Starting a fire or causing an explosion with intent to destroy or damage:
    a. Any vegetation, fence, or structure on open-space land; or
    b. Any building, habitation, or vehicle:
        (1) Knowing that it is within the limits of an incorporated city or town,
        (2) Knowing that it is insured against damage or destruction,
        (3) Knowing that it is subject to a mortgage or other security interest,
        (4) Knowing that it is located on property belonging to another,
        (5) Knowing that it has located within it property belonging to another, or
        (6) When the person starting the fire is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.
84. Recklessly starting a fire or causing an explosion while manufacturing or attempting to manufacture a controlled substance if the fire or explosion damages any building, habitation, or vehicle; or
85. Intentionally starting a fire or causing an explosion and in so doing:
    a. Recklessly damaging or destroying a building belonging to another, or
    b. Recklessly causing another person to suffer bodily injury or death.

Assault is defined in part by Penal Code 22.01 as intentionally, knowingly, or recklessly causing bodily injury to another; intentionally or knowingly threatening another with imminent bodily injury; or intentionally or knowingly causing physical contact with another that can reasonably be regarded as offensive or provocative.

Breach of computer security includes knowingly accessing a computer, computer network, or computer system without the effective consent of the owner as defined in Penal Code 33.02, if the conduct involves accessing a computer, computer network, or computer system owned by or

operated on behalf of a school district and 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.

Bullying is defined as a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct that:

86. Has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or damage to the student's property;
87. Is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;
88. Materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or
89. Infringes on the rights of the victim at school.

Bullying includes cyberbullying. (See below.) This state law on bullying prevention applies to:

90. Bullying that occurs on or is delivered to school property or to the site of a school-sponsored or school-related activity on or off school property;
91. Bullying that occurs on a publicly or privately owned school bus or vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity; and
92. Cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity if the cyberbullying interferes with a student's educational opportunities or substantially disrupts the orderly operation of a classroom, school, or school-sponsored or school-related activity.

Chemical dispensing device is defined by Penal Code 46.01 as a device designed, made, or adapted for the purpose of dispensing a substance capable of causing an adverse psychological or physiological effect on a human being. A small chemical dispenser sold commercially for personal protection is not in this category.

Club is defined by Penal Code 46.01 as an instrument, specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to a blackjack, nightstick, mace, and tomahawk

Controlled substance means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Group 1, 1-A, 1-B, 2, 2-A, 3, or 4 of the Texas Controlled Substances Act. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance. The term does not include hemp, as defined by Agriculture Code 121.001, or the tetrahydrocannabinols (THC) in hemp.

Criminal street gang is defined by Penal Code 71.01 as three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.

Cyberbullying is defined by Education Code 37.0832 as bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of

telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, an internet website, or any other internet-based communication tool.

Dangerous drug is defined by Health and Safety Code 483.001 as a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of the Texas Controlled Substances Act. The term includes a device or drug that federal law prohibits dispensing without prescription or restricts to use by or on the order of a licensed veterinarian.

Dating violence occurs when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control another person in the relationship. Dating violence also occurs when a person commits these acts against a person in a marriage or dating relationship with the individual who is or was once in a marriage or dating relationship with the person committing the offense, as defined by Section 71.0021 of the Family Code.

Deadly conduct under Penal Code 22.05 occurs when a person recklessly engages in conduct that places another in imminent danger of serious bodily injury, such as knowingly discharging a firearm in the direction of an individual, habitation, building, or vehicle.

Deferred adjudication is an alternative to seeking a conviction in court that may be offered to a juvenile for delinquent conduct or conduct indicating a need for supervision.

Deferred prosecution may be offered to a juvenile as an alternative to seeking a conviction in court for delinquent conduct or conduct indicating a need for supervision.

Delinquent conduct is conduct that violates either state or federal law and is punishable by imprisonment or confinement in jail. It includes conduct that violates certain juvenile court orders, including probation orders, but does not include violations of traffic laws.

Discretionary means that something is left to or regulated by a local decision maker.

E-cigarette means an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device or a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by this provision. The term includes any device that is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description and a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

Explosive weapon is defined by Penal Code 46.01 as any explosive or incendiary bomb, grenade, rocket, or mine and its delivery mechanism 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.

False alarm or report under Penal Code 42.06 occurs when a person knowingly initiates, communicates, or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he or she knows is false or baseless and that would ordinarily:

93. Cause action by an official or volunteer agency organized to deal with emergencies;

94. Place a person in fear of imminent serious bodily injury; or

95. Prevent or interrupt the occupation of a building, room, or place of assembly.

Firearm is defined by federal law (18 U.S.C. 921(a)) as:

96. Any weapon (including a starter gun) that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive;

97. The frame or receiver of any such weapon;

98. Any firearm muffler or firearm silencer, defined as any device for silencing, muffling, or diminishing the report of a portable firearm; or

99. Any destructive device, such as any explosive, incendiary or poison gas bomb, or grenade.

Such term does not include an antique firearm.

Graffiti includes markings with paint, an indelible pen or marker, or an etching or engraving device on tangible property without the effective consent of the owner. The markings may include inscriptions, slogans, drawings, or paintings.

Handgun is defined by Penal Code 46.01 as any firearm that is designed, made, or adapted to be fired with one hand.

Harassment includes:

100. Conduct that meets the definition established in district policies DIA(LOCAL) and FFH(LOCAL);

101. Conduct that threatens to cause harm or bodily injury to another person, including a district student, employee, board member, or volunteer; is sexually intimidating; causes physical damage to the property of another student; subjects another student to physical confinement or restraint; or maliciously and substantially harms another student's physical or emotional health or safety, as defined in Education Code 37.001(b)(2); or

102. Conduct that is punishable as a crime under Penal Code 42.07, including the following types of conduct if carried out with the intent to harass, annoy, alarm, abuse, torment, or embarrass another:

    a. Initiating communication and, in the course of the communication, making a comment, request, suggestion, or proposal that is obscene, as defined by law;

    b. Threatening, 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;

    c. Conveying, 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;

    d. Sending repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another; and

    e. Publishing on an internet website, including a social media platform, repeated electronic communications in a manner reasonably likely to cause emotional distress, abuse, or torment to another person, unless the communications are made in connection with a matter of public concern, as defined by law.

Hazing is defined by Education Code 37.151 as an intentional, knowing, or reckless act, on or off campus, by one person alone or acting with others, directed against a student for the purpose of pledging, initiation into, affiliation with, holding office in, or maintaining membership in a student organization if the act meets the elements in Education Code 37.151, including:

103. Any type of physical brutality;
104. An activity that subjects the student to an unreasonable risk of harm or that adversely affects the student's mental or physical health, such as sleep deprivation, exposure to the elements, confinement to small spaces, calisthenics, or consumption of food, liquids, drugs, or other substances;
105. An activity that induces, causes, or requires the student to perform a duty or task that violates the Penal Code; or

Coercing a student to consume a drug or alcoholic beverage in an amount that would lead a reasonable person to believe the student is intoxicated. **Hit list** is defined in Education Code 37.001(b)(3) as a list of people targeted to be harmed, using a firearm, a knife, or any other object to be used with intent to cause bodily harm.

Improvised explosive device is defined by Penal Code 46.01 as 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.

Indecent exposure is defined by Penal Code 21.08 as an offense that occurs when a person exposes the person's anus or any part of the person's genitals with intent to arouse or gratify the sexual desire of any person, and is reckless about whether another is present who will be offended or alarmed by the act.

Intimate visual material is defined by Civil Practices and Remedies Code 98B.001 and Penal Code 21.16 as visual material that depicts a person with the person's intimate parts exposed or engaged in sexual conduct. "Visual material" means any film, photograph, video tape, negative, or slide of any photographic reproduction or any other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen.

Location-restricted knife is defined by Penal Code 46.01 as a knife with a blade over five and one-half inches.

Knuckles means any instrument consisting of finger rings or guards made of a hard substance and designed or adapted for inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

Look-alike weapon means an item that resembles a weapon but is not intended to be used to cause serious bodily injury.

Machine gun as defined by Penal Code 46.01 is any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

Mandatory means that something is obligatory or required because of an authority.

Paraphernalia are devices that can be used for inhaling, ingesting, injecting, or otherwise introducing a controlled substance into a human body.

Possession means to have an item on one's person or in one's personal property, including, but not limited to:

107. Clothing, purse, or backpack;
108. A private vehicle used for transportation to or from school or school-related activities, including, but not limited to, an automobile, truck, motorcycle, or bicycle;
109. Telecommunications or electronic devices; or
110. Any school property used by the student, including, but not limited to, a locker or desk.

Prohibited weapon under Penal Code 46.05(a) means:

111. The following items, unless registered with the U.S. 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 U.S. Department of Justice: An explosive weapon;
    a. A machine gun;
    b. A short-barrel firearm;
112. Armor-piercing ammunition;
113. A chemical dispensing device;
114. A zip gun;
115. A tire deflation device; or
116. An improvised explosive device.

Public Lewdness is defined by Penal Code 21.07 as an offense that occurs when a person knowingly engages in an act of sexual intercourse, deviate sexual intercourse, or sexual contact in a public place or, if not in a public place, when the person is reckless about whether another is present who will be offended or alarmed by the act.

Public school fraternity, sorority, secret society, or gang means an organization composed wholly or in part of students that seeks to perpetuate itself by taking additional members from the students enrolled in school based on a decision of its membership rather than on the free choice of a qualified student. Educational organizations listed in Education Code 37.121(d) are excepted from this definition.

Reasonable belief is that which an ordinary person of average intelligence and sound mind would believe. Chapter 37 requires certain disciplinary decisions when the superintendent or designee has a reasonable belief that a student engaged in conduct punishable as a felony offense. In forming such a reasonable belief, the superintendent or designee may use all available information, including the notice of a student's arrest under Code of Criminal Procedure Article 15.27.

Self-defense is the use of force against another to the degree a person reasonably believes is immediately necessary to protect himself or herself.

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 Section 1.07, Penal Code; 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. Hazing under Education Code 37.152; or
    e. Harassment under Penal Code 42.07(a)(1) of a student or district employee.

Serious or persistent misbehavior includes, but is not limited to:

- Behavior that is grounds for permissible expulsion or mandatory DAEP placement.
- Behavior identified by the district as grounds for discretionary DAEP placement.
- Actions or demonstrations that substantially disrupt or materially interfere with school activities.
- Refusal to attempt or complete schoolwork as assigned.
- Insubordination.
- Profanity, vulgar language, or obscene gestures.
- Leaving school grounds without permission.
- Falsification of records, passes, or other school-related documents.
- Refusal to accept discipline assigned by the teacher or principal.

Short-barrel firearm is defined by Penal Code 46.01 as a 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.

Terroristic threat is defined by Penal Code 22.07 as a threat of violence to any person or property with intent to:

5. Cause a reaction of any type by an official or volunteer agency organized to deal with emergencies;
6. Place any person in fear of imminent serious bodily injury;
7. Prevent or interrupt the occupation or use of a building; room, place of assembly, or place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place;
8. Cause impairment or interruption of public communications; public transportation; public water, gas, or power supply; or other public service;
9. Place the public or a substantial group of the public in fear of serious bodily injury; or
10. Influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state (including the district).

Tire deflation device is defined in part by Penal Code 46.01 as 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.

Title 5 felonies are those crimes listed in Title 5 of the Penal Code that typically involve injury to a person and may include:

- Murder, manslaughter, or homicide under Sections 19.02–.05;
- Kidnapping under Section 20.03;
- Trafficking of persons under Section 20A.02;
- Smuggling or continuous smuggling of persons under Sections 20.05–.06;
- Assault under Section 22.01;
- Aggravated assault under Section 22.02;
- Sexual assault under Section 22.011;
- Aggravated sexual assault under Section 22.021;
- Unlawful restraint under Section 20.02;
- Continuous sexual abuse of a young child or disabled individual under Section 21.02;
- Bestiality under Section 21.09;
- Improper relationship between educator and student under Section 21.12;
- Voyeurism under Section 21.17;
- Indecency with a child under Section 21.11;
- Invasive visual recording under Section 21.15;
- Disclosure or promotion of intimate visual material under Section 21.16;
- Sexual coercion under Section 21.18;
- Injury to a child, an elderly person, or a disabled person of any age under Section 22.04;
- Abandoning or endangering a child under Section 22.041;
- Deadly conduct under Section 22.05;
- Terroristic threat under Section 22.07;
- Aiding a person to commit suicide under Section 22.08; and
- Tampering with a consumer product under Section 22.09.

Under the influence means lacking the normal use of mental or physical faculties. Impairment of a person's physical or mental faculties may be evidenced by a pattern of abnormal or erratic behavior, the presence of physical symptoms of drug or alcohol use, or by admission. A student "under the in-fluence" need not be legally intoxicated to trigger disciplinary action.

Use means voluntarily introducing into one's body, by any means, a prohibited substance.

Zip gun is defined by Penal Code 46.01 as 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.

LOISD

Back to School 2022-2023

www.loisd.net

Safe Return to In-Person Instruction and Continuity of Services Plan



PLEASE NOTE: The details in this document are subject to change as directives are provided by governing authorities and/or health officials or as environmental conditions change.

Dear LOISD Family,

Thank you so much for your patience and support over the last few school years as we navigated the many changes brought about by the COVID-19 pandemic.

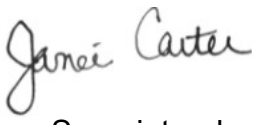
As we return to school for the 2022-23 school year, we anticipate a much more normal feel to our school days. Many of the restrictions in place are lifted; however, we do plan to maintain several protocols put into place that helped prevent the spread of not only COVID-19, but also many other common illnesses we have seen run through the student body in years past. We adapted many cleanliness and hygiene practices that will likely stay in place for theforeseeable future. I can assure you that we will continue to do everything possible to keep students, teachers, staff, and our community safe.

A grim reality we are facing as we move forward is the negative impact this pandemic has had on our students. Moving forward, we are committed to working together with our students and families to address learning loss as well as social emotional issues created by lost instructional time, high absenteeism, and other factors that make learning more challenging for our students.

To ensure that each of our students have access to a high-quality education, the Lone Oak ISD leadership team has once again worked hard on a Safe Return to School and Continuity of Services Plan that outlines safety protocols for the upcoming year and also outlines our vision for meeting the educational, social, and emotional needs of our students.

We are excited about the upcoming school year and encourage all of our families to partner with us as we continue to provide a high quality educational experience for the students in this amazing school district.

Sincerely,



Superintendent

Safe Return to In-Person Instruction and Continuity of Services Plan Introduction and Overview

On March 11, 2021, the American Rescue Plans (ARP) Act was signed into law. In it, the U.S. Department of Education is providing an additional $121.9 billion for the Elementary and Secondary School Emergency Relief Fund (ESSER). This legislation will award grants to state educational agencies for providing local education agencies with emergency relief funds to address the impact that COVID-19 has had, and continues to have, on the elementary and secondary schools across the country.

This plan describes how Lone Oak ISD will provide for the safe return to school in August of 2022 as well as provide a continuity of services for all students in our schools. This document complies with all reporting requirements of the ARP Act, the ESSER II and III grant terms established by the U.S. Department of Education.

One requirement in creating this plan was to seek stakeholders using a variety of methods including public meetings, informational flyers, surveys, and needs assessments. After reviewing all of the information received through stakeholder input, top priorities were identified and the ESSER grants were written and submitted to the Texas Education Agency.

Lone Oak ISD will continue to review and revise this plan at least once every six months as required by the ARP Act.

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Safety Protocols

Protocols for Face Coverings

For the 2022-23 school year, face coverings are optional at Lone Oak ISD. Students, staff, and visitors may wear face coverings if they choose, but they are not required while on campus or at school activities. The Lone Oak ISD Board of Trustees determined in a regular meeting of the Board that wearing masks would be optional if the superintendent and administrative team determined that transmission levels were low in our school community.

The district maintains the ability to require face coverings if the situation changes, such as a higher transmission level or governor's order. Lone Oak ISD will continue to work with the Hunt County Health Department and follow recommendations from this entity should health conditions change in our area.

Protocols for Screening and Isolation

Screening Protocols

- Staff will self-screen for COVID-19 symptoms prior to reporting to work each day. Staff must ensure they do not come to campus if they have symptoms causing suspicion that they are infected with COVID-19.
- Parents/guardians are expected to screen their students for COVID-19 symptoms each day prior to sending their student to school. Parents must ensure they do not send a child to school if they suspect the student is infected with COVID-19.
- The list below details possible symptoms of COVID-19:
    - Feeling feverish or a measured temperature greater than or equal to 100.4 degrees Fahrenheit
    - Loss of taste or smell
    - Cough
    - Difficulty breathing
    - Shortness of breath
    - Headache
    - Chills
    - Sore throat

- Shaking or exaggerated shivering
- Significant muscle pain or ache
- Diarrhea

Teachers will monitor students and refer to the nurse if symptoms are present.

Isolation Protocols

Students or Staff Displaying COVID-19 Symptoms

- When a student has displayed symptoms of COVID-19, the school nurse will provide a clinical assessment. As with all illnesses, students will be sent home if they have a fever of 100.4 or higher, are vomiting, or have diarrhea. Students will also be sent home if the nurse determines the symptoms may be from COVID-19.
- Students who are ill will be separated from their peers and should be picked up within 30 minutes and no later than 1 hour from the time the campus contacted the student's parent/guardian.
- Any individuals who themselves either: (a) are test-confirmed to have COVID-19; or (b) are determined to have the symptoms of COVID-19 (listed above) must stay at home throughout the infection period, and cannot return to campus until the school system screens the individual to determine if the conditions for campus re-entry have been met:
  - In the case of an individual who is symptomatic and is diagnosed with COVID-19, the individual may return to school when **all three** of the following criteria are met:
    - at least 24 hours have passed since recovery (resolution of fever without the use of fever-reducing medications);
    - the individual has improvement in symptoms (e.g., cough, shortness of breath); and
    - at least five days have passed since symptoms first appeared.
  - In the case of an individual that is asymptomatic but has received a positive COVID-19 test result, the individual may not return to the campus until five days have passed since a positive test result.
  - In the case of an individual who has symptoms that could be COVID-19 and who is not evaluated by a medical professional or tested for COVID-19, such an individual is assumed to have COVID-19, and the individual may not return to the campus until the individual has completed the same three-step set of criteria listed above.
  - If the individual has symptoms that could be COVID-19 and wants or is

requested to return to school before completing the recommended stay-at-home period, the individual must either (a) obtain a medical professional's note clearing the individual for return based on an alternative diagnosis, though for health privacy reasons the note does not need to indicate what the alternative diagnosis is, or (b) obtain an acute infection test (at a physician's office, approved testing location (https://tdem.texas.gov/covid-19/), or other site that comes back negative for COVID-19.

- If the individual has tested positive for COVID-19 and believes the test was a false positive, and wants or is requested to return to school before completing the above stay-at-home period, the individual must either (a) obtain a medical professional's note clearing the individual for return based on an alternative diagnosis, though for health privacy reasons the note does not need to indicate what the alternative diagnosis is, or (b) obtain two PCR acute infection tests (at a physician's office, approved testing location, or other site) at least 24 hours apart that come back negative for COVID-19.

Determining Close Contact

This document refers to **"close contact"** with an individual who is lab-confirmed to have COVID-19. For clarity, close contact is defined as:

- Being directly exposed to infectious secretions (e.g., being coughed on, sharing a drink); or
- Having significant and sustained contact with an individual who is lab-confirmed to have COVID-19. Factors like social distancing, masks, ventilation, presence of dividers, and case symptomatology may affect this determination.
- Either scenario above defines close contact if it occurred during the infectious period of the case, defined as two days prior to symptom onset to 10 days after symptom onset. In the case of asymptomatic individuals who are lab-confirmed with COVID-19, the infectious period is defined as two days prior to the confirming lab test and continuing for 10 days following the confirmed lab test.
- Parents of students potentially exposed due to **close contact** with a positive case at school events will be notified directly to best of the school's ability. These students will **NOT BE EXCLUDED** from activities unless they are experiencing symptoms, test positive for COVID OR a parent chooses for their student to be excluded or quarantined.

- Parents of students exposed due to **close contact (see definition)** to a confirmed COVID positive case will have the **option** to quarantine their student but it will only be excused if it was a school notified exposure. Other absences caused by potential exposure outside of school, or not reported as a school exposure by administration will follow the campus absencepolicy for excused and unexcused absences.
- If you are determined to meet the definition of close contact with a lab-confirmed case of COVID-19, it will be **recommended** to self-quarantine. See **Stay-at-Home Period for Close Contacts**.
- Staff must use their own state and local days for absences unless a positive COVID test is submitted to campus administration or human resources for that time period. School district will allow up to 5 days of COVID leave without the use of personal days for a medically documented positive result. Rapid tests will not be accepted.

Stay-at-Home Period for Close Contacts

For individuals who are determined to be in close contact with an individual who tested positive, the stay-at-home period can end for individuals experiencing no symptoms:

- On Day 5 after close contact exposure without testing,

Additionally:

- A vaccinated individual does not need to stay at home following close contact exposure to a test-confirmed individual if the following conditions are true:
    - The exposed individual is fully vaccinated (at least two weeks have passed since receiving the second dose of a two-dose vaccine or the first dose of a single-dose vaccine)
    - Have not experienced any COVID-19 symptoms following close contact exposure to a test-confirmed individual.
- Individuals who have tested positive for COVID-19 within the past 3 months and recovered do not have to stay at home or get tested again, as long as they do not develop new symptoms.
    - Individuals who develop symptoms again within 3 months of their first bout of COVID-19 may need to be tested again if there is no other cause identified for their symptoms.

Community Transmission Levels

Although Lone Oak ISD hopes the worst of COVID-19 is behind us, the district wants to be prepared if that is not the case and there are outbreaks. The Transmission Level table and Prevention Practices table will remain in this guidance document for the 2022-23 school year.

Lone Oak ISD will monitor the local/county transmission levels and seek input from the Hunt County Health Department to determine the risk level for students and staff. The district has identified three different transmission levels.

Transmission Level	
Substantial	High number of active cases relative to population
	Cases increasing rapidly
	Strain on hospital beds/staff/equipment
Moderate	Moderate number of active cases relative to population
	Cases are increasing slightly or staying steady
	Hospital/ICU beds and equipment are still available
Low	Small number of active cases relative to population
	Cases are decreasing; More cases are attributed to travel or close contact than to unknown community sources
	Hospital/ICU beds and equipment are widely available

Prevention Practices in the School Setting

Measures and precautions taken to protect students and staff may vary throughout the year depending on the transmission level. The table below will help explain this practice.

Prevention Practices		
	Source Control Measures	**Transmission Precautions**
Substantial	Face coverings must be worn by all staff and may be required by students pending governor's orders. Mask breaks will be scheduled when social distancing can be maintained. Maximum social distancing measures will be taken, including possible changes to the school's daily schedule. Breakfast/lunch locations may be altered. No visitors will be permitted past the front desk. No outside field trips or in-person assemblies. Lone Oak ISD will follow standard infection control protocols, such as handwashing and frequent disinfecting procedures.	Use of face mask/n95, eye protection, gown, gloves, by school nurse when in close contact with a suspected case of COVID-19 (fever plus symptoms). Use of face masks, eye protection, gloves by staff at high risk for coming into contact with blood, body fluids, secretions, and excretions. Placement of face masks on students or staff with fever and/or symptoms of COVID-19.

Moderate	Face coverings may be required for staff, students, and visitors as feasible, especially in common areas, during transitions, and when social distancing cannot be maintained. Will comply with the governor's orders. The school will implement social distancing measures, such as desks in rows, no close contact grouping without face coverings, and altered eating during lunch/breakfast. Only visitors essential to school operation will be allowed on campus. Screening will be required, and face coverings will be required when social distancing cannot be maintained. Outside field trips and in-person assemblies require approval from campus principals. Lone Oak ISD will follow standard infection control protocols, such as handwashing and frequent disinfecting procedures.	Use of face mask/n95, eye protection, gown, gloves, by school nurse when in close contact with a suspected case of COVID-19 (fever plus symptoms). Use of face masks, eye protection, gloves by staff at high risk for coming into contact with blood, body fluids, secretions, and excretions. Placement of face masks on students or staff with fever and/or symptoms of COVID-19.
Low	Face coverings are optional. Visitors & deliveries will be limited on campuses. Self-screening & principal approval will be required. Outside field trips and in-person assemblies are allowed with principal approval. Lone Oak ISD will continue to promote and encourage standard infection control protocols, such as handwashing and frequent disinfecting procedures.	Practice standard universal precautions when coming into contact with blood, body fluids, secretions, and excretions.

Protocols for Campus Visitors

As long as transmission levels are low, Lone Oak ISD will allow visitors with principal approval and consistent with campus procedures. If transmission levels change, the Prevention Practices table above details procedures for campus visitors.

Food drop-off for students and allowing visitors during lunch time are determined by campus policy. However this is not recommended.

Protocols for Disinfecting and Hand Sanitizing

Hand Washing/Sanitizing Expectations

- Alcohol-based hand sanitizer will be available at the main entry to the campus, in all classrooms, in the cafeteria and in common areas throughout the campus.
- Staff and students will be expected to regularly wash or sanitize their hands.
- Training will be conducted for all employees and students on effective hand-washing techniques. Posters will be hung beside all sinks to demonstrate appropriate hand-washing measures.
- Requirements for hand washing and/or use of LOISD-provided hand sanitizer:
    - Provide hand sanitizer upon entry to classroom and periodic teacher reminders during instructional day.
    - Thorough hand washing upon return from outdoors, before eating, following restroom breaks.

Disinfecting Expectations

- Staff will have access to disinfectant supplies to sanitize high-touch and working surfaces and shared objects regularly.
- Staff will limit the use of shared supplies when possible.

Protocols for Campus Cleaning and Disinfecting

Daily Campus Cleaning

- Each classroom and restroom will be cleaned daily.
- The cafeteria will be disinfected between lunch periods.
- Staff will have access to disinfectant supplies to sanitize working surfaces and shared objects after each use and during breaks in instruction.

Additional Cleaning Measure for Covid-19 Positive Cases on Campus

- Custodial staff will defog and disinfect classrooms, restrooms, the athletic facilities, weight room and all additional areas in the building when needed.
- Custodial staff will perform additional cleaning in areas of heavy use (classroom, restroom, workroom, etc.) for any individual who is lab-confirmed to have COVID-19 while at school.
- Campuses will close off areas that are heavily used by individuals who are lab-confirmed to have COVID-19 until the non-porous surfaces in those areas can be disinfected, unless more than 3 days have already passed since that person was on campus.

Work and Learning Environments

Classroom Configuration

- See the Prevention Practices table for more information on classroom configuration during moderate and substantial transmission levels.
- Recommended procedures will be applied to all classroom settings, including special education service locations when possible and appropriate. Students' individual needs will be addressed on a case-by-case basis.

Collaborative Work and Projects

- During low transmission levels, collaborative work and projects will be allowed.
- See the Prevention Practices table for more information on collaborative work during moderate and substantial transmission levels.

General Classroom Supplies

- Multiple locations of hand sanitizer, tissues, and trash cans will be available in several locations to limit student and staff movement.

Specialized Classrooms

- There will be adequate supplies to minimize the sharing of high touch materials or limit use of supplies of equipment to one group of students at a time.
- Career and Technical Education classes will follow industry-based safety guidelines as appropriate to the equipment and course content.

Physical Education Classroom Protocols

- Sanitizing areas and access to handwashing will be provided.

Meeting Spaces

- During low transmission levels, face-to-face meetings will be allowed.
- During moderate transmission levels, only meetings essential to school operations will be allowed.
- During substantial transmission levels, no visitors are allowed. All meetings involving individuals outside the school district will be conducted virtually.

Transitions

- During low transmission levels, transitions and traffic patterns are determined by campus procedures. There are no requirements of social distancing during this time.
- During substantial and moderate transmission levels, traffic patterns will be established throughout the campus that separate individuals to the greatest extent possible. When transitioning between classes, students shall travel corridors as far to the right as possible.

Arrival

- Students may not be dropped off until the building is open. The buildings will be open at 7:20 a.m.
- There will be designated doors for entry at each campus. These may be based on arrival methods: bus riders, drop-off, student drivers, and students with unique needs. Campus principals will communicate entry procedures.
- Designated entry doors will be continuously monitored by staff to stop unauthorized access and to monitor for threats.
- Parents may not accompany students into the building. Some exceptions may be made based on campus procedures.

Dismissal

- Sanitizer stations will be placed at each exit and students will be encouraged to sanitize hands prior to exit.

Breakfast/Lunch

- During low transmission levels, cafeteria capacity and seating arrangements will be determined by campus policies.
- During moderate or substantial transmission levels, as much physical distance as possible.
- During moderate or substantial transmission levels, signage and staff will reinforce physical distance and traffic patterns in the cafeteria.
- Hand sanitizer stations will be available at entrances and exits of the cafeteria.
- Water fountains will be used as refill stations at every campus.

Off-Campus Student Activities

- During low transmission levels, student participation in extracurricular contests (Athletics, BETA, Robotics, OAP, UIL, etc.) will be allowed. Fans will also be permitted to attend these events with no limitations unless District, UIL, or TEA guidelines state otherwise.
- During moderate or high transmission levels, activities may be altered and attendance by fans may be limited.
- All field trips require approval of the campus principal. The transmission levels and social distancing capabilities will be considered before a field trip is approved.

On Campus Activities

- During low transmission levels, all school wide events (pep rallies, student assemblies, informational meetings, etc...) will be allowed. Parents and community members will also be permitted to attend these events with no limitations unless District, UIL, or TEA guidelines state otherwise.
- During moderate or high transmission levels, on-campus activities may be altered and attendance by parents and community members may be limited.

Continuity of Services
Teaching and Learning
2022-2023

Face-to-face learning will be the only mode of instruction offered in Lone Oak ISD for the 2022-2023 school year. It is in the best interest of our students to be in school. Assessment data shows deficiencies across the district in core areas. Below are steps the district plans to implement this school year to help close achievement gaps, as well as boost student achievement in all subjects through interactive technology devices.

Lone Oak ISD has developed the following plans to provide a road map for staying on track as we strive to mitigate learning loss for all students. This *Back to School Plan* will work in conjunction with district and campus improvement plans for this school year. The primary instructional goals for this school year will be to:

- Create rigorous, engaging learning environments.
- Create a culture of high expectations-every class, every day for all students.
- Adhere to our guaranteed and viable district curriculum.
- Provide high-impact tutoring for our most at-risk students.

Each campus will adhere to the guidelines set forth in our **Lone Oak ISD 2022-23 Academic Action Plan**, as well as the targeted needs outlined in campus-specific action plans that reflect the needs of individual campuses.

INSTRUCTION AND INTERVENTION

- **Excused Absences due to COVID -** Lone Oak ISD will make every effort to support students during this time through various instructional methods. Teachers may provide and **will be encouraged** to provide access to as much missed instruction during this time as possible to aid in students not getting behind with their studies. However students will be given adequate time to complete assignments when they return according to LOISD grading and grouping guidelines.

- **Friday School -** Lone Oak ISD will host frequent Friday schools for students performing below grade level.
- **Reading & Math Interventionists** - Lone Oak ISD will employ reading and math interventionists at Lone Oak Elementary School and Middle School to work with struggling students. The interventionists will have extensive experience in reading and/or math intervention..
- **High School Data & Assessment Interventionist**- Lone Oak ISD will employ a specialist to analyze data, create assessments, monitor and plan intervention for all students enrolled in an EOC class or lab.
- **During School Intervention Sessions** - Lone Oak ISD will provide designated time during school for tutoring students in reading, math, science and history based on needs. Delivery will be by certified instructional staff.
- **High-Impact Tutoring** - Lone Oak ISD will provide high impact after school tutoring for students in reading and math. Tutoring will begin in September 2022 and conclude in April 2023. Delivery will be by trained instructional staff in high impact tutoring strategies.

PROFESSIONAL DEVELOPMENT

- **TEKS Resource Reboot** - Lone Oak ISD will conduct extensive/ongoing training of all components of the TEKS Resource Curriculum. Training will be provided through Region 10 ESC and by district and campus administrative staff. Training will be both face-to-face and through self-paced, virtual options.
- **Google Training** - Lone Oak ISD will continue to provide Google Suite training to teachers. Although the district will not provide remote learning as an option for students, staff will continue to use the Google tools to communicate with students and parents, as well as engage students in more robust learning opportunities through these digital tools.
- **Eduphoria Professional Development** - Lone Oak Elementary School will offer Eduphoria training for teachers. The goal of this training is to help teachers make data driven decision for accelerated instruction
- **Reading Academies** - Lone Oak Elementary School will continue to send teachers to the state required reading academies.
- **Region 10 Accountability Training** - Lone Oak Administrators will work with specialists to analyze data to ensure intervention and enrichment needs are being met.

TECHNOLOGY

- **Interactive Flat Panels (IFPs) and Sound Boosting Equipment** - Lone Oak ISD will equip multiple classrooms in the district with interactive smartboards to produce productivity and student engagement in the classroom. These devices will be used to enhance collaboration and student discourse.
- **Additional Chromebooks and Laptops** - Lone Oak ISD will continue to add chrome books to each campus so that all students in the district will have accessto the latest technologies that help boost student achievement.

SOCIAL EMOTIONAL LEARNING

- **Why Try Curriculum** - Lone Oak Elementary will continue the use of the Why Time Quest curriculum to use for guidance lessons centered around the social and emotional health of students.
- **Family Engagement** - The Lone Oak ISD will publish a schedule of family engagement nights to share pertinent information with parents and families on health related topics facing students today. These events will be offered throughout the school year.

Texas Education Agency

Commissioner Mike Morath

1701 North Congress Avenue • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • tea.texas.gov

DATE:	**July 7, 2022**
SUBJECT:	**Travel Reimbursement Rates**
CATEGORY:	**Grant Fund Expenditures**
NEXT STEPS:	**Proper preparation of travel reimbursement requests**

The Texas Comptroller of Public Accounts has published the travel and mileage reimbursement rates, as summarized below:

- Effective July 1 – December 31, 2022, the automobile mileage reimbursement rate is 62.5 cents per mile.
- Effective January 1 – June 30, 2022, the automobile mileage reimbursement rate is 58.5 cents per mile. Grantees may claim reimbursement retroactively for this rate for the effective dates.
- Effective October 1, 2021, the meal reimbursement rate for overnight travel is listed by city on the federal per diem rate map. If the city you are traveling to is not listed, use the daily rate for the county. If the county to which you are traveling is not listed, use the current maximum daily reimbursement rate of $59.
- The meal reimbursement rate for non-overnight travel is up to $36.
- Lodging reimbursement rates for in-state and out-of-state travel are listed on the federal per diem rate map. If the city you are traveling to is not listed, use the daily rate for the county. If the county to which you are traveling is not listed, use the current maximum daily reimbursement rate of $96.

The mileage, lodging, and meal rules and reimbursement rates published by the comptroller apply to all grants that the Texas Education Agency administers for individuals on travel status.

See the attached guidelines for summarized travel information. For detailed travel rules and reimbursement rate information, visit the Texas State Comptroller's website.

If you have any further questions, please email grantsupport@tea.texas.gov.

Meals & Incidentals (M&IE) Breakdown

Use this table to find the following information for federal employee travel:

M&IE Total - the full daily amount received for a single calendar day of travel when that day is neither the first nor last day of travel.

Breakfast, lunch, dinner, incidentals - Separate amounts for meals and incidentals. M&IE Total = Breakfast + Lunch + Dinner + Incidentals. Sometimes meal amounts must be deducted from trip voucher. See More Information

First & last day of travel - amount received on the first and last day of travel and equals 75% of total M&IE.

Show entries 10

Filter Results...

Primary Destination	County	M&IE Total	Continental Breakfast/Breakfast	Lunch	Dinner	Incidental Expenses	First & Last Day of Travel
Arlington / Fort Worth / Grapevine	Tarrant County / City of Grapevine	$64	$14	$16	$29	$5	$48.00
Austin	Travis	$64	$14	$16	$29	$5	$48.00
Big Spring	Howard	$64	$14	$16	$29	$5	$48.00
Corpus Christi	Nueces	$64	$14	$16	$29	$5	$48.00
Dallas	Dallas	$69	$16	$17	$31	$5	$51.75
El Paso	El Paso	$64	$14	$16	$29	$5	$48.00
Galveston	Galveston	$64	$14	$16	$29	$5	$48.00
Houston	Montgomery / Fort Bend / Harris	$69	$16	$17	$31	$5	$51.75
Midland / Odessa	Midland / Andrews / Ector / Martin	$64	$14	$16	$29	$5	$48.00
Pecos	Reeves	$59	$13	$15	$26	$5	$44.25

Showing 1 to 10 of 16 entries

Previous 1 2 Next

Purchasing Authority

The Board delegates to the Superintendent the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs $10,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place.

Exception for Emergency Contracts

In the event of a catastrophe, emergency, or natural disaster affecting the District, the Board delegates to the Superintendent the authority to contract for the replacement, construction, or repair of school equipment or facilities in accordance with law, if emergency replacement, construction, or repair is necessary for the health and safety of District students and staff. The Superintendent shall report to the Board at the next regular meeting any contract made under this authority. [See Disaster Exception, CH(LEGAL)]

The delegation regarding emergency contracts does not waive competitive purchasing requirements under Education Code Chapter 44. Only the Board is authorized to waive competitive purchasing requirements under limited circumstances in accordance with Education Code 44.031(h). [See Emergency Damage or Destruction, CH(LEGAL)]

Purchasing Procedures

The Superintendent shall develop purchasing procedures to implement the requirements of state and federal law. [See also CB, CBB, CH(LEGAL), and COA]

Purchasing Method

The Board delegates to the Superintendent the authority to determine the method of purchasing in accordance with CH(LEGAL) or CBB(LEGAL), as appropriate.

Competitive Bidding

If competitive bidding is chosen as the purchasing method, the Superintendent shall prepare bid specifications. All bids shall be in accordance with administrative regulations, and the submission of any electronic bids shall also be in accordance with Board-adopted rules. All bidders shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.

The District may reject any and all bids in accordance with state or federal law, as applicable.

Competitive Sealed Proposals

If competitive sealed proposals are chosen as the purchasing method, the Superintendent shall prepare the request for proposals and/or specifications for items to be purchased. All proposals shall be in accordance with administrative regulations, and the submission of any electronic proposals shall also be in accordance with Board-adopted rules. Proposals received after the specified time shall not be considered. Proposals shall be opened at the time

specified, and all proposers shall be invited to attend the proposal opening. Proposals may be withdrawn prior to the scheduled time of opening. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.

The District may reject any and all proposals in accordance with state or federal law, as applicable.

Electronic Bids or Proposals

Bids or proposals that the District has chosen to accept through electronic transmission shall be administered in accordance with Board-adopted rules. Such rules shall safeguard the integrity of the competitive procurement process; ensure the identification, security, and confidentiality of electronic bids or proposals; and ensure that the electronic bids or proposals remain effectively unopened until the proper time.

Responsibility for Debts

The Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made in accordance with the adopted budget, state law, Board policy, and the District's purchasing procedures. [See CE] The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control. Persons making unauthorized purchases shall assume full responsibility for all such debts.

Purchase Commitments

All purchase commitments shall be made by the Superintendent in accordance with administrative procedures, including the District's purchasing procedures.

Personal Purchases

District employees shall not be permitted to make purchases for personal use through the District's business office.

Lone Oak ISD

State & Federal Grants Manual

2021-2022

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General Information

The district has established fiscal procedures that apply to all financial transactions regardless of the funding source. **Procedures that relate directly and/or indirectly to federal and state grant compliance are indicated with a (†).** A separate section in this Manual will include specific procedures related to acquiring, expending, and managing grant funds.

In accordance with School Board Policy, BP Local, the Superintendent and administrative staff shall be responsible for developing and enforcing procedures for the operation of the District. These procedures shall constitute the administrative regulations of the District and shall consist of guidelines, handbooks, manuals, forms, and any other documents defining standard operating procedures. The Superintendent shall approve this State and Federal Grants Manual on an annual basis, or as appropriate, if federal, state or local changes in regulations or policy warrant immediate changes. **Administrative regulations [procedures] are subject to Board review but shall not be adopted by the Board. [Refer to BP Local]**

Business Department Mission

The Mission of the Dodd City Independent School District Business Office is to provide support to all District students, staff, parents, and the community and to ensure that all business operations are supportive of the instructional goals and objectives of the district in the attainment of the campus performance objectives (Student Achievement Indicators).

The Business Division's primary goal is to protect the assets of the district and to ensure that all financial transactions are performed in accordance with generally accepted accounting practices.

Business Department Staff

The Business Department staff shall perform multiple roles; however, adequate internal controls and separation of duties shall be maintained at all times regardless of the size of the business department staff. The staff consists of:

- Gary Sorrells, Business Manager
- Jan Dewitt, Payroll/Benefits
- Cindy Smith, Accounts Payable
- Rob O'Connor, Federal Programs Director
-

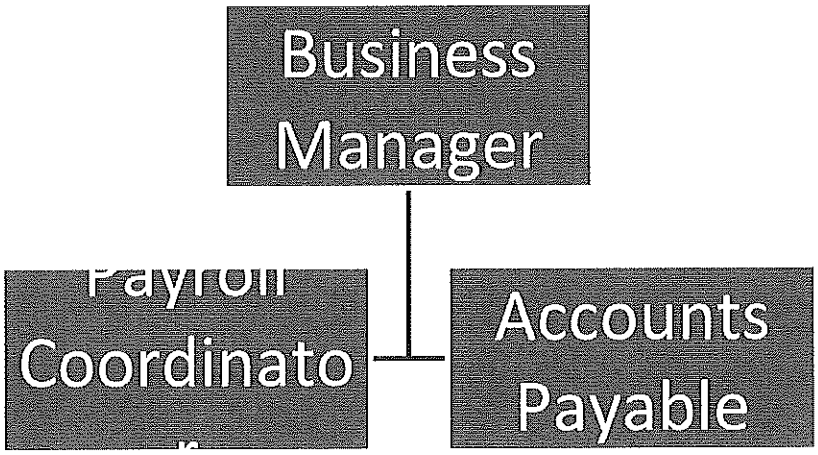
All Business Department staff are expected to comply with the:

- **Code of Ethics and Standard Practices for Texas Educators [Board Policy DH (Exhibit),**
- **School Board Policies, especially CAA Local regarding fraud,**
- **Sample ISD Employee Handbook,**

- **Sample ISD Fiscal Manual, sub-manuals and procedures,**
- **Sample ISD Confidentiality Agreement, and**
- **Sample ISD Technology Responsible Use Guidelines.**

Each staff member shall have an up-to-date job description on file in the Human Resources department. In addition, each staff member should receive and sign a job description and corresponding evaluation instrument during the annual evaluation process. Changes to job descriptions should be made when substantial changes occur in job duties or responsibilities.

Organizational Chart –



General Ledger Maintenance (†)

General ledger entries shall be made on an on-going basis as needed. End-of-the-month and end-of-the-year entries shall be made on a timely basis. End-of-the-year entries shall be made prior to the audit field work by the district's external audit firm.

The Business Manager shall be responsible for monitoring the general ledger maintenance on a monthly basis as part of the monthly End-of-Month Process [Refer to End-of-Month Procedures]. The Business Manager shall have ultimate responsibility for the accuracy of the general ledger. The general ledger shall be reviewed for accuracy in areas such as, but not limited to the following:

- Cash and investment balances equal the respective bank or investment monthly statements
- Aged purchase orders, receivables and payables
- Verify that fund accounts are in balance
- Verify that bank account reconciling items are posted to the general ledger

Journal Entries (†)

All general ledger entries shall be in balance (debits shall equal credits). A Journal Voucher form shall be used to document all entries. All journal entries shall be numbered for tracking purposes. An automated numbering system [through the Finance System [such as Ascender] shall be utilized by the district. The Business Manager and Payroll Director shall be authorized to create journal entries. The Business Manager shall be authorized to approve journal entries. All of the aforementioned business staff shall be authorized to post journal entries to the general ledger.

Note: As an internal control, the Business Manager shall not create, approve and post journal entries with line items in excess of $50,000. Journal entries with one or more line items in excess of $50,000 shall be approved by the Superintendent if the Business Manager has created a journal entry. The Business Manager will then post the journal entry.

All payroll general journals shall be interfaced to the finance system by the payroll department. The payroll department shall verify that the pre-post payroll general journals and the finance payroll general journals are in balance and posted accurately to the general ledger. All payroll general journals must be posted to the finance general ledger no later than the actual pay date.

All changes to the general ledger should be posted within the same month as the changes occurred, if possible, or as soon as practicable. At times, prior to closing the month, additional reconciling journal entries may be posted in accordance with the creation and approval guidelines.

School Board Reports and a detailed Check Payments report for the previous month should be generated by the Business Manager and forwarded to the Superintendent for board review. The financial reports and check payment list shall not be approved by the School Board.

All reports should be filed for audit purposes including, but not limited to, the following:

- Cash General Journal
- General Journal
- Check Payments & Check Register
- Detail General Ledger
- Summary General Ledger

The Business Manager shall review a Summary General Ledger on a monthly basis to ensure the accuracy of fund accounting.

Data Entry and Validation (†)

All data entry shall be from the appropriate source document(s). All data entry shall be validated (verified) with the source documents. A system of checks and balance shall be in place to ensure that all postings to the general ledger result in the desired outcome. For example, a cash receipt journal shall be validated to ensure that the total amount of the deposit matches the posted cash receipt journal. The posted cash receipt journal shall match the bank's validation of the deposit.

Ongoing, daily data entry validation greatly increases the accuracy of the fund accounting and facilitates reconciliation of the monthly bank statements with the general ledger.

General Ledger Transaction (Minimum Data Required) – (†)

All general ledger financial transactions shall require the following minimum data:

- **Date of the general ledger transaction** – the date of the transaction should be within the posting month and within the posting fiscal year.
- **Account code(s)** – the proper account code shall be used for all transactions
- **Journal [transaction] number** – the number assigned should be manually or automatically assigned in a sequential order. A log of the journal numbers utilized each fiscal year should be available in a manual or automated form. Automated, system-generated general ledger entries shall be easily distinguished from manual general ledger entries.
- **The credit and debit amounts**– the total debits must match the total credits
- **Reason for the general ledger transaction** – the reason should explain the reason for the transaction such as cash receipt number, adjustment to budget/expense, etc.
- **Supporting document** – supporting documentation, if any, shall be attached to the journal entry form for audit tracking purposes
- **Signature or initials, as appropriate**
    - Signature or initials of the appropriate approval(s)
    - Signature or initials of the individual posting the transaction.

All general ledger payroll transactions shall require the following minimum data:

- **Check date** – the system-generated general ledger transaction should reflect the check date as part of the journal entry number
- **Account code(s)** – the account codes charged for all payroll disbursements, including liability accounts, should exist in the general ledger prior to posting the system-generated journal entries. [Note: During the payroll posting process, the payroll department must verify that all payroll accounts exist on the general ledger. If accounts do not exist on the general ledger, the accounts should be verified for accuracy and if accurate, the list of account codes must be submitted to the Business Manager to ensure that the appropriate accounts are created in the finance system.

End of Month Process

Within 20 days after the end of the month, all end-of-month reports should be printed and verified and the end-of-month process completed. There are four (4) steps in completing the End-of-Month process as listed below:

- Reconciliation of all bank accounts
- EOM Activities (Report Generation & Verification)
- Run EOM Reports (archival purposes)
- Process the EOM Close

The Finance EOM Checklist and Procedures should be utilized to ensure that all critical steps are followed during the EOM Process.

End of Fiscal Year Process –

All changes to the general ledger should be posted within the same month as the changes occurred, if possible, or as soon as practicable. Within 30 days after the fiscal year, all end-of-fiscal year reports should be printed and verified for audit purposes.

All end-of-fiscal year adjustments should be posted to the general ledger prior to closing out the fiscal year. Prior to the start of the audit field work, the following adjustments shall be posted to the general ledger:

- **Reconcile all cash and investment accounts** – all cash and investment accounts (1110 and 1120) shall match the corresponding bank or investment general ledger balances as of August 31st, as reflected on the respective monthly statement.
- **Reconcile all revenue accounts with amounts received and/or earned as of August 31st** – All measurable revenue should be posted to the general ledger. For example, all state aid earned as of the most recent Summary of Finance report from TEA shall be posted to the appropriate state revenue accounts.
- **Reconcile all state and federal grant revenue and expenditures** – the revenue and expenditures in every grant program (state and federal) should equal. The excess revenue if any should be reclassified to a payable (218X) to the granting agency, unless the excess revenue is an advance payment (deferred revenue - 2310). If expenditures exceed revenue, the amount due from the granting agency should be posted to the revenue account and accounts receivable accounts (124X).
- **Reconcile the final amended budget** – verify that all budget amendments (at the functional level) have been posted to the general ledger. The sum of the original budget, plus all budget amendments during the fiscal year shall equal the final amended budget.
- **Reconcile and post all accounts receivables** – all funds due from other sources, as of August 31st, shall be posted to the general ledger. The other receivables (2190) shall be measurable and expected to be received within 60 days after the end of the fiscal year in accordance with the district's accounting standards.
- **Reconcile and post all accounts payables** – all payables due to others (such as vendors), as of August 31st, shall be posted to the general ledger. The amounts due for all goods and/or services received as of August 31st are classified as accounts payable and paid during the next fiscal year. The district has established a September 20th cut-off for prior year accounts payables, unless the accounts payable expense exceeds $10,000 and is known prior to the end of the audit field work. [Note. The accounts payable account (2111.01) in the prior fiscal year and the next fiscal year must be in balance, except for construction retainage, if any.]
- **Reconcile all accrued wages and benefits as of August 31st** – All accrued wages and benefits (object codes 2161 and 2211) shall be posted to the general ledger, especially for all wages earned in August but scheduled to be paid in the next fiscal year (after September 1st).
- **Reconcile all TRS deductions and payments as of August 31st** – All TRS employee and employer deductions and expenses shall be posted to the general ledger and paid to TRS before the end of the fiscal year. Any funds remaining in object code 2155 shall be reconciled to identify under and/or overpayments to the TRS.
- **Reconcile all mandatory and voluntary deductions as of August 31st** – All mandatory (social security, withholding tax, and garnishments) and voluntary deductions (insurance and other

benefits) shall be posted to the general ledger and disbursed as required by law. Any remaining funds in object codes 2151, 2153 and 2159 shall be reconciled at year end.

- **Reconcile all Due To and Due From accounts as of August 31st** – All Due To and Due From accounts shall be in balance throughout the year and at the end of the fiscal year. (object codes 217X and 126X).
- **Reconcile all prepaid expenses as of August 31st** – All prepaid expenses shall be posted to the general ledger to object code 1410. A prepaid expense is typically one that is represents a disbursement of funds (payment) for goods or services that will be received or utilized in the next fiscal year. For example, a maintenance agreement that has a term of January 1st through December 31st, would have an expense for 6 months in the current fiscal and a prepaid expense of 6 months at the end of the fiscal year. [Note. The prepaid expenses should be cleared in the next fiscal year by posting the expense to the appropriate expense account code(s).
- **Reconcile the fixed assets ledger with all fixed asset additions, deletions, or changes** – All assets (as defined in the Fixed Asset Procedures) acquired during the fiscal year shall be added to the fixed asset ledger (database and/or Excel spreadsheet). Capital assets shall be recorded in object code 663X. All assets disposed of (sold or lost) shall be removed from the fixed asset ledger. Changes, if any, to the location, value, or category of assets shall be posted to the fixed asset ledger.
- **Reconcile the fund balance as of August 31st** – All changes, reductions, additions, and/or designations [restricted, committed, assigned, etc.] of fund balance accounts shall be posted to the general ledger. All budgetary fund balance accounts (object code 3700) shall be posted to the appropriate fund balance account (typically object code 3600). [Note. Changes to the budgeted and committed fund balances should be supported by minutes of Board approval. The Superintendent and Business Manager are authorized by the School Board to assign fund balances.]

Segregation of Duties (†)

At a minimum, the business office staff shall operate under a segregation of duties, including but not limited to, the following:

- **Endorsement of checks** – The same staff member shall not prepare **and** endorse accounts payable or payroll checks.
- **Bank reconciliations** – The same staff member shall not prepare cash disbursements, cash deposits, or other cash transactions **and** reconcile the district's bank accounts.
- **Maintain non-cash accounting records** – The same staff member shall not prepare non-cash general ledger transactions **and** post the transactions to the general ledger.
- **Purchasing and Receiving functions** – The same staff member shall not serve as the final approver of a purchase order **and** verify receipt of the goods.
- **Contract Management** – The same staff member shall not approve a contract for goods or services **and** have sole approval authority to disburse the payment for the contracted goods or services.
- **General Ledger Maintenance** – The same staff member shall not prepare, approve and post a general ledger transaction, unless a specific exception exists in the district procedures.

Retention of Records (†)

All financial records for the current fiscal year shall be retained for audit purposes in accordance with the district Local Records Retention Schedule at the district's administration building. Prior year records shall be transferred to and archived at the district's Records Center. Destruction of records, at the expiration of the records, shall also be in accordance with the district's Local Records Retention Schedule. **Note: The Destruction Schedule [list of all records destroyed] is a permanent document.** Unless a record that has been destroyed is specifically listed on a Destruction Schedule, it is presumed to still exist. **The local retention period or federal retention period, whichever is longer, shall prevail.**

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a **period of three years** from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. **[2 CFR 200.333]**

The district shall maintain grant-related records in a combination of paper and electronic formats. The following records shall be maintained in format(s) specified below:

- Grant applications and grant award notifications (Paper and PDF files)
- Grant revenues and expenditures (Ascender Finance System)
- Grant purchasing records (Ascender Requisition & Finance systems, paper, PDF and Excel files)
- Grant expenditure draw-downs (reimbursements) – Paper, PDF, and Excel files

In accordance with federal regulations, the district shall maintain the grant-related records in an open and machine-readable format. Specifically, the district shall use the following formats to store electronic data. **[2CFR 200.335]**

- Microsoft products such as Word, Excel, Access, etc.
- Financial Management System, Ascender Finance, HR, Assets, Purchasing, etc. modules

The Records Custodian for the financial records of the district is the Superintendent. All questions related to the retention, destruction, and/or addition of new record series shall be directed to the District's Records Management Officer (RMO), _____.

Data System Security & Access to Records (†)

The business department staff handles and/or processes a substantial amount of confidential information. All staff is strictly prohibited from revealing confidential information to an unauthorized individual. Unless required by Federal, state, and local statute, the district is not required to permit public access to their records. The district shall make all grant-related records available for access to the federal granting agency and/or pass-through entity upon request. **[2 CFR 200.336]**

All business office staff shall sign a Confidentiality Agreement on an annual basis. Among the most critical information is documentation related to employee's Personally-Identifiable Information (PII) such as health, benefits, financial, family members, or other personal information. **[2CFR 200.337]** Violators will be subject to discipline, employment termination, and/or may be reported to the

appropriate legal authorities. Violations of some protected information, such as health or medical information, is also protected by federal laws, such as HIPPA.

Unless notified otherwise by the federal granting agency, the district shall retain all financial and program records related to the grant award in accordance with the federal grant. Upon request from the federal granting agency, the district shall transfer the records to the requesting federal agency. **[2 CFR 200.334]**

The business office staff shall be authorized to access the district's financial and/or payroll system(s) for job-related purposes only. Use of the systems for personal reasons or benefit will result in disciplinary action, up to and including employment termination.

Each staff member shall take appropriate steps to ensure that their respective computer system is managed in a controlled environment to prevent unauthorized access. At no time (including lunch breaks) shall a computer system be logged on to a financial data system while unattended by the respective staff member. All computer systems shall revert to a screen lock after **30 minutes (or less) of nonuse**.

Assignment of Access and Passwords (†)

Access to data systems shall be based on the specific job duties and responsibilities of each staff member. Except for limited exceptions, staff will not be given unilateral access to all modules in the financial and payroll system. For example, a payroll staff member will not have access to the human resources system unless the access is limited in scope and "read-only". These restrictions to unilateral access are designed to prevent complete autonomy which could lead to fraud.

Each staff member shall be responsible for securing their assigned (selected) password. At no time shall passwords be shared with others or posted in visible locations within the staff member's work space. Violators of this restriction shall be subject to disciplinary action, including but not limited to employment termination.

Data system access to the authorized modules, shall be determined by the IT Coordinator, Director of Technology and the Business Manager. Each staff member shall have access to their respective database(s) and tabs within a database based on their position. Security roles will be established and assigned with the specific access to each module. In the event that a staff member gains access, due to human or software error, that he/she is not entitled to, it is the responsibility and duty of the staff member to notify the Security Administrator, or the Business Manager, regarding the ability to access the restricted database or module(s).

Revoking Access (†)

Access to data systems are subject to change and/or revocation when changes occur to a staff member's position, duties or responsibilities. Access to data systems are also subject to revocation when a staff member violates the Responsible Use Guidelines. Each staff member shall sign a Responsible Use Guidelines every fiscal year.

Business Staff Training (†)

Every staff member will be scheduled to attend at least one training and/or conference opportunity per year.

An annual training calendar shall be developed that may include, but is not limited to, topics in the following areas:

- Account coding
- Payroll and Human Resources Compliance Issues
- PEIMS Data Reporting and Quality
- GASB
- Audit requirements
- Legal changes, such as Purchasing
- State and Federal Grants Management
- Data system (software)
- Travel Guidelines
- Other job-related area(s) requested by a staff member
- Other job-related area(s) assigned by the supervisor as a growth opportunity

Additional training requests should be submitted to the supervisor. It is the employee's responsibility to request additional training that he/she feels will be beneficial in performing the assigned job tasks. At times, the immediate supervisor may also recommend or direct that a staff member attend specific training to improve their skills or comply with a Growth Plan.

In an effort to support compliance of fiscal policies and procedures, the business office shall conduct annual training for campus and department administrative and support staff, as appropriate. The business manager shall be responsible for developing the training calendar. Critical training areas shall include, but not be limited to:

- Activity Account Management
- Budget Development Process
- Cash Management
- State and Federal Grants Management
- Other area(s) requested by the Superintendent or department/campus administrator

State and Federal Grant Management (†)

The Department of Contracts, Grants and Financial Administration (CGFA) at the Texas Education Agency is responsible for overseeing all phase of federal and state contracts and grants awarded to TEA grantees, including independent school districts, or LEAs. The department houses the following divisions:

- Grants Administration Division
    - Provides centralized administration of all formula and discretionary state-appropriated funds and federal grant funds awarded to TEA.
- Federal Fiscal Compliance and Reporting Division
    - Oversees activities of federal grant programs to determine whether organizations are in compliance with fiscal requirements to ensure that grant recipients spend funds in the manner specified by the grant program.
- Federal Fiscal Monitoring Division
    - Monitors the expenditures of federal grant recipients to ensure federal funds are used for authorized purposes in compliance with federal statutes, regulations, and terms and conditions of the federal awards.

Compliance with all federal and state grant requirements is essential to ensure that all granted funds remain with the district. Failure to comply with grant requirements may result in denial of reimbursement requests and/or requests from the granting agency to return a portion or in some cases all grant funds. The Texas Education agency acts as the pass-thru entity for many of the United States Department of Education (USDE) federal grants.

TEA Grant Opportunities are posted on the TEA webpage to provide administrative guidance, timelines, due dates, program-specific guidelines, use of funds, and many more resources.

Federal Regulations for Federal Grant Awards

All federal grant funds are subject to the compliance with Administrative (EDGAR) and Programmatic (ESSA, IDEA, etc.) regulations for each federal grant award.

Title 34 of the Code of Federal Regulations (34 CFR), known as the Education Department General Administrative Regulations (EDGAR), pertains to TEA grants. For a complete description of the federal regulations that apply to federal education grant awards, visit USDE's EDGAR website. Refer to the

EDGAR Materials and Resources page of the TEA website for details on new federal regulations, including their effective/applicability date, purpose, a list of the OMB circulars they replace, and links to related TEA grantee guidance.

For state-administered federal grants, TEA shall notify the district on the Notice of Grant Award (NOGA) of the applicable administrative regulations.

When the district's local policies and/or procedures conflict with the federal regulations, the district shall comply with the more restrictive regulations in all aspects of federal and state grants management.

Overview of the Education Department General Administrative Regulations (EDGAR). The EDGAR, as amended on December 26, 2014, includes six (6) subparts and multiple appendices under 2 CFR Part 200 of EDGAR as noted below:

- Subpart A – Acronyms and Definitions
- Subpart B – General Provisions
- Subpart C – Pre-award Requirements
- Subpart D – Post-award Requirements
- Subpart E – Cost Principles
- Subpart F – Audit Requirements
- Appendices – I through XI

Generally, 2 CFR Part 200 applies to all programs under the Every Student Succeeds Act (ESSA) and may apply to other US Department of Education grants. **NOTE. The Title VII (Impact Aid) Program is specifically excluded from 2 CFR Part 200. [Reference: 34 Part 299.2]**

The EDGAR in its entirety can be accessed at: Education Department General Administrative Regulations (EDGAR) and Other Applicable Grant Regulations.

Technical assistance and interim guidance can be accessed at: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards | U.S. Department of Education. Interim guidance should be monitored to ensure that additional requirements or flexibilities issued via an OMB Memorandum, but not codified in the EDGAR are known and complied with.

To ensure consistency with the EDGAR, the district shall utilize the acronyms and definitions included in the EDGAR for general terms related to the management of federal grant funds. The EDGAR Acronyms and Definitions can be found in **CFR 200.0** through **200.1**, respectively.

Programmatic regulations for each of the district's federal grant awards are hyperlinked in the List of Grant Awards for easy access to the Fiscal Guidelines, Allowable Costs, and/or other programmatic regulations.

At the District level, managing State and Federal Grants shall be a collaborative process between the Finance (Accounting, Budgeting, Purchasing, Payroll, etc.), Human Resources and Grant Management Departments. Each respective department shall be responsible for their duties and responsibilities as they relate to the management of state and/or federal grants. The duties of each department are listed below in general terms. Additional, specific duties and responsibilities may be listed within an area of compliance within this Manual.

Finance Department

- Assisting the Grant Manager with budgeting grants funds. Preparing and posting the initial budget and all amendments to the general ledger.
- Assisting the Human Resources, Payroll and Grants departments with determining the payroll distribution code(s) for all grant-funded staff.
- Preparing all grant-related financial reports (monthly, quarterly and/or annual).
- Preparing all financial records for the annual financial audit and single audit, as appropriate.
- Ensuring compliance with the FASRG in coding all payroll and non-payroll expenditures.
- Adjusting the general ledger, as appropriate, after the Grant Manager's reconciliation of the time and effort reports, as appropriate if adjustments are necessary
- Developing and maintaining all salary schedules to ensure consistency between local and non-local pay rates (Includes base salaries, stipends and extra-duty rates of pay)
- Managing the day-to-day cash needs for grant expenditures and drawing-down cash reimbursements, as appropriate
- Managing all purchasing and contractual commitments in compliance with the grant periods and allowable cost principles
- Retaining all financial records for the required length of time (5 years) for audit purposes
- Managing all fixed assets and ensuring compliance with the inventory and disposition federal guidelines

Human Resources Department

- Assisting the Grant Manager with the recruitment and hiring of all grant-funded staff
- Ensuring that all grant-funded staff meet the Highly Effective guidelines, as appropriate (and, all state certification requirements)

- Ensuring that all grant-funded staff have a job description with the grant-related duties and funding. (And, that all grant-funded staff sign a job description on an annual basis)
- Preparing any Highly Effective and/or certification reports as required by ESSA
- Maintaining audit-ready HR employee files for financial audit or single audit purposes, as appropriate
- Assisting the Grant Manager with determining the position title, Role ID and other salary information for use in completing the grant application
- Retaining all personnel records for the required length of time (5 years) for audit purposes

Grant Management or Special Program Department **[the role of Grant Manager will be assigned to the Asst. Superintendent for C&I, unless otherwise noted)**

- Working cooperatively with the campus administrative staff to ensure that all grant activities are collaboratively planned and appropriate to each campus.
- Providing supporting documentation for budgeted grants funds. And, submitting all grant amendments to the finance department to facilitate budget amendments.
- Assisting the Human Resources/Payroll department with determining the payroll distribution code(s) for all grant-funded staff.
- Preparing all grant-related programmatic (evaluation) reports (monthly, quarterly and/or annual).
- Ensuring compliance with the FASRG in coding all payroll and non-payroll expenditures.
- Receiving and monitoring the time and effort reports, as appropriate, and submitting adjustments, if any, to the finance department
- Monitoring the spending thresholds throughout the grant period to ensure that the grant activities are being conducted systematically throughout the grant period
- Reviewing and approving all purchasing and contractual commitments in compliance with the grant periods and allowable cost principles
- Retaining all application and programmatic grant records for the required length of time (5 years) for audit purposes
- Providing information to the Human Resources/Payroll department regarding the number and type of grant-funded positions approved in the grant application by the granting authority
- Verifying with the HR department that all grant-funded staff meet the Highly Effective Staff federal guidelines, as appropriate (And, all state certification requirements)
- Verifying with the HR department that all grant-funded staff have a job description with the grant-related duties and funding. (And, that all grant-funded staff sign a job description on an annual basis)
- Verifying with the HR department the Highly Effective Staff Annual Report and conducting the required public notice or hearing, as appropriate
- Assisting the HR department with determining the position title, Role ID and other salary information for use in completing the grant application

Payroll Department

- Maintaining audit-ready payroll employee files for financial audit or single audit purposes, as appropriate
- Assisting the Grant Manager with determining the position title, Role ID and other salary information for use in completing the grant application
- Retaining all payroll records for the required length of time (5 years) for audit purposes
- Assisting the Human Resources & Grants departments with determining the payroll distribution code(s) for all grant-funded staff.
- Receive and review Time and Effort documentation to compare to payroll distribution records.

All departments shall provide staff training for their respective staff and other staff, as appropriate, regarding the grant management duties and responsibilities for each staff member.

Part I - State Grants

State Programs – Allotments

The Texas Education Agency's State Funding Division is responsible for administering the Foundation School Program (FSP) and wealth equalization provisions of the Texas Education Code. In addition to the FSP Basic Allotment, the district receives state program allotments to meet the needs of specific student populations. The special program allotments shall be used to ***supplement*** (beyond the basic program) the academic needs of students enrolled in a special program.

State Program allotments are estimated and paid to school districts through a Summary of Finance template created by the Texas Education Agency. The actual state allotments are calculated as noted below in each respective section. A settle-up process occurs at the end of each fiscal year – funds owed to a district are paid by TEA and funds owed by a district are paid to TEA (or TEA reduces the following fiscal year funds by the amount owed to the state).

A percentage of each state allotment must be spent on "direct" expenditures for the given special program. The current percentages and program intent code (PIC) are noted below by program:

▪ **Special Education**	**55%**	**PIC 23**
▪ **Career & Technical Education**	**55%**	**PIC 22**
▪ **State Compensatory Education (SCE)**	**55%**	**PIC 24-30 (except 25& 27)**
▪ **Bilingual/ESL Education**	**55%**	**PIC 25**
▪ **Dyslexia**	**100%**	**PIC 37**
▪ **Early Education Allotment**	**100%**	**PIC 36**
▪ **CCMR Outcomes Bonus**	**55%**	**PIC 38**

Budgeting Special Program Allotments

The per-pupil expenditures of federal, state and local funds, including actual personal expenditures and actual non-personnel expenditures must be in compliance with federal regulations [ESSA and 34 CFR]. As a best practice, the district shall ensure that the appropriate program intent code (PIC) and campus/department organization codes are used during the budget and expenditure processes. Expenditures coded to PIC 99 (undistributed) and Organization Code 999 will be distributed by TEA using a methodology that may include: student enrollment by campus, staff FTEs, square footage of buildings (for functions such as 34, 35, 51, etc.), or other methodology as may be determined by TEA.

During the budget process, the estimated state allotment shall be calculated by the business manager based on prior year special program enrollment, average daily attendance (ADA), and projected revenue based on the most current Summary of Finance template. The estimated state allotment by special program shall be provided to the Special Program staff. The Special Program staff has global oversight of

all state special programs. The Special Program Coordinators, as noted below, shall be directly responsible for their respective program(s). These special program administrators shall be responsible for the programmatic compliance in their respective program(s). Programmatic compliance shall include, but not limited to: program eligibility, program design, instructional delivery, entry/exit procedures, professional development, and certification.

- Special Education _____
- Career & Technical Education _____
- Gifted & Talented Education _____
- State Compensatory Education (SCE) _____
- Bilingual/ESL Education _____
- Dyslexia _____
- Early Education _____
- CCMR Outcomes Bonus _____

The finance department, specifically the, Business Manager shall be responsible for the financial compliance in each of these special programs. Financial compliance shall include, but not limited to: budgeting development & monitoring, approval of expenditures, financial reporting to TEA, financial audit, calculating per-pupil expenditures by program, and purchasing with state allotment funds.

As part of the budget adoption process, the Business Manager shall verify that the proposed budget includes appropriations in each of the special programs of *no less* than the percentages stated above as required direct expenditures for each special program. [Note. If the District does not budget to compliance, it may not spend to compliance.]

Program Intent Codes (PICs) – FASRG

The mandated program intent codes (as defined in the FASRG or recently by TEA) are classified as Basic or Enhanced. The PICs in these classifications for regular and special program allotments are noted below:

Basic Services – PIC 1X

- PIC 11 Basic Educational Services

Enhanced Services – PIC 2X – 3X

- PIC 21 Gifted & Talented
- PIC 22 Career & Technical Education
- PIC 23 Special Education*
- PIC 24 Accelerated Education (State Compensatory Education)**
- PIC 25 Bilingual and ESL Education***
- PIC 26 Non-Disciplinary Alternative Education Program**
- PIC 28 Disciplinary Alternative Education Program – Basic**
- PIC 29 Disciplinary Alternative Education Program – SCE Supplemental**
- PIC 30 Title I, Part A Schoolwide Activities related to SCE (Campuses

with 40% or more educationally disadvantaged students)**

- PIC 31 High School Allotment (discontinued funding 2018-2019)
- PIC 32 Prekindergarten, Regular
- PIC 33 Prekindergarten, Special Education*
- PIC 34 Prekindergarten, State Compensatory**
- PIC 35 Prekindergarten, Bilingual/ESL***
- PIC 36 Early Education Allotment (New in 2019-2020)
- PIC 37 Dyslexia (New in 2019-2020)
- PIC 38 College, Career and Military Readiness (CCMR) – (New in 2019-2020)
- PIC 43 Dyslexia, Special Education (New in 2020-2021)

*PIC codes used in Special Education mandated spending requirement
**PIC codes used in State Compensatory Education mandated spending requirement
***PIC codes used in Bilingual/ESL mandated spending requirement

If the "intent" of a particular course or program is one of the Enhanced Services, the appropriate PIC shall be used for the expenditures even if an incidental student(s) benefits from the program. For example, the salary of a Bilingual Instructional Aide should be paid 100% from PIC 25, if the intent of his/her position is to support Bilingual students even though 1 or 2 non-Bilingual students also benefit from a small group instructional setting.

Student Special Program Enrollment Reporting (PEIMS)

The special program enrollment shall be reported to TEA through the PEIMS data submissions. Campus principals shall be responsible for developing procedures to identify the entry and exit of students into the state mandated special programs. The procedures shall comply with the Texas Education Code, Chapter 29 for each respective special program. The entry and withdrawal of students in special programs shall be in accordance with the district's Attendance Accounting Procedures Handbook, TEA's *Student Attendance Accounting Handbook (SAAH)* and the *Texas Student Data Standards (TSDS).*

Upon enrollment and throughout the school year, the Student Information System (Ascender) shall be used to record student enrollment in each special program. The student enrollment record shall include the entry and exit date(s) for all special programs that generate state funding.

The PEIMS Annual Timelines shall be used to ensure that prior to the submission of the Fall, Summer and Extended Year PEIMS Student Data that all students are properly coded in their respective special programs. The campus principals shall review the appropriate TSDS reports prior to all PEIMS Submissions to ensure that the student special program enrollment is accurate and reasonable compared to the historical data. The reports listed on the table below include some, but not all, of the reports that each principal shall review and sign-off on before the submission of PEIMS data to TEA.

Submission	Report #	Report Name
Fall	PDM1-120-002	LEP/BL/ESL and Parental Denial Students
	PDM1-120-003	Student Program Roster

	PDM1-120-005	Student Data Review
	PDM1-120-009	Disaggregation of PEIMS Student Data
Summer	PDM3-120-004	Disaggregation of PEIMS Summer Attendance Data
	PDM3-120-013	Special Programs Attendance Data
	PDM3-120-015	Previous Year Average Daily Attendance Data
Extended Yr	PDM4-120-001	Extended School Year (ESY) Services Roster
	PDM4-120-004	Bilingual/ESL Summer School Roster

Staff Full-time Equivalents (FTEs) and Payroll Account Coding

At the beginning of each school year, the salaries of all staff should be determined based on their position and assignment. Specifically, we need to know the following:

- What the employee will do? Determines the function code
- What is the FLSA status of employee? Determines the object code [Exempt staff – 6119 and Non-exempt staff – 6129]
- Where the employee will work? Determines the organization code (may be split)
- Who will benefit? Determines the population served or PIC (may be split)

Determining the correct payroll account distribution code(s) is critical to ensure that all payroll costs are expensed in the correct account code(s). This is extremely important for staff assigned on a part-time or full-time basis to support a special program. Only the payroll costs for services whose intent is to serve one or more special program may be charged to the special program PIC.

Best Practice to ensure accuracy of Staff FTEs by special program:
By **September 15th**, each school year, the Campus Principals shall prepare a Staff FTEs report that is based on the campus Master Schedule. The Staff FTE report shall reflect the names of all staff, the position, and the assignment(s) by PIC code. For example, a teacher that teaches 4 special education classes and 4 career and technical education courses, should have .5 FTEs in PIC 23 (Special Education) and .5 FTEs in PIC 22 (Career Technology). [Note. The master schedule shall reflect the teaching assignment for all teachers and every course section shall reflect the "intent", or population served code. The population served codes and program intent codes are correlated below:

- Population Served Code 04 PIC 21 Gifted & Talented
- Population Served Code 05 PIC 22 Career & Technical Education
- Population Served Code 06 PIC 23 Special Education
- Population Served Code 03 PIC 24 Accelerated Education (State Compensatory Education)
- Population Served Code 02 PIC 25 Bilingual Education
- Population Served Code 07 PIC 25 ESL Education
- Population Served Code 03 PIC 26 Non-Disciplinary Alternative Education Program
- Population Served Code 03 PIC 28 Disciplinary Alternative Education Program – Basic
- Population Served Code 03 PIC 29 Disciplinary Alternative Education Program – SCE Supplemental
- Population Served Code 03 PIC 30 Title I, Part A Schoolwide Activities related to SCE

(Campuses with 40% or more educationally disadvantaged students)

All staff assigned to support all students, not specifically served in a special program, shall be coded as basic population served (01) and the basic program intent code (11).

Special Program Administrators shall also submit a Staff FTE report for non-campus administrative staff **by September 15th** at the beginning of each fiscal year. The PIC codes for the non-campus staff shall reflect what they do, where they are assigned to work, and the special program(s) that they support.

The Staff FTEs reports shall be submitted to the Business Manager no later than the deadline of September 15th at the beginning of each fiscal year. The Business Manager shall verify the Staff FTEs and ensure that funds are budgeted in the appropriate payroll account codes. Budget changes and/or amendments, if any, shall be prepared by the Business Manager. [Note. The minimum spend percentages shall be verified again to ensure that the budgeted amount by PIC still meets or exceeds the minimum spend percentage by special program.]

After approval of the Staff FTEs reports, the Business Manager shall submit the Staff FTEs to the payroll department for the purpose of updating the payroll distribution record(s) of each district employee.

Campus Principals and Special Program Administrators shall be responsible to ensure that any changes to staff assignments are submitted to the Business Manager within five (5) days of the assignment change. The prior process of verifying the FTEs/account codes, approval of the FTE report, and submission of the reports to the payroll department shall occur upon the receipt of assignment changes.

The staff FTEs by special program shall be reported to TEA through the PEIMS data submissions. Campus principals shall be responsible for developing procedures to ensure that all staff, especially instructional staff, has the correct populated served code in the campus master schedule. The procedures shall comply with the district's Attendance Accounting Procedures Handbook, TEA's *Student Attendance Accounting Handbook (SAAH)* and the *Texas Student Data Standards (TSDS).*

The Student Information System (Ascender) shall be used to create the district/campus master schedule, instructor records, and course/section records. Specifically, every course record shall reflect the correct Service ID (as noted on TEDS Code Table C022 Service-ID); and, every section course record shall reflect the correct Population Served Code (as noted on TEDS Code Table C030 Population-Served-Code).

The PEIMS Annual Timelines shall be used to ensure that prior to the submission of the Fall and Summer PEIMS Staff Data that all staff are properly coded in their respective special programs. The campus principals shall review the appropriate TSDS reports prior to all PEIMS Submissions to ensure that the staff data by special program enrollment is accurate and reasonable compared to the historical data. The reports listed on the table below include some, but not all, of the reports that each principal shall review and sign-off on before the submission of PEIMS data to TEA.

Submission	Report #	Report Name

Fall	PDM1-110-004	Staff FTE Summary
	PDM1-110-005	Student and Staff Counts by Service ID
	PDM1-110-006	Staff FTE by ROLE ID
	PDM1-110-007	Payroll Information by Program Intent Code 21 thru 25
	PDM1-111-001	Individual Staff Profiles (PIC Code and Pop Served should match)

State Allotment Program Expenditures Compliance

Throughout the fiscal year and at the end of the fiscal year, the Business Manager shall calculate the periodic and final spend percentages for each special program. The allocated expenditures by program intent code (PIC) shall be used to determine compliance. In the event that direct expenditures fall below the mandated percentages, the Business Manager shall ensure that the deficit amount is budgeted in the following fiscal year. The deficit amounts, if any, shall be provided by the Business Manager to the Special Program Administrators no later than October 1st for planning and budgeting purposes. The Special Program Administrators shall submit the proposed budget to the Business Manager no later than November 1st of the following fiscal year.

The TEA Special Allotments Monitoring Program (SAMP) methodology and expenditure rate calculation worksheet shall be used by the finance department, specifically the Business Manager to ensure compliance with required spend percentages. The SAMP shall include the supplemental state allotment programs: 1.) Special Education, 2.) Compensatory Education, 3.) Bilingual Education, 4.) Career and Technology Education, 5) Dyslexia, 6) Early Education, and 7) CCMR. The Gifted and Talented expenditures (PIC 21) will also be monitored by the TEA.

Upon receipt of a TEA Preliminary SAMP report, the Business Manager shall review the report and submit any additional information to TEA within 10 days of the report. If the results of a TEA Special Allotments Monitoring Program report indicate that the district did not over a period of three (3) fiscal years, utilize the state allotment program funds in accordance with TEC, TAC or TEA guidelines, the Business Manager/Supt. shall develop a Corrective Action Plan. If the Corrective Action Plan indicates that the district must return state allotment program funds to TEA, the funds shall be submitted to TEA within the allotted time period. If the Corrective Action Plan indicates that the district shall correct operational procedures related to the budgeting and expensing of state allotment program funds, the Business Manager shall draft and implement the operational procedures.

State Allotment Program Legal Requirements (TEC excerpts)

State laws, specifically Chapter 29 and Chapter 48 include requirements related to program eligibility and allowable funds. Excerpts from each state allotment program fund requirements are noted in the following sections.

Gifted and Talented

The Gifted and Talented program must adhere to state law, Texas Education Code (TEC) 29.121. Chapter 29 addresses the programmatic guidelines related to eligibility, identification, program services, and use of funds.

Specifically, each school district shall identify students eligible for the GT program and serve the students in an appropriate manner. All student identification and enrollment shall meet the special program guidelines in the Student Attendance Accounting Handbook (SAAH). Student enrollment data shall be submitted to TEA through the PEIMS Fall Submission as of the snapshot date. The attendance and/or contact hour data for funding purposes shall be submitted to TEA through the PEIMS Summer Submission.

Each school district must annually certify to the commissioner that the district has established a program for gifted and talented students as required by Chapter 29 and that the program is consistent with the state plan developed under Section 29.123

The Special Program Administrator with oversight responsibility to certify the Gifted & Talented special program data prior to submission to TEA shall be as noted on the Annual List of Program Coordinators (Exhibit Section].

Career and Technical Education (CTE)

The Career and Technical Education program must adhere to state law, Texas Education Code (TEC) 29.181 and TEC 48.106. Chapter 29 addresses the programmatic guidelines related to eligibility, identification, and program services. Chapter 48 addresses the funding weight(s) and allowable costs.

Specifically, each school district shall identify students eligible for the CTE program and serve the students in an appropriate manner to obtain state funds. The Master Schedule shall serve as the official document to support that each student was enrolled in a CTE course. All student identification and enrollment shall meet the special program guidelines in the Student Attendance Accounting Handbook (SAAH). Student enrollment data shall be submitted to TEA through the PEIMS Fall Submission as of the snapshot date. The attendance and/or contact hour data for funding purposes shall be submitted to TEA through the PEIMS Summer Submission.

The Special Program Administrator with oversight responsibility to certify the CTE special program data prior to submission to TEA shall be as noted on the Annual List of Program Coordinators (Exhibit Section].

Special Education

The Special Education program must adhere to state law, Texas Education Code (TEC) 29.003 and TEC 48.102. Chapter 29 addresses the programmatic guidelines related to eligibility, identification, and program services. Chapter 48 addresses the funding weight(s) and allowable costs.

Specifically, each school district shall identify students eligible for the Special Education program and serve the students in an appropriate manner to obtain state funds. The student's Individualized Education Plan (IEP) shall serve as the official document to support that each student is eligible for

special education, the type of instructional arrangement, and the number of contact hours to be served in a special education setting. All student identification and enrollment shall meet the special program guidelines in the Student Attendance Accounting Handbook (SAAH). Student enrollment data shall be submitted to TEA through the PEIMS Fall Submission as of the snapshot date. The attendance and/or contact hour data for funding purposes shall be submitted to TEA through the PEIMS Summer Submission.

The Special Program Administrator with oversight responsibility to certify the Special Education program data prior to submission to TEA shall be as noted on the Annual List of Program Coordinators (Exhibit Section].

Compensatory Education (SCE)

The Compensatory Education program must adhere to state law, Texas Education Code (TEC) 29.081 and TEC 48.104. Chapter 29 addresses the programmatic guidelines related to eligibility, "at risk" identification, and program services. Chapter 48 addresses the funding formula and allowable costs. The SCE program is funded based on fall PEIMS snapshot count of enrolled students who are reported as economically disadvantaged and the census-based weight associated each identified student's home address. All student identification and enrollment shall meet the special program guidelines in the Student Attendance Accounting Handbook (SAAH). Student enrollment data shall be submitted to TEA through the PEIMS Fall Submission as of the snapshot date. The campus administrator (Principal) and the Child Nutrition Administrator shall be responsible for the collection, maintenance and verification of student home address and free/reduced lunch eligibility respectively. .

Specifically, each school district shall identify students eligible for the Compensatory Education program and serve the students in an appropriate manner to obtain state funds. There are thirteen (14) at risk indicators in state law. Districts may also use compensatory education funds to support students who are identified as economically disadvantaged, even if they are not identified as at risk. The Campus Principal, or designee, at each campus shall be responsible for identification of all at risk students. The at-risk student enrollment shall be reported to TEA through the PEIMS Fall Submission.

The SCE program compliance is unlike the other special programs in that it requires specific documentation as outlined in the Financial Accounting System Resource Guide (FASRG) Module 9. **The District Improvement Plan (DIP) and Campus Improvement Plans (CIP) are the primary source of documentation for the expenditure of SCE funds**. The DIP and CIPs shall include the SCE goals, strategies, activities and resources (Staff FTEs and budgeted funds).

According to TEA, annually within 150 days after the last day permissible to send data for the PEIMS data FINAL Midyear resubmission 2 (typically late July), the District shall electronically submit a PDF version of the DIP and at least two (2) CIPs through the TEASE system. The determination regarding which CIPs to submit to TEA shall be based on the TEA guidelines in the FASRG, Module 9.1.2 Summary of Filing Requirements. The District's submission dates shall be as noted below to ensure compliance with this critical requirement.

- Campus Principals shall submit their CIPs to the Superintendent **by November 1st for review.**
- Campus Principals shall submit their final, approved CIPs to the Superintendent **by June 15th.**
- The Business Manager shall submit the DIP and CIPs through TEASE within the 150-day deadline, **or July 1st**, whichever is earlier.

Financial guidelines related to supplement, not supplant, targeted-assistance versus school-wide campus expenditures, staffing formulas, job descriptions, time and effort, student case counts, local identification criteria and allowable costs are described in Module 6 State Compensatory Education.

Bilingual and ESL

The Bilingual and ESL program must adhere to state law, Texas Education Code (TEC) 29.053 and TEC 48.105. Chapter 29 addresses the programmatic guidelines related to eligibility, identification, and program services. Chapter 48 addresses the funding weight(s) and allowable costs.

Specifically, each school district shall identify students eligible for the Bilingual or ESL program and serve the students in an appropriate manner to obtain state funds. All student identification and enrollment shall meet the special program guidelines in the Student Attendance Accounting Handbook (SAAH). Student enrollment data shall be submitted to TEA through the PEIMS Fall Submission as of the snapshot date. The attendance and/or contact hour data for funding purposes shall be submitted to TEA through the PEIMS Summer Submission.

The Special Program Administrator with oversight responsibility to certify the Bilingual and ESL special program data prior to submission to TEA shall be as noted on the Annual List of Program Coordinators (Exhibit Section].

New Allotments created by HB 3, 86th Legislative Session

House Bill 3 created three new allotments that will require financial reporting: the dyslexia allotment, the college, career and military readiness (CCMR) outcomes bonus, and the early education allotment. The FASRG has been updated in April 2021 with final rules related to the use of these allotments, but the allotments and statutory language around their use are described below.

The use of the dyslexia allotment must be in accordance with TEC 48.103 and can be used only for a student who is receiving services in accordance with an IEP under Section 29.005 or a plan developed under Section 504, is receiving instruction that meets dyslexia criteria established by the State Board of Education and is provided by a person with specific training in providing that instruction, or that is permitted to use modifications in the classroom or accommodations in the administration of assessment instruments on the basis of having dyslexia or a related disorder. School districts are prohibited from using more than 20 percent of the dyslexia allotment to contract with a private provider to provide supplemental academic services recommended in the student's IEP or 504 plan. Students may not be

excused from school to receive these supplemental services. At least 100 percent of the dyslexia allotment must be used in accordance with TEC 48.103.

The use of the early education allotment must be in accordance with TEC 48.108 and can only to fund programs and services designed to improve student performance in reading and math in grades prekindergarten through three, including programs and services designed to assist the district in achieving the goals from the district's early childhood literacy and mathematics proficiency plans adopted under TEC 11.185. At least 100 percent of the early education allotment must be used in accordance with TEC 48.108.

At least 55 percent of the college, career and military readiness outcomes bonus must be used in accordance with TEC 48.110 in grades 8 through 12 to improve college, career and military readiness outcomes.

Part II - Federal Grants

Acronyms and definitions related to federal grant management are listed in the EDGAR, Subpart A, 200.0 through 200.1, respectively, and may be accessed at: Education Department General Administrative Regulations (EDGAR) and Other Applicable Grant Regulations.

These acronyms and definitions are used throughout this manual. One of the most critical definitions is that of a "non-federal entity". When this definition is used it refers to the "school district", as a recipient of a federal grant award.

General Provisions (Conflict of Interest & Disclosure):

The District shall comply with all General Provisions of EDGAR (Subpart B). Specific areas of compliance are noted below:

Federal Regulations (EDGAR)

1. The district shall execute an organizational conflict of interest disclosure (signed by the Superintendent) only if the district enters into a relationship with an outside entity as described in the EDGAR organizational conflict regulations. **[2 CFR 200.318(c)(2)] At this time, the district has no such relationships.** [Note. EDGAR requires that if a non-Federal entity has a parent, affiliate, or subsidiary organization (that is not a state, local government, or Indian tribe), the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest.]
2. The district has developed a **Purchasing Conflict of Interest Form** to be used to disclose employee conflicts related to purchasing, contract management or other expenditure of federal grant funds. [EDGAR requires that **employees engaged in the selection, award and administration of contracts disclose conflicts to the district.] 2 CFR 200.318(c)(1)]**

State Regulations (State Law)

The District has established conflict of interest policies [School Board Policy BBFA, CAA, CB, CBB and DBD).

1. School Board Policy DBD Legal states: A local government officer (defined as the School Board and Superintendent) shall file a conflicts disclosure statement with respect to a vendor if the vendor enters into a contract with the district or the district is considering entering into a contract with the vendor and the officer has a conflict of interest or has accepted gifts in excess of $100 in the aggregate in a 12-month period.
2. School Board Policy DBD Legal states: The Superintendent shall file an affidavit with the Board President disclosing a substantial interest, as defined by Local Government Code 171.002, in any business or real property that the Superintendent or any of his or her relatives in the first degree may have.

Local Regulations (Local Board Policy and/or Procedures)

1. School Board Policy CB Local states: Each employee, board member or agent of the district who is engaged in the selection, award or administration of a contract supported by a federal grant or award and who has a potential conflict of interest as defined at Code of Federal Regulations, Title 2, section 200.318, shall disclose to the district, in writing, any conflict that meets the disclosure threshold in Chapter 176 of the Local Government Code. In addition, each employee, board member or agent of the district shall comply with any other conflict of interest requirements imposed by the granting agency or a pass-through entity.
2. School Board Policy DBD Local states: Any other employee who is in a position to affect a financial decision involving any business entity or real property in which the employee has a substantial interest, as defined by Local Government Code 171.002, shall file an affidavit with the Superintendent; however, the employee shall not be required to file an affidavit for the substantial interest of a relative.

Other Conflict of Interest Requirements

1. The district shall comply with all additional conflict of interest requirements required by the federal granting agency and/or the pass-through entity (TEA).
    a. The District shall disclose in writing to the granting agency and/or pass-through entities any potential conflict of interest concerning the expenditure of federal or state grant funds. The TEA Division of Grants Administration Conflict of Interest Disclosure Form shall be used disclose the potential conflict.
    b. The District shall disclose in writing to the granting agency and/or pass-through entities any violations of federal criminal law including fraud, bribery, or gratuity violations affecting a federal grant award. Upon detection of any fraud, abuse or waste with federal grant funds, the District shall promptly notify the proper legal authorities and pursue appropriate criminal and/or civil actions. The TEA Division of Grants Administration Conflict of Interest Disclosure Form shall be used to disclose the violation(s).
    c. The Superintendent shall be responsible for overseeing, reporting, and documenting any fraud, abuse, or waste of federal grant funds.
    d. The Superintendent shall be responsible for completing the Certification Statement on the TEA Division of Grants Administration Conflict of Interest Forms.
    e. The District shall reclassify fraudulent expenditures made with federal grant awards to local district funds, i.e. the General Fund on a temporary basis and shall seek to recover the funds for fraudulent expenditures from the individual(s) perpetrating the fraud.

Conflict of Interest Forms:

- Sample ISD Purchasing Conflict of Interest Form
- Conflict of Interest Disclosure (CIS) – Texas Ethics Commission
- Conflict of Interest Disclosure Form - TEA Division of Grants Administration
- Mandatory Disclosure Form - TEA Division of Grants Administration

All district employees are prohibited from soliciting gifts or tokens from vendors or other parties who are affected by (or have an interest in) a federal grant award.

In addition, all district employees are prohibited from accepting *unsolicited* gifts or tokens from vendors or other parties who are affected by (or have an interest in) a federal grant award that exceed an nominal (individual) value of $25 [IRS business gift limit] and an aggregate value of $100 [or current Conflict of Interest limit, whichever is less] in a fiscal year. The unsolicited gifts or tokens may be a nominal meal, vendor exhibit promotional items, calendars, or other nominal value items not specifically excluded below:

- Items prohibited at a public elementary and secondary schools such as drugs, tobacco or alcohol products

District employees who violate this administrative directive shall be subject to disciplinary action, up to and including termination of employment with the district. Violations that exceed the federal Conflict of Interest thresholds shall be reported to the federal granting agency and/or pass-through entity by the Superintendent.

Pre-Federal Award Requirements:

The federal awarding agency and pass-through entities, in accordance with **2 CFR 200.332**, are required to evaluate the risk of the District in respect to financial stability, quality of management system, history of performance (grants), audit reports and ability to effectively implement the grant program.

To comply with this requirement, the Federal Fiscal Monitoring Division at TEA conducts an annual risk assessment of all subrecipients, including local educational agencies, to determine their potential risk of noncompliance. Based upon the outcome of the risk assessment, subrecipients are assigned a risk level of low, medium, or high.

The division updates the risk assessment model annually to ensure that risk indicators and weights reflect current risks, such as economic conditions; political conditions; regulatory changes; unreliable information; financial problems that could lead to diversion of grant funds; loss of essential personnel; loss of accreditation; rapid growth; new activities, products, or services; and organizational restructuring.

The risk assessment criteria include indicators and weights derived from multiple sources. Each subrecipient is allotted points based upon these criteria, and assigned a risk level of high, medium, or low based on the total number of points allotted.

The current TEA criteria to determine the risk level is available on the TEA website at: Annual Federal Fiscal Risk Assessment | Texas Education Agency.

The effects of the district's risk level determined by TEA may impact the districts in the following ways:

- ***Differentiated Grant Negotiation.*** TEA uses a differentiated grant negotiation process for federal grant applications. Organizations with a medium or high risk level are subject to a more stringent grant negotiation review than those with a low risk level.
- *Subrecipient Monitoring.* Each year, TEA selects subrecipients for fiscal monitoring, according to their risk levels. The higher your organization's risk level, the more likely you are to be selected for monitoring.

The Superintendent shall obtain the district's risk assessment level by accessing the GFFC Reports and Data Collections secure application on an annual basis.

The District shall implement strategies as noted below to ensure that its risk level for federal grants management is determined to be "low":

1. Timely submission of all required programmatic and financial reports
2. Timely and consistent submission of reimbursement requests as an indication that the district is regularly spending the federal grant funds to conduct approved grant activities
3. Complying with the federal grant award fiscal guidelines and allowable cost principles
4. Ensuring that all grant-related staff are properly trained in their respective grants management role on at least an annual basis.
5. Developing and implementing district policies and procedures for all critical business functions
6. Developing and implementing grant management procedures and internal controls

If the District is determined to be a "high risk" district, it shall comply with all of the additional requirements as imposed by the federal granting agency and/or pass-through entity. In addition, the District shall develop and implement strategies to correct the identified deficiencies in an effort to move to a "low risk" entity status.

No pre-award expenses or obligations shall be made by the District prior to the approval of the federal granting agency or pass-through entity. **[2 CFR 200.458]** Non-authorized pre-award expenses, if any, shall be paid from local District funds, i.e. the General Fund.

Grant Application Process

The district may be eligible to apply for "entitlement" and/or "competitive" federal grant funds.

Federal entitlement grant funds include, but are not limited to, Every Student Succeeds Act (ESSA), Individuals with Disabilities Education Act (IDEA), and Carl D. Perkins. The "maximum" and/or "final" entitlement awards for the district are posted on the TEA Grants Management webpage at: Administering a Grant | Texas Education Agency. The Grant Manager shall obtain the annual entitlement amounts and begin the grant development process with the appropriate stakeholders.

A list of competitive grants administered by the TEA are also posted on the TEA Grants Management webpage at: ProgramSearch (state.tx.us). The Grant Manager shall obtain the competitive grant information to determine whether the grant(s) is appropriate for the district. Some competitive grants may have matching-funds and/or in-kind payment requirements which may place a burden on the district's available financial resources.

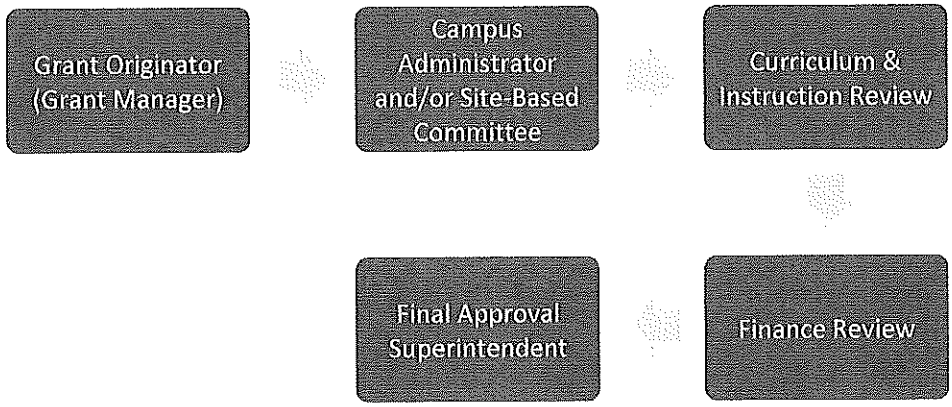
TEA's Grant Opportunities webpage provides a wealth of information related to available grants such as: [http://burleson.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx]

- **General and Fiscal Guidelines**
- **Program Guidelines**
- **Program-Specific Provisions and Assurances**
- **General Provisions and Assurances**
- **Debarment and Suspension Certification**
- **Lobbying Certification**
- **Sample Application**
- **Deadlines and Due Dates for: grant application, amendments and grant reporting.**

All district staff involved in the management of federal grant awards shall be aware of these resources.

The school district's grant application process for federal grants is illustrated below on a flowchart (Illustration 1). As noted on the flowchart, all grant applications must be reviewed by the Finance, Curriculum & Instruction, and Grants Management departments. In addition, all grant applications that will support student instruction at one or more campuses, must be developed in collaboration with the respective campus principal(s). Specific grant activities to support the academic program at a campus should be reflected in the Campus Improvement Plan.

Illustration 1. Grant Application Approval Flowchart



The final approval of all grant applications shall be the Superintendent.

The Grants Manager shall work collaboratively with the finance department to ensure that all grant budget schedules are completed using the correct account code structure (as appropriate); the district's

purchasing, travel, and other procedures; and are adequately documented if prior approval is required by the granting agency or pass-through entity (TEA).

The Grants Manager shall obtain pre-approval for the following activities which have been identified by the granting agency or pass-through entity (TEA);

- Student educational field trips – TEA Division of Grants Administration form
- Hosting or sponsoring conferences - TEA Division of Grants Administration form
- Out-of-state travel - TEA Division of Grants Administration form
- Request for Approval of Special or Unusual Costs – TEA Division of Grants Administration form
- Request for Approval of Participant Support Costs – TEA Division of Grants Administration form

An approved copy of a pre-approval form, if required, shall be attached to the purchase order for audit purposes.

Grants that require matching or in-kind district contributions shall be evaluated for overall impact on the district's current and future local funds.

No federal grant funds shall be budgeted, encumbered, or spent until either of the following has occurred:

- grant has been approved by the granting agency and a Notice of Grant Award (NOGA) has been issued to the district; or
- the entitlement grant has been received by the district and the grant application has been submitted to TEA

[NOTE: TEA allows federal grant expenditures from the grant application "stamp-in date"; however, expenditures that require TEA's specific approval are not approved until the NOGA is issued.]

The grant application shall be the source document to create the original budget. The Grant Manager shall review the grant application, especially the Budget Schedules, and only budget allowable expenditures and object categories. Reserved funds, if any, shall be included in the original budget.

The Business Manager shall notify the Grants Manager when the funds have been budgeted and are ready for expenditure by the appropriate campus or department.

General Provisions and Assurances

General Provisions and Assurances apply to all grants administered by TEA. Additional provisions and assurances may apply to specific grants. The Grants Manager shall inform all staff involved in the expenditure of grant funds of the provisions and assurances for each grant program, as appropriate. Numerous resources are available on TEA's Provisions and Assurances webpage at: http://tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/Provisions_and_Assurances/

- **General Provisions and Assurances (The New EDGAR)**
- **Debarment and Suspension (The New EDGAR)**
- **Lobbying Certification (The New EDGAR)**

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

The district must not award a contract [required for all federal grants, regardless of dollar amount] to a vendor which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal grant award programs. **[2 CFR 200.213]**

The finance department [purchasing] shall verify the eligibility of each vendor with this certification requirement by requesting that the vendor execute a Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts and Grants Form before awarding a contract and/or issuing a purchase order. A copy of the certification Form shall be maintained with the contract and/or purchase order for audit purposes.

The finance department [purchasing] shall monitor ongoing contracts to verify the contractor's compliance with the debarment, suspension, ineligibility and voluntary exclusion provisions. In the event that a vendor is suspended or debarred during a contract, the district shall continue the contract in force until the contract lapses. The contract term shall not include any extensions to the original term of the contract.

The Vendor Management Procedures shall be utilized to verify that vendors are not on the State of Texas or Federal (www.sam.gov) debarred lists.

Lobbying Certification

For all federal grants in excess of $100,000, the district shall certify on the grant application that no federal grant funds are expended for the purpose of lobbying. [Appendix II – H1] The grants management and finance departments shall jointly execute a Lobbying Certification Form [Standard Form – LLL: Disclosure of Lobbying Activities], as applicable, if the district used funds other than federal grant funds for lobbying activities.

The grant manager shall ensure that all contract award documents with federal grant funds contain the appropriate lobbying certification language.

Budgeting Grant Funds

The finance department, shall budget grant funds in the appropriate fund code as authorized by Financial Accountability System Resource Guide, or the granting agency, as appropriate. In addition, the object expenditure codes noted on the grant application shall be consistent with the budgeted account codes.

For example, if the grant application included $2,000 for "6219 Professional Services", the budget shall include an appropriation for Professional Services in object code 6219. However, if the intent was to expend funds to pay a Math Consultant, the grant application may need to be amended to move the

"6219 Professional Services" funds to the correct object code "6299 Other Professional Services". **All expenditures shall be made from the correct FASRG object code.**

Federal grant funds shall be budgeted and available for use no later than 30 days after receipt of the NOGA or from the stamp-in date, whichever is earlier.

Budget amendments, if any, shall be approved by the Grant Manager, to ensure that the reclassification of funds is allowable under the grant management guidelines related to budget amendments. Some grants allow a transfer of funds, up to 25% of the grant award, but only within the same object class and if the new object code does not require specific approval from the granting agency.

The TEA Grants Division has developed guidance related to "When to Amend" grants administered by the TEA. The guidance document is posted on the TEA website at: http://tea.texas.gov/Finance_and_Grants/Administering_a_Grant.aspx.

The guidance document contains the following guidance:

1. Use Table 1 for federally funded grants and for grants funded from both federal and state sources.
2. Use Table 2 for state-funded grants. Refer to the "Select Grantees" column if the NOGA is for over $1 million.

In addition to TEA's guidelines, federal regulations require that the district amend the grant application when grantees deviate from the original scope or grant objectives. Other amendments may be necessary when the district changes the designated Grant Manager, disengages from grant activities for more than three (3) months, or a 25% reduction in the time devoted by a grant manager.

Best Practice for Monitoring Grant Expenditures

The Grant Manager shall monitor the need for amendments at least quarterly throughout the grant period and at least one (1) month prior to the grant amendment deadline, as applicable. If an amendment is necessary for any of the reasons specified by the pass-through entity (TEA) or in federal regulations, the Grant Manager shall initiate the amendment process and collaborate with the Business manager prior to submission of the grant amendment. The approval process of a grant amendment shall be the same as the grant application process, i.e. the Superintendent shall approve all federal grant amendments.

The finance department, shall be responsible for ensuring that the finance system budget corresponds to the most recent grant NOGA.

Financial and Program Management

The District must comply with all requirements of federal grant awards including the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and the Financial Assistance Use of Universal Identifier and Central Contractor Registration (CCR). **[2 CFR 200.211]**

FFATA Reporting

The district shall report the following for all federal grant awards, as appropriate. The Business Manager shall be responsible for collecting and reporting the information.

1. The following data about sub-awards greater than $25,000
    a. Name of entity receiving award [entity = district]
    b. Amount of award
    c. Funding agency
    d. NAICS code for contracts / CFDA program number for grants
    e. Program source
    f. Award title descriptive of the purpose of the funding action
    g. Location of the entity (including congressional district)
    h. Place of performance (including congressional district)
    i. Unique identifier of the entity and its parent; and
    j. Total compensation and names of top five executives (same thresholds as for primes)
2. The Total Compensation and Names of the top five executives if:
    a. More than 80% of annual gross revenues from the federal government, and those revenues are greater than $25M annually and
    b. Compensation information is not already available through reporting to the SEC.

At the present time, the district has no federal grant sub-awards greater than $25,000.

Financial Management System

The District's financial management system, Ascender Finance System, shall be utilized to record, expend and track all federal grant revenues and expenditures. The financial management system shall be maintained in a manner that provides adequate internal controls over the data integrity, security and accuracy of the financial data. **[2 CFR 200.302(a)]**

The financial management system must contain information pertaining to all federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation. All expenditures of federal grant funds shall be in accordance with the district's written procedures such as cash management, accounts payable, purchasing, travel, allowable costs, capital asset tracking, contract management, and other procedures, as appropriate. In addition, the district shall include written procedures to implement the requirements of 2 CFR 200.305 Payments. **[2 CFR 200.302(b)(6)**

Records Retention

The financial management system shall be utilized to store, maintain, and report all required federal grant information. **[2 CFR 200.334]** Consequently, the district shall ensure that access to the data is restricted to authorized individuals in accordance with the district's Data Security and Access policies. In addition, the district shall retain all federal grant records for a period of five (5) years in accordance with the district's Local Records Retention Plan. [Note: The district's retention period exceeds the three (3) year retention period required in the EDGAR.] The district's Record Management Officer (RMO), the

Business Manager, shall be responsible to ensure that all records are retained, stored and accessible, as appropriate.

List of Federal Grant Awards

A list of all federal grant awards shall be maintained to include all EDGAR required data (denoted with an *) and district-required information listed below: [List of all federal grant awards with the required identification information is included in the Exhibit Section] **[2 CFR 200.302(b)(1)]**

- The CFDA title and number*,
- Federal award identification number and year*,
- Name of the Federal agency*, and
- Name of the pass-through entity*, if any.
- Grant period (start and end of the grant award)
- Grant award (dollar amount of award)
- Grant manager for each grant (Generally, the Asst. Superintendent for C&I shall serve as the Grant Manager, unless otherwise noted)
- Subgrants, if any
- TEA-assigned risk level for each grant, as appropriate
- Applicable federal regulations (OMB A-87 or EDGAR, based on the date of grant award)

On at least a monthly basis, the Grant Manager, shall review the status of each federal grant fund. The review shall include a comparison of budget to expenditures. **[2 CFR 200.302(b)(5)]**

Internal Controls

Internal controls, defined in **2 CFR 200.1**, is a process, implemented by the district, designed to provide reasonable assurance regarding the achievement of objectives in the following categories.

- Effectiveness and efficiency of operations
- Reliability of reporting for internal and external use; and
- Compliance with applicable laws and regulations.

The district' Internal Control Procedures over financial management, developed in accordance with the Internal Control Integrated Framework (COSO) and TEA's Internal Controls Guidance Handbook, shall be made available to all staff involved in the management of federal grant funds. **[2 CFR 200.303]** TEA's Internal Controls Guidance Handbook provides a general overview of internal controls as they relate to the federal grants TEA awards. According to the Handbook, the district must have an effective system of internal controls in place to prevent, detect and reduce the risks of fraud, waste and abuse of federal grant awards.

The internal control procedures shall be reviewed on at least an annual basis and updated as appropriate. If any weakness in an internal control is detected, the internal control procedures shall be revised to incorporate the weakness(es) at either the annual review or as the need arises dependent upon the severity (materiality) of the weakness.

The Business Manager shall be responsible for the annual review and update of the Internal Control Procedures.

Bonds

If the granting agency requires that the district obtain bonding and/or insurance for a specific project, the district shall ensure that the bonds are obtained from a company that holds a certificate of authority as specific in 31 CFR Part 223, Surety Companies Doing Business with the United States.

The Superintendent shall be responsible for obtaining insurance and/or bonding, as appropriate.

Payments from the Granting Agency and to Vendors

Payments to vendors shall be made promptly in accordance with federal regulations and state law. Specifically, in accordance with the Texas Prompt Payment Act, the district shall pay all invoices within 30 days of receipt of the goods/services and the invoice, whichever is later.

The district has determined that it will accept advanced payments for federal grant funds. Acceptance of advanced payments require depositing of the funds in an interest-bearing bank account, tracking of interest earnings, and return of all investment earnings in excess of $500 per year to the granting agency. **[2 CFR 200.305(9)]**

The district shall seek reimbursement for federal grant expenditures, rather than using an advanced payment method. Consequently, the district shall prepare and submit a "draw-down" of federal grant funds only after the payments have been made and distributed to the vendor via mail, e-payables or other delivery method. The draw-down of expended funds shall be net of all rebates, refunds, contract settlements, audit recoveries and interest earned, as appropriate. The Grant Manager shall be responsible for preparing the draw-down of federal grant funds. All draw-downs shall be recorded on the general ledger as a receivable when the draw-down process is complete and posted to the cash account upon receipt of the receivable.

The Federal Grant Fund Expenditure Reimbursement Certification Form shall be prepared and certified by the Business Manager and Grant Manager prior to completing the on-line [or manual] draw-down procedure. To ensure that the district does not draw down any advanced funds, the draw down shall occur after the 10th of the following month to ensure that all payroll-related liabilities, such as federal taxes and Texas Teacher Retirement System deposits, have been disbursed from the districts bank accounts. The draw-down of payroll expenditures shall be net of all accrued wages (object code 2161) and payroll liabilities (object code 2211).

All expenditures must meet the Obligation Rules (Title 34, 76.707). Obligations that are liquidated and recognized as expenditures must meet the allowable cost principles in 2 CFR 200, Subpart E of EDGAR (as applicable) and program rules, regulations, and guidelines contained elsewhere.

The Grant Manager shall strive to "draw-down" federal grant funds only a monthly, or at least quarterly basis. **TEA requests that LEAs make timely draw-downs to ensure that funds are being used and that grant activities are being met throughout the grant period.**

Cost Sharing or Matching Funds

The Grant Manager shall ensure that requirements for cost sharing and/or matching funds are approved through the grant approval process prior to the submission of the grant. At a minimum, the Grant Manager and the Superntendent must approve the commitment of all cost sharing and matching grant funds.

If cost sharing or matching funds are required as part of a federal grant award, the required direct or in-kind expenditures should be recorded and tracked on the general ledger. If matching grant funds are required in the General Fund (Fund 199), the district shall utilize a sub-object to separately track the expenditures for reporting and compliance purposes.

All staff paid with cost sharing and matching funds, shall be subject to the federal Time and Effort Documentation requirements.

Cost sharing and matching funds that are as a result of donated services or supplies, shall be recorded and tracked in accordance with the federal regulations **(CFR 200.306).**

Program Income

The district does not plan to generate any program income as part of a federal grant award. Federal regulations **(CFR 200.307)** allow the district to generate program income to offset federal grant award costs. Income earned, if any, must be expended in accordance with the grant requirements.

In the event that the district opts to generate program income as part of a federal grant award in the future, all recommendations for program income activities, shall be reviewed and approved by the Grant Manager and the Superintendent.

If program income activities are approved, the Grant Manager over the activities shall ensure that the costs of generating the program income are not federal grant funds, are nominal in cost, are offset from the program income, and meet all of the federal requirements. The TEA Division of Grant Administration Request to Add Program Income to Federal or State Grant Award and Expansion Delivery of Programmatic Services Form shall be used to request authorization to use any program income to support a state or federal grant.

The district shall not retain any program income earned through a federal grant program.

Period of performance (Obligations)

All allowable grant expenditures shall be incurred during the grant period, i.e. begin date and end date of the federal grant award as designated on the Notice of Grant Award (NOGA). The Grant Manager shall notify the appropriate departments, such as Purchasing, Human Resources, Finance, Payroll, etc. of the grant periods for each federal grant award to ensure compliance as noted below:

- No employee shall be hired and paid from federal grant funds except during the federal grant period
- No purchase obligation shall be made from federal grant funds except during the federal grant period

- No payroll or non-payroll expenditures shall be made from federal grant funds except during the federal grant period.

The district's Purchasing Deadlines have been established to facilitate the purchase of all goods and service within the fiscal year and/or grant period. The purchasing deadline for non-federally funded purchases is May 1st of each fiscal year. The purchasing deadline for federally funded purchases will follow this same deadline, unless the deadline is adjusted to fall within the grant's period of performance. At a minimum, the purchasing deadlines for federally-funded purchases shall end approximately two (2) months prior to the end of the grant period to ensure **receipt** and **use** of the goods or services for the intended grant activities.

All obligations with federal grant funds must occur during the grant period. Obligations that occur before or after the grant period are not allowable costs. The obligations must be liquidated in accordance with the grant deadlines, especially as they relate to the final draw-down of federal grant funds. **[2 CFR 200.309]**

Guidance regarding the obligation of federal grants funds [Title 34 76.707] can be found in TEA's General and Fiscal Guidelines. Excerpt from the guidelines is noted below:

An obligation occurs depending upon the expenditure, as described in the following table.

If the Obligation Is For—	The Obligation Is Made—
Acquisition of real or personal property	On the date the grantee makes a binding written commitment to acquire the property
Personal services by an employee of the grantee	When the services are performed
Personal services by a contractor who is not an employee of the grantee	On the date on which the grantee makes a binding written commitment to obtain services
Performance of work other than personal services	On the date on which the grantee makes a binding written commitment to obtain the work
Public utility services	When the grantee receives the services
Travel	When travel is taken
Rental of real or personal property	When the grantee uses the property

Procurement Standards and Expenditure of Grant Funds

Procurement with and expenditure of grant funds shall be through the documented purchasing, finance or payroll department processes in place for non-grant funds and shall have additional requirements as noted below to ensure full compliance with federal regulations, specifically the Procurement Standards in ***EDGAR 2 CFR Part 200.318-200.327.***

The district shall comply with the general procurement requirement of the EDGAR (2 CFR 200) **effective July 1, 2018 and amended in November 2020.** The district shall utilize a purchase order and encumbrance system to manage the expenditure of all federal grant funds unless other methods such as

credit cards, petty cash, direct payments, etc. are authorized in the district's operating procedures. All purchases shall be in accordance with the district's School Board Policies (CH Legal and Local) and the district's **Purchasing Procedures (Exhibit Section). The district purchasing procedures shall comply with all federal, state, and local procurement requirements. If a conflict arises between the federal, state and local requirements, the stricter requirement shall prevail.**

The district shall adhere to state law and federal guidelines related to competitive procurement of grant purchases. Specifically, the district shall comply with the Texas Education Code, Chapter 44 regarding the authorized competitive procurement options available to school districts. In addition, any competitive procurement requirements specific to a federal grant must also be adhered to for all grant purchases. For example, a federal grant may require that all purchases and/or contracts that exceed $100,000 be approved by the granting agency before approval of a purchase order or contract.

Additional compliance with federal guidelines may include specific approval for purchases from sole sources vendors, non-appropriate cancellation language in multi-year contracted purchases, vendor selection criteria, and other guidelines specific to a federal grant.

The district shall utilize the Financial Accountability System Resource Guide (FASRG) Account Code Structure to record all payroll and non-payroll expenditures. Additional guidance regarding the FASRG Account Code Structure is available on the TEA Website (www.tea.texas.gov) and the district's Chart of Accounts Reference Guide.

The Grant Manager for each federal grant shall be responsible for the programmatic and evaluation compliance and the Business Manager shall be responsible for the financial compliance. A **List of Grant Managers** by federal grant is included in the Exhibit section. The use of "Grant Manager" throughout this document shall refer to the specific Grant Manager by federal grant as listed on this document.

Federal Regulations - Education Department General Administrative Regulations (EDGAR)

The district shall adhere to the **Education Department General Administrative Regulations (EDGAR)** and any additional grant-specific cost principles. The 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards include numerous requirements of the grantee.

All refunds, rebates, discounts, or other credits to grant expenditures shall be posted to the finance general ledger as soon as the credit is known. [Note. It is essential to post all credits to the general ledger on a timely basis to ensure that the district does not draw-down grant expenditures in excess of actual expenditures net of all credits.]

Additional information related to the EDGAR is located at:
http://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html

State-Administered Federal Grant Guidelines and Requirements

The district shall also adhere to General and Fiscal Guidelines established by the Texas Education Agency. The guidelines for grants awarded before and after December 26, 2014 are hyperlinked below:

- **General and Fiscal Guidelines (through December 26, 2014)**
- **General and Fiscal Guidelines: EDGAR (after May 1, 2020)**

The district shall also adhere to grant-specific cost requirements established by the Texas Education Agency. The grant-specific guidelines for current district grants are hyperlinked under the Grant Opportunities webpage at: Guidelines, Provisions, and Assurances | Texas Education Agency

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- **2020-2021 ESSA Consolidated Federal Grant Program Guidelines**
  - **ESEA Title I, Part A Improving Basic Programs**
  - **ESEA Title II, Part A Teacher/Principal Training**
  - **ESEA Title III, Part A English Language Acquisition**
- **IDEA, Part B Formula and Preschool**
- **Carl Perkins, Career and Technical Basic Grant**

Local Guidelines Related to Unallowable Costs - Optional

The district has developed local guidelines related to unallowable costs with federal grant funds. The unallowable costs are noted below or in the Exhibit Section.

Unallowable Costs

- Snacks that do not meet the Smart Snack federal and/or state guidelines (Copy of USDA Smart Snack Standards included in the Exhibit Section).
- Commercial printing in color, unless it is deemed necessary to accomplish grant activities
- Meals (during a Working Lunch or Professional Development) that exceed $20 per person [maximum amount per EDGAR, but the district could elect a lesser amount]
- Educational field trips to an amusement park for recreational purposes only
- Consultant fees in excess of $2,500 per day [no maximum in EDGAR, but there may be a grant-specific maximum], unless an exception is authorized by the Superintendent

Procurement Tracking and Documentation

The Grant Manager shall be responsible for ensuring compliance with all federal, state and local procurement requirements and for ensuring that the district maintains an up-to-date procurement history to include, but not limited to, the information below for all federal-funded purchases ***(2 CFR 200.318(i)).***

- *Rationale for the method of procurement
- *Selection of contract type
- *Contractor selection or rejection
- *Basis for the contract price
- List of all procurements by type
- Like-item category (commodity code)

- Advertisement date(s) of the procurement
- Release date of the procurement specifications
- Selection criteria for vendors
- Opening date of the procurement
- List of vendors submitting a proposal/bid
- Selection of Vendor
- Date of contract award
- Begin date of contract
- End date of contract
- Contract Amount

*EDGAR-specific provisions [2 CFR 200.318(i)].

The procurement history records and other procurement records shall be retained in accordance with the federal, state and/or local retention periods, whichever is greater. The procurement records shall be made available to the federal granting agency, pass-through entity (TEA), and auditors, as appropriate.

Purchasing Efficiency Strategies

All purchases shall be purchased from a variety of qualified vendors with the ability to perform successfully under the terms and conditions of a proposed procurement. The district shall strive to avoid acquisition of unnecessary or duplicative items ***(2 CFR 200.318(d)).***

The district shall implement the following strategies to maximize federal grant funds:

- Consolidation of purchases to obtain volume pricing, as appropriate
- Evaluate the cost efficiencies of leases versus purchases of equipment
- Utilize cooperative purchasing agreements, as appropriate, to obtain volume pricing ***(2 CFR 200.318(e))***
- Utilize federal or state excess/surplus property supplies or equipment in lieu of purchasing new supplies or equipment, as appropriate ***(2 CFR 200.318(f))***
- Utilizing value-engineering in construction projects to seek cost reductions ***(2 CFR 200.318(g))***
- Develop vendor selection criteria to select the best vendor ***(2 CFR 200.318(h))***
- Develop a tracking system of all informal and formal procurements ***(2 CFR 200.318(i))***
- Avoid "time and materials" contracts if other alternatives exist ***(2 CFR 200.318(j)(1))***
- Monitor vendor performance to ensure that the vendor provides the services and/or goods, as appropriate ***(2 CFR 200.318(k))***
- Ensure that all contract and vendor disputes are resolved in the most advantageous manner
- Minimize the risk of jurisdictional issues by ensuring that all contracts would be litigated in a court within the county, city and/or state, as appropriate

The district has determined that its procurement systems comply with the Procurement Standards or The district may complete a review of the procurement system to self-certify that the procurement

system is efficient and effective ***(2 CFR 200.325)***. The Business Manager shall oversee the completion of the self-certification. The results of the certification shall be distributed to all grant management staff. If deficiencies are noted, the Grant Manager shall develop a Corrective Action Plan to remedy the deficiencies, as appropriate.

Conflict of Interest

The Superintendent shall execute an Organizational Conflict of Interest document to disclose if any conflicts exist in the application, receipt of, or expenditure of federal grant funds. **An organizational conflict of interest does not to apply to the district at this time there are no parent, affiliate or subsidiary organizations related to the district.**

The Superintendent, Cabinet staff members, Human Resources/Benefits Coordinator, Payroll Coordinator, Operational Directors, and Grant Manager(s) shall each execute a Conflict of Interest Form to disclose a conflict of interest, as appropriate, related to the awarding of a contract or substantial expenditures with federal grant funds. Substantial expenditures shall be defined as a purchase in excess of $24,999.

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. In addition, no employee, officer or agent of the district may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontractors. All employees shall comply with the Educators' Code of Ethics (DH Exhibit). Violators of the Code of Ethics shall be subject to disciplinary action, including but not limited to, termination of employment with the district.

Vendor Competition

The finance/purchasing department shall be responsible for selecting and awarding contracts to vendors that are qualified to provide the goods and/or services to be purchased with federal grant funds. The vendor selection process shall ensure that the district does not restrict competition among qualified vendors ***(2 CFR 200.319)***.

Vendor Selection Criteria

The district has selected vendor qualification criteria that includes, but is not limited to, the following:

- Past experience with the district
- Cost of goods and services, including future costs of maintenance
- Vendor's financial stability and position as it relates to the ability to provide the goods and/or services
- Small, minority, woman-owned, or labor surplus area firms
- Other criteria as reflected on the Vendor Management Procedures

The district shall not restrict vendor competition by requiring any of the following as selection criteria: **[2 CFR 200.319]**

- Unreasonable requirements, such as excessive experience or bonding, brand name products, or geographic preferences that would unduly restrict competition among qualified vendors
- Arbitrary restrictions that are not essential to the bid/proposal specifications

Vendor Database

A vendor database shall be maintained by the finance department, in the finance system (Ascender Business System). The district's Vendor Management Procedures shall be adhered to for all purchases. Vendor selection shall include the following criteria:

- Has not been debarred or suspended by the State of Texas or federal government
- Is licensed or registered with the State of Texas to perform the contracted services, as appropriate
- Has obtained the minimum insurance limits and/or bonding established by the district, as appropriate
- Has disclosed any felony convictions and/or criminal history, as appropriate

All vendors shall complete the appropriate vendor forms as required by federal or state regulations and the district. The district requires that every vendor have the following documents on file:

- Vendor application file (new vendors)
- Form W-9 – Internal Revenue Service
- Conflict of Interest Questionnaire (CIQ) – Texas Ethics Commission
- Felony Conviction Notice
- Fingerprinting (If working directly with students)
- Criminal Background and Fingerprinting (if working directly or indirectly with students)
- Certificate of Insurance (with the District as additional insured) if services will be rendered on district property

Vendors shall be assigned a primary vendor category code to track aggregate purchases by "like items".

Vendor Management

A vendor database shall be maintained by Accounts Payable with oversight by the Business Manager. The district's **Adding/Renewing Vendors Procedures** shall be adhered to in adding and maintaining approved vendors.

Although the district maintains a pre-qualified vendor database, to ensure open competition, vendors shall be allowed to enter competition at any time during the school year.

A Vendor Performance Report shall be completed to report complaints against vendors or to indicate appreciation for positive vendor performance. Vendor Performance Reports shall be submitted to the business office for review and possible action. Complaint and appreciation reports become a permanent

record of the vendor and must be accurate to guarantee an equitable resolution and to serve as a reliable guide for future action, positive or negative, regarding a vendor's performance.

Bid and Proposal Specifications

The district shall develop written bid/proposal specifications that are provided to every qualified vendor to ensure consistency in the procurement process. A vendor that is allowed to assist with the development of specifications shall be ineligible to submit a proposal for the specific procurement as this may provide a barrier to open, competition among the qualified vendors. **[2 CFR 200.319(b)]** The bid/proposal documents must include guidance to vendors regarding the following:

- Time, date and place of bid/proposal opening
- Anticipated award date, as applicable
- Written specifications and addendums, as appropriate
- List of all bid/proposal required documents such as CIQ, Fedebarlony Conviction Notice, etc.
- Bid/Proposal Sheet
- Bid/Proposal evaluation criteria, including the weights, as applicable
- Other documents, as appropriate for a specific bid/proposal

The district's specifications shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. **[2 CFR 200.319(b)(6)].**

The Superintendent shall oversee all bid/proposal documents before release to the vendor to ensure the documents comply with the federal requirements.

Procurement Methods

The district shall use one of the procurement methods allowed by federal regulations to procure goods and services with federal grant funds ***[2 CFR 200.320].*** In addition, the district shall comply with state purchasing laws and local Board Policy, CH Legal and Local.

The procurement method shall be determined based on the type of goods or services to be purchased with federal grant funds. The Superintendent shall be responsible for selecting the appropriate procurement method for each procurement.

The district shall adhere to the *most restrictive* federal regulations, state laws, local policies and/or procedures when the guidance documents are in conflict. [CFR 200.403(c)]

Procurement Levels and Requirements

The district has developed and implemented a Purchasing Levels and Requirements Chart for non-federal and federally-funded purchases. The chart includes the following data:

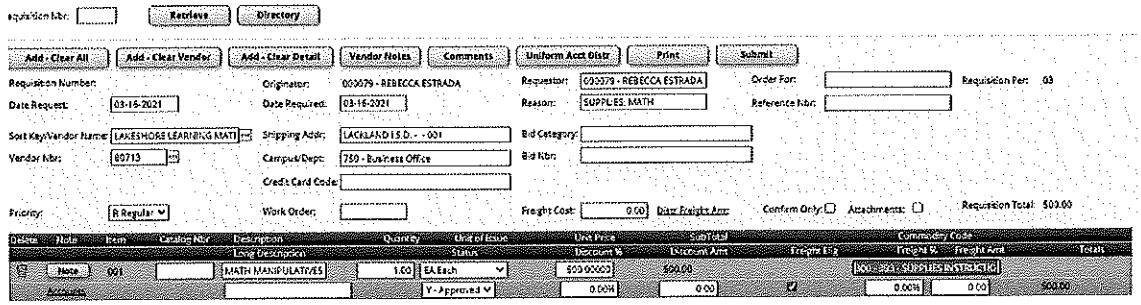
- Purchase Commitment Amount
- Support [Documentation] Required
- Additional Forms Required, if any
- RFP/RFQ Requirement
- Board Approval Requirement
- Advertising Requirement

Illustration #2 – Sample ISD Purchasing Levels and Requirements

SAMPLE I.S.D. PURCHASING LEVELS AND REQUIREMENTS					
Purchase Commitment Amount	**Support Required**	**Additional Forms**	**RFP/RFQ**	**Board Approval**	**Advertising**
Purchases with State and Local Funds					
For purchases Less than $49,999	1 QUOTE	NOT REQUIRED	NOT REQUIRED	NOT REQUIRED	NOT REQUIRED
For purchases over $50,000.00 Competitive Procurement/Texas	COMPETITIVE PROCUREMENT (Education code 44.031)	BID OR PROPOSAL TABULATION FORM	REQUIRED	BOARD AGENDA ITEM REQUIRED	REQUIRED Two (2) consecutive weeks
SOLE SOURCE PURCHASE $50,000.00 and over (Below $50,000 no Agenda Item)	1 QUOTE	SOLE SOURCE DOCUMENTATION	NOT REQUIRED	AGENDA ITEM REQUIRED	NOT REQUIRED
Purchases with Federal Grant Funds					
For purchases Less than $49,999 (Micro-purchase/Fed Funds)	1 QUOTE	NOT REQUIRED	NOT REQUIRED	NOT REQUIRED	NOT REQUIRED
For purchases $50,000.00 to (Small purchase/Fed Funds) Competitive Procurement/Texas	COMPETITIVE PROCUREMENT (Education Code 44.031)	BID OR PROPOSAL TABULATION FORM	REQUIRED	BOARD AGENDA ITEM REQUIRED	REQUIRED Two (2) consecutive weeks
For purchases over $250,000.00 Single Acquisition Threshold/Fed	COMPETITIVE PROCUREMENT EDGAR Methods Cost/Price Analysis	BID OR PROPOSAL TABULATION FORM	REQUIRED	BOARD AGENDA ITEM REQUIRED	REQUIRED Two (2) consecutive weeks
SOLE SOURCE PURCHASE $50,000.00 and over (Below $50,000 no Agenda Item)	1 QUOTE	SOLE SOURCE DOCUMENTATION (Document Justification)	NOT REQUIRED	AGENDA ITEM REQUIRED	NOT REQUIRED

Note. The threshold shall be determined by expenditures for "like-items" in the aggregate over a fiscal year (September 1st through August 31st). The Business Manager shall review expenditures from all district funds (local, state and federal) by "like-item" on at least a quarterly basis to monitor that the district does not exceed any "like-item" categories. The district has elected to use a coding system for "like-items" that is similar to the State of Texas Procurement Commodity Codes, plus locally defined codes that may not exist on the Commodity Codes. A copy of the district's Like-Item Categories are in the Exhibit Section. In addition, vendors in the finance system shall be coded to a primary vendor category.

The 'like-item" categories shall be entered in the finance system, (such as Ascender Business System), as vendor categories and shall be indicated on every purchase order as illustrated below. The sample requisition indicates that the supplies for Math have been coded to Like-Item Category #393 – Supplies, Instructional, Math.



The Business Manager shall review annual expenditures from all district funds (local, state and federal) after the close of the fiscal year to determine if any additional "like-item" categories should be added for the following fiscal year. The budgeted funds by like-item categories may also be helpful in planning for large expenditures in a particular like-item category in a given fiscal year.

Micro-Purchase Procurement Method

Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the school district **[2 CFR 200.320(a)(1)(ii)].** [The district has written Procurement Card Procedures – refer to the Exhibit Section.

The school district is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the school district must be authorized or not prohibited under State or local laws or regulations. School districts may establish a threshold higher than the Federal threshold. **[2 CFR 200.320(a)(1)(ii) and (iii).**

The Business Manager shall conduct an evaluation on an **annual basis** of the district's internal controls, TEA-assigned risk level and documented procurement procedures to determine the appropriate micro-purchase threshold. The Self-Certification of Micro-Purchase Threshold form shall be submitted to the Superintendent at least 30 days prior to the start of each fiscal year for his/her review and consideration. The approved threshold shall be documented in the State and Federal Grants Manual to ensure that all stakeholders are aware of the approved micro-purchase threshold.

Micro-Purchase Procedures – Less than $24,999

The **Procurement by Micro-purchase** may be the most frequently used method due to the frequent purchase of goods or services that are less than $24,999 in the aggregate, as defined in **CFR 200.1** and the granting agency. The district shall purchase goods and services under this method from among qualified vendors, but will not competitively procure the micro-purchases, unless in the aggregate in a 12-month period (fiscal year), the district exceeds federal or state law thresholds **[*2 CFR 200.320 (a)*],** or the district's threshold in Board Policy CH Legal or Local.

The finance/purchasing department shall distribute micro-purchases equitably among qualified vendors to the maximum extent possible and shall ensure that the price is reasonable.

Micro-Purchase Procedures – Up to $50,000

As of November 12, 2020, **2 CFR 200.320(a)(1)(iv)** states that a *Non-Federal entity increase to the micro-purchase threshold up to $50,000.* Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

The district's Board Policy CH Local has a 50,000 threshold for Board approval of purchases.

The district (has elected to self-certify a threshold up to $24,999 in accordance with Texas law (TEC 44.031). The Superintendent shall complete the Self-Certification of Increased Micro-purchase threshold Form **(Rogers, Morris & Grover 2021)** on an annual basis at least 30 days prior to the start of each fiscal year. A copy of the form is included in the Exhibit Section.

Small Purchase Procedures - $50,000 - $249,999

The **Procurement by Small Purchase Procedures** shall be used by the district when the purchase of goods or services do not exceed $250,000, the Simplified Acquisition Threshold **(CFR 200.1).** The purchasing department shall require written, emailed, or faxed quotations from at least three (3) qualified vendors for all small purchases, i.e. purchases that do not exceed $50,000 [the state law threshold which requires a competitive procurement]. Note. The quotes can be from three (3) separate vendors within a qualified purchasing cooperative or different purchasing cooperatives to meet both the EDGAR and state law requirements for competitive procurement.

The district shall use a Small Purchase Quotation Form to document the quotations from vendors. A copy of the Small Purchase Quotation Form shall be filed with the appropriate purchase order. The Small Purchase Quotations shall be tabulated by the Superintendent on a Quotes Tabulation Form.

The district shall strive to obtain small purchases from qualified vendors under a Cooperative Purchasing Program **[*2 CFR 200.318 (e)*].** Even though these cooperative purchasing programs have competitively procured the vendor contracts, the district shall compare the pricing among the vendors to select the best quality and price.

The Cooperative Purchasing programs shall provide an EDGAR compliance certification on an annual basis. If the Cooperative fails to provide the certification, the district shall not purchase goods or services through the Cooperative with federal grant funds. Reminder: District must still obtain at least 2 quotes from cooperatives to ensure compliance.

The district is currently participating in the following cooperative purchasing programs:

- **TASB Buy Board**
- **ESC 4 - TCPN**
- **ESC 20 Purchasing Co-Op**
- **ESC 2, Goodbuy Co-Op**
- **ESC 8 – Interlocal Purchasing System (TIPS)**
- **Texas Employees Benefit Co-Op (TEBC)**
- **US Communities Government Purchasing Alliance**
- **National Joint Powers Alliance (NJPA)**
- **State of Texas Co-Op Purchasing Program (TxSmartBuy)**

*Sealed Bid Procedures – Over $250,000**

The **Procurement by Sealed Bids** (formal advertising) method shall be used by the district when the purchase of goods or services exceed $250,000 if the acquisition of the goods or services lends itself to a fixed price contract and the selection of the successful bidder can be made principally on the basis of price **[*2 CFR 200.320 (b)(1)*]**. The district shall comply with the sealed bid requirements, as defined by the EDGAR, as noted below:

- Bids must be solicited from an adequate number of bidders, but no less than two (2) bidders
- Bids must be publicly advertised and bidders shall be provided an adequate amount of time to prepare and submit their bid. Local criteria shall include:
    - The district shall publicly advertise all bids in accordance with state law, i.e. at least two (2) times in two separate weeks
    - The district shall provide no less than ten (10) days for bidders to prepare and submit their bids
- Bids must contain detailed specifications to ensure that bidders have a clear understanding of the goods or services that the district is seeking to purchase
- Bids must specify the time, date, and district location where bids will be opened publicly
- Bids must be awarded based on a fixed price contract to the lowest responsive and responsible bidder. The district shall consider discounts, transportation costs, and life cycle costs only if these factors were included in the bid specifications. The district will consider payment discounts because the district does routinely take advantage of payment discounts.
- Bids will be evaluated, ranked, and a recommendation for award made to the School Board at a regularly scheduled board meeting.
    - If no bidder is recommended, the district shall reject all bids and evaluate whether to modify the bid specifications to initiate a new bid process

- The district shall notify the successful bidder and process the contract documents and/or purchase orders, as appropriate
- The district shall notify all of the unsuccessful bidders to ensure that qualified bidders are encouraged to submit bids during future bid opportunities

***Note. The state regulations (TEC Chapter 44) related to competitive procurement shall be implemented at a $50,000 threshold even though the federal regulations allow greater flexibility.**

Competitive Proposal Procedures – Over $250,000

The **Procurement by Competitive Proposal** method shall be used by the district when the acquisition of the goods or services exceeds $250,000 and does not lend itself to a fixed price contract **[*2 CFR 200.320 (b)(2)*]**. The district shall comply with the competitive proposal requirements, as defined by the EDGAR, as noted below:

- Requests for Proposals (RPF) must be publicly advertised
- The RFP shall identify the evaluation factors and their weight in awarding the proposal
- Proposals shall be solicited from an adequate number of bidders, but no less than two (2) qualified vendors
- Proposals shall be evaluated, ranked, and a recommendation for award made to the School Board at a regularly scheduled board meeting **[2 CFR 200.320(b)(2)(ii)]**
    - The district shall utilize the Competitive Sealed Proposal Process Checklist
    - The district shall develop an instrument to evaluate each proposal and rank the proposals based on the evaluation scores
    - The district shall evaluate each proposal by committee or no less than two (2) district staff with knowledge of the RFP specifications
    - In accordance with state law, the vendor who is ranked highest as providing the " proposal most advantageous to the district" shall be notified of the potential award
        - The district may negotiate with the vendor only as it relates to potential cost savings
        - If the district and vendor cease to negotiate, the district shall notify the vendor in writing before starting to negotiate with the 2nd highest ranked vendor.
- The district shall notify the successful proposer and process the contract documents and/or purchase orders, as appropriate
- The district shall notify all of the unsuccessful proposers to ensure that qualified bidders are encouraged to submit bids during future bid opportunities

<u>Noncompetitive Proposal Procedures</u>

The **Procurement by Noncompetitive Proposal** method shall be used by the district when the purchase of goods or services is from a "sole source vendor" **[*2 CFR 200.320 (c)*]**.

A sole source vendor is defined as a vendor that meets the following requirements:

- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold ***[2 CFR 200.320 (c)(1)]***
- The goods or services are only available from a single source ***[2 CFR 200.320 (c)(2)]***
    - The district shall acquire and maintain a copy of a vendor's sole source letter which specifies the statutory or other reason for its sole source status
    - The TEA Division of Grants Administration Request for Noncompetitive Procurement (Sole Source) Approval Form shall be utilized to request prior approval of a non-competitive, sole source proposal.
    - The district's Sole Source Justification Form shall be completed and submitted with the single source proposal.
- A public exigency or emergency will not permit a delay resulting from the competitive solicitation process ***[2 CFR 200.320 (c)(3)]***
    - The district shall declare a public exigency or emergency prior to making such as purchase of goods or services under this method
- The granting agency or pass-through entity authorized the use of a non-competitive proposal method ***[2 CFR 200.320 (c)(4)]***
    - The district shall obtain written approval/authorization from the granting agency or pass-through entity.
    - The district has received written authorization from the Texas Education Agency that the Education Service Center, Region 20 is approved as a non-competitive proposal.
- After solicitation of a number of sources, competition is determined to be inadequate ***[2 CFR 200.320 (c)(5)]***
    - The district shall determine that competition is inadequate if after two (2) solicitations of bids and/or proposal, only one vendor is responsive to the solicitations

Note. TEA has approved Education Service Centers in the non-competitive proposal category.

Other Procurement Guidelines

Vendor Preferences

In accordance with state purchasing laws, the district shall comply with the Texas Education Code (TEC Chapter 44) if the procurement guidelines are stricter under state law than federal regulations. Regardless of the procurement method, the district shall encourage small, minority, woman-owned and labor surplus area firms to compete with other qualified vendors by implementing strategies to encourage their participation ***[2 CFR 200.322].***

As appropriate, and in accordance with **2 CFR 200.322,** the district should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

The Purchasing Administrator shall ensure that vendor preferences are included in all specifications, purchase orders and contracts, as appropriate.

Vendor Restrictions

In accordance with **2 CFR §200.216** that prohibitions certain telecommunications and video surveillance services or equipment, the Purchasing Administrator and the Director of Technology shall review and approve all telecommunication contracts for goods and services with federal grant funds to include the following:

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;
(2) Extend or renew a contract to procure or obtain; or
(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The district shall comply with the federal regulations related to the procurement of recovered materials **[2 CFR 200.323]** and the Solid Waste Disposal Act.

For all purchases that exceed the Simplified Acquisition Threshold of $250,000, the district shall perform a cost or price analysis with every procurement ***[2 CFR 200.324]***. Secondly, all purchases that exceed this threshold shall comply with federal bonding requirements such as ***[2 CFR 200.326]***:

- Bid guarantee from each bidder of five percent (5%) of the contract price
- Performance bond on the part of the contractor for 100% of the contract price
- Payment bond on the part of the contractor for 100% of the contract price.

The Superintendent shall be responsible to ensure that all purchases above this threshold are guaranteed with the appropriate bid guarantee, performance bond and payment bond.

All contracts shall contain the applicable provisions described in 2 CFR 200 Appendix II ***[2 CFR 200.327].*** In addition, all contracts for services and/or goods purchased with federal grant funds shall be subjected to the same review and approval process as all other district contracts. The Contract Procedures and Contract Review Checklist are applicable to all federally funded contracts.

The district shall retain all records related to the procurement of goods and services in accordance with federal, state and local requirements. In addition, all procurement records shall be available for inspection and/or audit during the life of the records. The district shall maintain all procurement records for five (5) years in accordance with the district's Local Records Retention Schedule.

Property Standards and Management

The district shall safeguard all property (capital assets and inventory) purchased with federal grant funds under the same guidelines as property purchased with non-federal funds ***[2 CFR 200.310].*** Additional insurance for property purchased with federal grant funds shall be acquired if specifically required by a federal grant award. The Superintendent shall oversee the acquisition of insurance for all federally funded property.

Title to federally-owned property remains vested in the Federal Government. The district must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the district must report the property to the Federal awarding agency for further Federal agency utilization ***[2 CFR 200.312].***

Federally-funded Capital Assets

The district has not and will not use federal grant funds to purchase real property. At the present time, the district operates several district facilities that are owned by the Department of Education. The district shall insure the DOE-owned buildings for loss in the same manner as locally-owned facilities.

If the district owns and/or purchases real property, the title to the real property acquired or improved under a federal award will vest upon acquisition with the district ***[2 CFR 200.311(a)].***

Federally-funded Capital Assets

The district may use federal grant funds to purchase capital assets (tangible and intangible assets) and supplies if approved by the granting agency. The district shall not use federal grant funds to purchase intangible property (defined in ***[2 CFR 200.1]).*** If the district purchases intangible property, the title to the intangible assets vest upon acquisition with the district ***[2 CFR 200.315].***

The federally-funded capital assets shall be used only for the authorized purposes and shall be disposed of, at the end of the useful life or end of the grant period, in accordance with the grant award guidelines ***[2 CFR 200.313].*** The district shall not use the federally-funded capital assets to generate program income. The purchase of capital assets shall be recorded in object code 663X in accordance with the FASRG and any local-use account codes.

Federally-funded Supplies

The federally-funded supplies shall be used only for the authorized purposes. Supplies shall include all non-assets such as consumable supplies and non-consumable inventory (equipment with a unit cost from $1,000 to $4,999). Any residual (unused) supplies, in excess of $5,000 in total aggregate value, at the end of the grant program or project may be used for any other federal grant program. **[2 CFR 200.314]** Otherwise, the supplies shall be retained by the district or sold but must reimburse the granting agency for the district use or sale of the supplies. The district shall implement purchasing deadlines for the purchase of federally-funded supplies to ensure that residual supplies are not available at the end of the grant period or project. The purchasing deadlines are posted on the Business webpage at www.Sampleisd.net. The purchase of supplies shall be recorded in object 639X, in accordance with the FASRG and any local-use account codes.

Capitalization Policy and Definitions

Capital Assets

The district shall utilize the same capitalization policy for non-grant and grant-funded asset purchases. The district's capitalization threshold for assets is $5,000 per unit cost. The district has adopted the EDGAR **(CFR 200.1)** definitions of property as noted below:

- *Capital assets* means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. **(CFR 200.1).**
- *Equipment* means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000. **(CFR 200.1)**
- *Computing devices* means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. **(CFR 200.1)**
- *General purpose equipment* means equipment which is not limited to research, medical, scientific or other technical activities.

- Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.
- *Information technology systems* means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. **(CFR 200.1)**
- *Special purpose equipment* means equipment which is used only for research, medical, scientific, or other technical activities.
    - Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.
- *Supplies* means all tangible personal property other than those described in **§200.1** Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000, regardless of the length of its useful life. **(CFR 200.1)**

Acquisition Cost

The district has also adopted the EDGAR definition of Acquisition cost as noted below:

- *Acquisition cost* means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices. **[CFR 200.1]**

The district shall utilize the invoice cost, including all related costs, to record the cost of the equipment on the fixed asset database.

Inventory Items

The district has also defined "inventory items" as items with a unit cost between $1,000 and $4,999. These items shall have a tag affixed to the item for inventory tracking and insurance purposes only. Inventory items shall include computing devices within these costs. The district shall track these items for insurance purposes and shall conduct an annual inventory of these items to the extent possible. Purchases of inventory (taggable) shall be made from object code 6398 accounts.

Consumable Supplies

Consumable supplies shall include technology-related "walkable" or "personal use" items with a unit cost less than $1,000 as the following (these items shall be tracked by the Technology Department].

- I-Pads
- Kindle/Nook

- Computers with a cost under $1,000

Consumable supplies, including the walkable and personal items with a unit cost less than $1,000, shall be made from object code 6399 accounts. The consumable supplies shall be tracked by the campus or department making the purchase.

Identifying and Tracking Federally-Funded Assets

Titles to federally funded equipment and supply purchases shall be retained by the district, unless otherwise notified by the granting agency. **[2 CFR 200.313(a)]** As district property, the district shall affix a tag, inventory, and dispose of all assets (non-grant and grant-funded) according to the district's fixed asset procedures. [**Fixed Asset Procedures in Exhibit Section**] The district procedures shall include the recording of all assets on a database with the following information:

1) **District-issued tag (or identification number)**
2) **Date of acquisition**
3) **Description of asset**
4) **Serial number, or other identifying number**
5) **Funding source, i.e. fund code**
6) **Federal use of asset (percentage)**
7) **Cost of asset (acquisition cost)**
8) **Use and condition of the asset (New, Used, etc.)**
9) **Location of asset (building and room number)**
10) **Owner of asset title, typically the district**
11) **Disposition data including the date of disposal and sale price of property**
12) Life of asset
13) Depreciation of asset

Note. Bold items are required by federal regulations (EDGAR, 2 CFR 200.313(d)(1)]

Maintaining Capital Asset Inventory & Records

All federally-funded capital assets shall be maintained in an operable state. If repairs are necessary, the district may pay for the repairs of the federally-funded assets with federal grant funds, unless expressly restricted by the granting agency. All federally-funded capital assets shall have a tag affixed to the assets to distinguish the assets from non-federally funded assets.

The district fixed asset procedures require an annual inventory (or more frequently if required by a granting agency) of all capital assets and reconciliation of the asset reports. **[Note. Federal requirements CFR 200.313(d)(1) requires an inventory at least once every 2 years.]**

The district's annual inventory of capital assets shall be conducted by the business office department. Lost, damaged, or stolen assets shall be recorded on the fixed assets database with the date of the loss. The disposition records such as the loss report (police report for thefts) shall be maintained with the capital asset records.

In addition, the district shall track all grant-funded capital asset purchases by grant, or fund code, as appropriate. The disposal of grant-funded assets shall be in accordance with federal guidelines and grant-specific guidelines, if any. At a minimum, the disposition date, reason, and sale price of all federally-funded assets shall be recorded in the fixed assets database. **[2 CFR 200.313(d)]**

During the life of the asset, the district shall ensure that all assets purchased with federal grant funds are insured against loss. The costs to insure and maintain (repair) assets purchased with federal grant funds are generally allowable costs, unless specifically prohibited by a granting agency. **[2 CFR 200.310]**

The business office shall be responsible for maintaining the fixed asset database (Ascender Asset Management System) of all district assets, including all federally-funded assets.

Cost Principles

All grant expenditures must be allowable under the Federal Cost Principles (2 CFR 200 – Subpart E), the grant application program assurances, the granting agency's policies, and the district policies and procedures.

The General Provisions for Selected Items of Cost (Cost Principles) are available on the Department of Education EDGAR webpage.

The district shall adhere to the Cost Principles for federal grants [EDGAR SUBPART E] and any additional grant-specific cost principles. General criteria affecting the allowability of costs includes, but may not be limited to, the following: **[2 CFR 200.403] and [2 CFR 200.320(b)(7)]**

- Costs must be reasonable and necessary **[2 CFR 200.404]**
    - A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.
    - Necessary is defined as costs needed to carry out the grant activities
- Be allocable to Federal awards **[2 CFR 200.405]**
- Be authorized or not prohibited under State or local laws or regulations.
- Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
- Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

- Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- Except as otherwise provided for in EDGAR, be determined in accordance with generally accepted accounting principles.
- Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- Be the net of all applicable credits. **[2 CFR 200.406]**
- Be adequately documented.

The district shall utilize the Allowability/Allocability of Costs Worksheet to verify that all proposed obligations and expenditures meet the Cost Principles. If the Worksheet reflects that the proposed obligation and/or expenditure is not allowable and/or allocable to a federal grant award, the district shall not make the obligation/purchase with the federal grant funds. Other funds, such as local funds, may be used to make the obligation/expenditure, as appropriate.

Cost Allocation Plan and Indirect Cost Rate

A cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the district, must be certified by the district using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII, and Appendix IX. The certificate must be signed on behalf of the district by the Superintendent.

All district costs with federal grant funds, whether direct or indirect, shall meet the minimum requirements of allowability as specified in the **2 CFR 200.403**. In addition, the costs must meet the general provisions for selected items of cost **(2 CFR 200.420).** Specific items not listed within these procedures shall be evaluated by the Grant Manager and Business Manager within these procedures shall apply to all federal grant funds, unless more restrictive allowability rules are required by a particular federal grant award.

The district shall adhere to the more restrictive allowability rules when a conflict arises between the general allowability rules, the program-specific allowability rules, and the district's allowability rules.

The same expense allocation formula shall be used for non-federal and federal funded expenditures. Purchases shall be expensed to the appropriate fiscal year and/or grant period, as appropriate. For example, if the district purchases a subscription or maintenance agreement that covers a twelve-month period from January 1st through December 31st, only the current year expenditure and/or current grant period expenditure shall be posted to the general ledger, as appropriate. In this scenario, the following expenses would be posted to the general ledger.

Current fiscal year	January to August	8 months	Object code 6XXX
	September to December	4 months	Object code (1410)

The district has elected to use federal grant funds for both compensation/benefits and non-compensation expenditures.

Total Costs

The **total cost** of a federal award is the sum of allowable direct and allocable indirect costs less any applicable credits. **[2 CFR 200.402]** All refunds, rebates, discounts, or other credits to grant expenditures shall be posted to the finance general ledger as soon as the credit is known. The district shall ensure that all known credits have been posted to the general ledger prior to the drawdown on federal grant reimbursements.

The district shall post all credits [discounts, rebates, refunds, etc.] to the general ledger on a timely basis to ensure that the district does not draw-down grant expenditures in excess of actual expenditures net of all credits. Otherwise, the district may be considered to have drawn-down funds under an advanced cash method. The _____ shall ensure that all applicable known credits have been posted to the general ledger prior to preparing and submitting a federal grant draw-down request from the granting or pass-through entity.

District costs generally fall under two major categories:

1) compensation/benefits; and

2) non-compensation (supplies, services, travel/miscellaneous or equipment).



Compensation & Benefit Costs

Compensation and benefits (payroll expenditures) are allowable costs for personal services rendered by district employees during the period of performance under the federal grants.

All payroll expenditures shall in accordance with federal cost principles and Department of Labor regulations, such as the Fair Labor Standards Act (FLSA). All payroll expenditures shall be paid in accordance with the federal cost principles. First and foremost, the payroll expenditures must be authorized on the grant application and the duties assigned must be directly related to grant activities. The Grants Manager shall provide a copy of the Payroll Summary to each of the departments noted above upon approval of the grant application.

Compensation Plan

The School Board approved Teacher Hiring Pay Scale, Mid-Point Pay Scale and Stipend/Extra Duty Pay Scale shall be used to compensate all district staff whether paid from local, state or federal grant funds. In addition, the district shall provide the same employer-provided benefits for all district staff whether paid from local, state or federal grant funds.

The compensation for grant-funded staff shall be allocated to the respective grant program (fund) based on the single and/or multiple cost objectives performed by the grant-funded staff. If a grant-funded staff member performs non-grant activities during the day or beyond the normal work day, the compensation for the non-grant activities shall be paid from non-grant funds. Grant-funded staff with more than one cost objective, shall comply with the Time and Effort documentation requirements. Incentive payments, such as performance, perfect attendance, safety, etc. for grant-funded staff shall be allowable with federal grant funds if they are based on the same criteria as non-federal grant funded staff.

Allowable Compensation Costs
Compensation costs shall be allowable if:

- The costs are reasonable for the services rendered and conforms to the established district compensation and benefit plans for expenditures with all other funds, i.e. local funds **[2 CFR 200.430(a)(1)],**
- The employees have been employed in accordance with the district's established Hiring Procedures **[2 CFR 200.430(a)(2)],** and
- The costs are supported by the appropriate timekeeping, absence tracking, time & effort certifications, or other documentation **[2 CFR 200.430(a)(3)],** as appropriate,
- Federally-funded employees shall report all outside employment or professional services rendered to other entities. The external employment and/or professional services shall not conflict with the federally-funded activities with the district **[2 CFR 200.430(c)],**
- Incentive compensation, such as stipends, awards, early resignation incentive, attendance incentive, etc. are in accordance with the district's written plans for each of these incentives **[2 CFR 200.430(f)],**
    - Stipend compensation for other non-federal grant award duties shall be supported by a Supplemental Duties Job Description/Pay Notice. The additional duties shall not conflict with the federally-funded activities with the district.

Substitute Teachers
Salary expenditures for substitute teachers are allowable for approved teacher positions. The finance and payroll departments shall ensure that the expenditures for substitute teacher costs are budgeted and expensed from the appropriate account code(s). The School Board approved Substitute Pay Scale shall be used to compensate all substitute teachers whether paid from local, state or federal grant funds.

Stipends and Extra Duty Pay
Stipend and extra duty pay expenditures are allowable for authorized and approved activities. A schedule or work log shall be maintained to substantiate the stipend and/or extra duty pay. NOTE: It is recommended by the TEA that a job description for each stipend role include the duties related to the grant purpose and the grant funding source. **[Note. A Supplemental Pay Notice-Job Description is included in the Exhibit Section.]**

The School Board approved Stipend and Extra Duty Pay Schedule shall be used to compensate all district staff (exempt and non-exempt) whether paid from local, state, or federal grant funds.

The Business Manager shall ensure that the expenditures for stipend and extra duty pay are budgeted and expensed from the appropriate account code(s). The stipend and extra duty pay rates shall be the same as the rates used for similar locally funded activities. For example, if a teacher stipend for attending a 1-day professional development activity funded through local funds during a non-scheduled work day is $150 per day, the teacher stipend for attending a federally-funded 1-day professional development activity should be $150 per day, too. **[The Stipend and Extra Duty Pay Scale (adopted by the School Board) is included in the Exhibit Section.]**

Allowable Benefit Costs
District costs for fringe benefits, whether paid from local, state or federal grant funds shall be allowable as noted below **[2 CFR 200.431]:**

- All benefit costs shall be in accordance with the district's written Summary of Employee Benefits, except for any benefits that may be specifically excluded in a federal grant award
- All leave benefits shall be in accordance with the district's written Leaves and Absences Policy (DEC Legal and Local) **[2 CFR 200.431(b)]**
- The benefit costs shall be distributed equitably at the same allocation rate (percentage) as the base compensation
- The benefit costs were earned and paid during the grant period
- All benefit costs shall be allowable under the Internal Revenue Service, Fringe Benefits Guide (and subjected to taxes, as required by federal statute)

Non-Allowable Benefit Costs
The district shall **not** charge any benefit costs to a federally-funded grant if the benefit costs are not in accordance with district's written Summary of Employee Benefits, School Board Policy, **2 CFR 200.431,** or other written benefit plan(s). The district has established the following as **non-allowable** benefit costs:

- Severance or settlement agreement payouts to current and/or previous federally-funded grant staff [NOTE. These costs are allowed subject to strict guidelines – district option to include or exclude.] **2 CFR 200.431(i)**
- Optional pension plans (other than the mandatory Teacher Retirement System of Texas contributions). [NOTE. These costs are allowed subject to strict guidelines – district option to include or exclude.] **2 CFR 200.431(g)**
- Automobile costs or allowance for an employee's personal use of a vehicle (regardless of whether the benefit is taxable to the employee] **2 CFR 200.431(f)**

Documentation of Compensation and Benefit Costs

In addition, to the time and effort reporting requirements, the district shall support all compensation and benefit costs paid with federal grant funds shall be supported by the following documentation **[2 CFR 200.430(i)]:**

- Exempt staff
  - Employment agreement, contract, or reasonable assurance, as appropriate
  - Job description signed by the employee with language similar to: *Funded by Title I, Part A with the primary purpose of supporting grant activities aimed at improving academic achievement for students struggling to meet state standards.* In addition, the job description shall include the funding source (fund code).
  - *Supplemental duties, if any, shall be supported by a* Supplemental Duties Job Description/Pay Notice
  - Absence records, if any
  - Time and Effort documentation, as appropriate (Semi-Annual Certification, Periodic Time and Effort, or the Substitute System for Time and Effort)
- Non-Exempt staff
  - Employment agreement, contract, or reasonable assurance, as appropriate
  - Job description signed by the employee with language similar to: *Funded by Title I, Part A with the primary purpose of supporting grant activities aimed at improving academic achievement for students struggling to meet state standards.* In addition, the job description shall include the funding source (fund code).
  - Absence records, if any
  - Time and Effort documentation, as appropriate (Semi-Annual Certification, Periodic Time and Effort, or the Substitute System for Time and Effort)
  - Timekeeping records (actual work hours per workweek) in accordance with the FLSA and the district's Timekeeping Procedures.

Timekeeping Records

All payroll expenditures with federal grant funds shall comply with EDGAR regulations such as the period of performance (200.77) and compensation (200.430).

The Payroll department shall ensure that all timekeeping records are properly submitted before payroll disbursements are made to federally-funded staff. The timekeeping records for exempt staff may include supplemental pay sheets for additional assignments such as summer school, tutoring, professional development, etc. in accordance with the Supplemental Pay Procedures.

The timekeeping records for non-exempt staff shall comply with the FLSA **[2 CFR 200.430(i)(3)]**. Specifically, all non-exempt work hours must be submitted in accordance with the Time Sheet & Time Clock Procedures and recorded through the district's timekeeping system, Veritime.

The Grant Manager, [District PEIMS Coordinator], HR Administrator and Payroll Managers shall work collaboratively to ensure that the Role ID and salary object codes reflected on the grant application (Payroll Summary) are consistent with the HR, payroll, finance, and PEIMS records.]

Approval of Payroll Expenditures

The process of approving payroll expenditures from grant funds shall be a collaborative process between the campus or department, Human Resources, Grants Management, and Finance [Purchasing, Budgeting, Accounting and Payroll] departments. Each campus and/or department plays an essential role in ensuring that all federal grant requirements are met.

Selection of Grant-Funded Staff

The Grants Manager shall work collaboratively with the appropriate stakeholders (campuses and departments) to identify all staff needed to accomplish the grant activities. The Grant Manager shall work collaboratively with the Payroll director to obtain estimated salaries for proposed grant-funded staff prior to the completion of the grant application. And, the Grant Manager shall provide a copy of the Payroll Summary of each grant program to each of the campuses and departments noted above upon approval of the grant application.

New Positions

New grant-funded positions shall be created only when a job description has been developed and approved by the Human Resources and the Grant Manager. The Grant Manager shall ensure that the position is approved on the grant application and that adequate funds exist to fill the position.

The finance and payroll departments shall be notified to ensure that the position is budgeted on the general ledger and the position is paid using the correct payroll account distribution codes.

New Hires

New staff hired for work in positions that are wholly or partially funded with federal grant funds, shall be hired when a position and funding are both available. Upon separation of an employee, the home campus or department of the position shall initiate a request to replace the position. [NOTE: A Personnel Requisition Form should be used to start the process.]

The Grants Manager shall review the request to ensure that the position is still authorized and necessary. Changes to the job description, if any, shall be made at this time. The Business Manager shall review the request to ensure that adequate funds exist in the appropriate account code(s). If funds do not exist, the Business Manager shall notify the Grants Manager to determine if funds will be re-appropriated to the account code(s). After approval from the Grants Manager and Finance department, the Human Resources department shall advertise the position.

The screening and selection process shall include a review of the recommended applicant to ensure that he/she meets the any federal grant staff requirements such as the Highly Effective requirements under the Every Student Succeeds Act (ESSA), as appropriate, or any other grant-specific credentials. The district shall utilize the Applitrack Applicant System to advertise all new positions and collect employment applications and supporting documentation. [NOTE: A Personnel Recommendation Form or should be used recommend an applicant for employment.]

Upon employment, the new hire shall receive and sign a copy of his/her respective job description to include the grant funding source. NOTE: If the position is funded with a short-term grant fund, the employee shall be notified in writing when the grant funding will lapse, especially if their position will lapse at the end of the grant period.]

Transfer of Personnel

When staff in a position funded with grant funds is recommended for transfer to another campus, department, or assignment, the grants management, human resources, and finance departments shall work collaboratively to ensure that the appropriate staff allocations and funding changes are made at the time of the transfer. The home campus or department shall initiate the request for the transfer, especially if it is a teaching assignment change to another campus. The grants management, human resources, and finance departments must evaluate the requested transfer to ensure that the staff allocations, Highly Effective staff requirements, and funding source changes are in compliance with grant requirements and activities.

For example, if an elementary principal requests to transfer a Title I Reading teacher to a Pre-Kindergarten regular classroom teacher, the following considerations should be evaluated by the respective departments:

1) HR – ensure that a vacancy exists in a PK teacher position and that the teacher recommended for transfer is certified to teach PK and issue a new job description to the transferred staff member;

2) Grants management – ensure that the grant strategies and activities can be accomplished in a timely manner after filling the vacancy that would be created by the transfer; and

3) Finance department – ensure that funds exists for the additional PK teacher slot and change the payroll account distribution code(s) from Title I to PK as of the effective date of the transfer.

Job description for all grant funded staff

The HR Administrator shall develop and distribute a job description to all district staff that is wholly or partially funded with grant funds. The job description shall include the funding source(s) and the job duties as they relate to the grant position. The grant-funded staff shall sign the job description at employment and on an annual basis, or at a minimum, when the funding source, job title or other change occurs in the employment or assignment of the staff member.

The job description and assignment shall be supported by documentation such as grade books, master schedule, etc.

Roster of all grant funded staff

The Grant Manager shall maintain an up-to-date roster of all grant funded staff to include the position title, annual salary, and funding source(s) by percentage. The roster of grant funded staff shall include

all staff paid with non-federal grant funds whose compensation/benefits are paid as part of a matching or cost sharing requirement of a federal grant fund.

The home campus or department, human resources, and finance departments shall work collaboratively to ensure that the roster accurately reflects that data maintained in their respective area of responsibility. Discrepancies, if any, in the roster shall be brought to the attention of the grants management department.

The review of the roster shall include, but not be limited to the following:

1) Campus or department – ensure that the grant funded staff are assigned in the position title as noted on the roster. The master schedule or assignment of instructional staff must support the position title and funding source.
2) Human Resources – ensure that the position title and salary are correct as noted on the roster. In addition, the HR department shall ensure that each grant funded staff member has a signed job description on file for the position title noted on the roster. And, the HR department shall ensure that all grant-funded staff meet the state's Certification or are Highly Effective, as appropriate.
3) Finance – ensure that the funding source(s) and salary are correct as noted on the roster. In addition, the finance department shall ensure that the payroll distribution account code(s) are in accordance with the FASRG.
4) Grant Manager – ensure that the positions are authorized on the grant application and that the PEIMS Staff Data submitted to TEA is consistent with the position title, Role ID and object code.

The review shall occur on at least a quarterly basis throughout the school year to ensure that the roster of grant funded staff is accurate and up-to-date throughout the year.

NOTE: It is critical that at least one of the reviews coincide with the submission of the Fall PEIMS Staff Data to ensure that accurate data is submitted as of the October snapshot date.

Budgeting of grant funded staff

The roster of grant funded staff shall be the basis for budgeting of grant funded staff. The percentage of time in each funding source shall be utilized by the finance department to create and enter the salary portion of the grant budget. The percentages shall also be utilized by the payroll department to enter the payroll distribution account code(s).

In addition, the finance department shall ensure that the Grant Personnel Schedule of the grant application matches the budget and payroll account code(s). For example, if the Grant Personnel Schedule for Title I, Part A includes a position of a "008 – Counselor (6119)", the budget and payroll account code distribution shall be entered in a 6119 object code.

The grants management, human resources and finance departments shall work collaboratively to adjust the budget and payroll account code distributions of grant funded staff if the time and effort documentation consistently reflects that the percentage(s) across the funding source(s) is not a true reflection of the normal work schedule.

Time and Effort Documentation

District staff funded wholly or partially with federal grant funds shall comply with federal guidelines related to time and effort. The grant funded staff, their immediate supervisors, grants management, human resources, and finance departments shall be aware of the federal guidelines related to time and effort documentation. On a least an annual basis, all impacted staff shall be trained by the Grants Manager and/or attend appropriate training from an outside source.

The district shall collect and monitor time and effort documentation for district employees only. **Time and effort documentation does not apply to Independent Contractors.**

The district shall comply with all federal time and effort documentation guidelines. The following requirements shall apply to all district staff funded wholly or partially from federal grant funds, including staff funded through non-federal grant funds as part of a cost sharing or matching requirement.

Time and effort requirements for staff funded 100% from one grant (or working 100% of their time in a single cost objective)

The staff funded 100% from one grant source do not have to maintain periodic time and effort records. However, all employees must certify in writing, at least semi-annually, that they worked solely on the program for the period covered by the certification. The employee and his/her immediate supervisor must sign the Semi-Annual Certification Form (sample in Exhibit Section).

The timeline for semi-annual certifications shall cover a 6-month period. The 6-month period shall be determined per academic semester to coincide with teaching assignment each semester. The immediate supervisor shall submit all signed semi-annual certifications to the Grant Manager as noted below:

1) 1st Certification – due 1 week after the **end** of the 6-month period (July 1st – January 31st)
2) 2nd Certification –due 1 week after the **end** of the 6-month period* - (February 1st – June 30th)

*The 2nd semester certification for 10-month employees shall be due on the last working day of the school year. Submission of the required certification shall be part of a campus or department staff member's check out procedures.

The Grant Manager review shall consist of the following:

1) A review of the certification forms to ensure that every staff member and supervisor has certified that their schedule is 100% grant related
2) A test sampling of staff assignments, i.e. master schedule, duty schedule, etc. to verify the schedule is 100% grant related

The Grant Manager shall collect and review all Semi-Annual Certification Forms. Any certifications that reflect a percentage other than 100% shall be forwarded to the finance department for adjustment of the grant payroll expenditures for the certification period. NOTE: Steps should also be taken to ensure that the staff member's work schedule is adjusted to 100% grant related, or is changed from the semi-annual certification method to time and effort reporting. The Grant Manager shall file the certifications for audit purposes.

The Business Manager shall prepare a journal ledger entry to correct the account distribution code(s) as appropriate. The Business Manager shall post the entry to the finance general ledger.

Time and effort requirements for staff split funded (funded from more than one (1) cost objective and/or grant programs)

Time and effort applies to employees who do one of the following:

1) Do not work 100% of their time in a single grant program
2) Work under multiple grant programs
3) Work under multiple cost objectives

These employees are required to maintain a Periodic Activity Report or to account for their time under a substitute system. The district has not not applied for, nor been approved by the Texas Education Agency to use the Substitute Time and Effort System; therefore, employees must prepare Time and Effort Worksheet at least monthly to coincide with the district pay periods. **Such reports must reflect an *after-the-fact* distribution of 100 percent of the *actual* time spent on each activity and must be signed by the employee and their immediate supervisor.** Charges to payroll must be adjusted to coincide with preparation and submittal of the interim expenditure report required for TEA discretionary grants.

Grant-funded staff under this category shall complete a Time and Effort Worksheet (sample in Exhibit Section) to include the date, grant source, percentage worked in the grant source per day and the summary for the month (or pay cycle). The staff member and his/her immediate supervisor shall sign the time and effort report. The timeline for time and effort reports shall be once per month to coincide with the monthly payroll cycles as noted below:

1) Monthly payroll [25th of the month] – Time & Effort reports are due by the 10th for the prior month.
2) Semi-monthly payroll [15th & 31st of month] – Time & Effort reports are due by the 10th for the prior month.

The immediate supervisor shall submit all signed time and effort reports to the Grant Manager.
The Grant Manager review shall consist of the following work flow:

1) A review of the time and effort reports to compare the summary percentage of grant-related work per funding source to the budgeted percentage utilized to charge the monthly (or semi-monthly) payroll charges

2) A test sampling of staff assignments, i.e. master schedule, duty schedule, etc. to verify the percentage of grant-related work per funding source
3) If the time and effort report reflects the same percentage, the report may be filed for audit purposes
4) If the time and effort report reflects a different percentage, the report shall be reconciled to reflect the correct payroll charges by grant funding source and forward the reconciliation to the finance department for adjustment of the payroll charges on the general ledger.

The Business Manager shall prepare a journal entry to reclassify the expenditures as noted on the reconciliation of the time and effort report(s). According to federal regulations, the final amount charged to each grant award must be accurate, allowable, and properly allocated.

The finance department shall post all variances greater than 10% to the general ledger on a monthly basis; otherwise, the variances shall be posted prior to the final expenditure report.

NOTE. The finance department shall use caution to avoid excess drawdown of grant funds due to unallowable payroll costs if timely adjustments to the general ledger are not posted prior to the drawdown of funds.

Time and Effort Substitute System

The US Department of Education (USDE) and the Texas Education Agency (TEA) have authorized the use of a substitute system for time and effort.

The district has not opted to use the Time and Effort Substitute System at this time.

Non-Payroll Costs

Non-payroll costs are defined as expenditures other than salaries and benefits. Direct non-payroll expenditures include contracted services, supplies, travel, and equipment. The expenditure of federal grant funds for non-payroll costs shall adhere to the district's purchasing policies and procedures. In addition to the normal purchasing process, all grant funds must be approved by the Grants Manager for each respective grant program, as appropriate.

All purchases with federal grant funds shall be in accordance with the Purchasing Procedures.

Purchase Requisitions

Purchase requisitions must be itemized with detailed descriptions, prices, delivery details, delivery/ completion date, detailed vendor info, bid number, or quote information (where applicable), along with justification, terms, and conditions critical to the order. Requisitions submitted without adequate detail will be returned to the originator.

Purchase Orders

The primary method for all purchases is to issue a Purchase Order. Once issued by the district and

accepted by the vendor, the Purchase Order is a binding written agreement between the District and the Vendor. The types of purchase orders are noted below:

- Single PO – One-time purchase of goods and/or services where need is identified, ordered, received and PO is closed immediately.
- Open purchase orders:
    - Annual PO – For annual contracts such as annual service contracts, subscriptions, etc. The PO shall include a description of the goods and/or services with specified annual quantity, unit of measure, and price.
    - Monthly PO - As needed purchase of small dollar items that are expected to be purchased from a particular vendor throughout the year.

Both types of purchase orders [Single and Open] may be utilized with federal grant funds, subject to the approval of the purchase in accordance with the PO approval path.

Specific instructions related to specialized purchases are included in the Purchasing Procedures. Specific instructions include, but are not limited to, the following categories of purchases:

- Apple Purchases
- Amazon Purchases
- Walmart and Sam's Club
- Lowe's and Home Depot
- Credit cards such as the PCard, Travel Card and American Express
- Technology purchases

All district approved vendors shall be notified via a Vendor Notification of PO Requirement Letter that all purchases made on behalf of the district are to be initiated by the issuance of a purchase order.

Approval of Purchase Orders

The district shall utilize the Ascender Purchasing Module to manage the expenditure of all federal grant funds unless other methods such as credit cards, petty cash, direct payments, etc. are authorized in the district's operating procedures.

The approval levels noted below are part of the Ascender Purchasing Module approval path.

- Campus principal or department head – Initial approval
- Accounts Payable– Second approval
- Business Manager– Final approval

The district shall adhere to the normal approval path for purchase orders with non-grant funds. The Superintendent shall ensure that all purchase orders have been competitively procured as required by law; and, that the expenditure (PO) has been approved by the governing body, as appropriate [Note.

School Board Policy CH Local has established the threshold of contract approval by the School Board at $50,000.]

Contracts/purchases that are approved by the School Board shall also meet the Form 1295 Certificate of Interested Parties filing instructions. The vendor shall provide a notarized Form 1295 prior to the issuance of a purchase order. After approval of the purchase order and/or contract, the Business Manager shall access the Texas Ethics Commission website to acknowledge the Form 1295.

In addition, all purchase orders with grant funds shall be reviewed and approved by the appropriate Grant Manager.

The Grant Manager review of purchase requisitions/purchase orders shall consist of the following:

1) The expenditure is *reasonable* and *necessary* (as defined in federal grant guidelines). (NOTE: A test of whether an expense is necessary may include the verification that the expenditure is to perform a strategy or activity in the District or Campus Improvement Plans.)
2) The expenditure is not required by state law or local policy.
3) The expenditure has been approved in the grant application, if specific approval is required from the granting agency
4) The expenditure meets the allowable costs principles.
5) The expenditure is allowable and approved in the grant application and is consistent with the grant purpose
6) The expenditure is supplemental and not supplanting a local expenditure (NOTE: Refer to compliance issues related to supplement and supplant for additional guidance.)
7) Other _____

Purchase Order Deadline(s)

In an effort to meet all obligation and liquidation requirements of grant funds, the district has established a **May 1st** purchase order deadline. This deadline shall be adhered to by all purchase order originators. A campus principal or department head may impose an earlier deadline for their respective campus or department.

A different purchase order deadline may be required for federal grant funds to ensure that all purchases occur within the grant period (obligation period).

Receipts of Goods and/or Services

All district staff shall adhere to the Receipt of Goods and Services Procedures to ensure that receipt of all goods and services is properly documented prior to issuing payment to the vendor. No payment shall be made to a vendor for goods and/or services unless the receipt of the goods and/or services have been verified and documented by the receiving clerk (Administrative Support Secretary).

The district receives all goods under a decentralized receiving system. The campus administrator shall receive, open, and verify the receipt of all ordered goods. Signed documentation and packing lists, if any, shall be forwarded to the Business Manager for payment through the Accounts Payable Procedures.

For acceptance of services, the requestor shall inspect that the work has been accomplished according to the agreed upon terms and conditions and scope of work. Acceptance of partial completion should not be made unless previously agreed upon by the district and vendor in the contract and/or agreement for services.

Receipt of partial orders shall be allowable subject to the Partial Purchase Order Receipt Procedures. Payments for partial shipments shall be made within the 30-day payment period.

All shipment errors such as shortages, overages, damages, etc. shall be reported to the accounts payable clerk. The accounts payable clerk, shall be responsible for vendor relations and shall address and resolve the issues with the vendor.

Non-Purchase Order Purchases

The district shall utilize non-purchase order methods to obtain goods such as credit cards, petty cash, direct payments, etc. as authorized in the district's business procedures. All of the purchases shall be subject to pre-approval by the originator (campus principal or department head), and Grant Manager.

- Credit cards (may be used for federal grant purchases if pre-approved prior to the purchase),
- Petty cash, and
- Payment Authorization

Credit Card Purchases with Grant Funds

The district may choose to use purchase cards (credit cards) for federal grant purchases. **2 CFR 200.320(a)(1)(ii).**

The district will not use district-issued credit cards to make purchases with federal grant funds. An original, detailed receipt shall be required for all credit card purchases with federal funds. If the purchaser does not submit an original, detailed receipt for audit purposes, the expenditure and/or reimbursement may not be charged to a federal fund. At no time shall district credit cards be used to withdraw cash.

The Grant Manager shall review and approve all credit card expenditures if the expenditure is referred by the Business Manager for secondary approval.

The Grant Manager administrative review of credit card purchases shall consist of the following:

1) Original, detailed receipt includes an itemized list of what was purchased

2) The purchaser has documented a valid reason for the purchase which is consistent with the grant guidelines
3) The credit card purchase meets the allowable costs principles.
4) Other _____

NOTE: The district [shall or shall not] reimburse any purchases made with a non-district credit card, except for travel-related expenditures, as appropriate.

Fraudulent credit card purchases made with federal grant funds shall be grounds for disciplinary action, up to and including termination of employment. The appropriate legal authorities shall also be notified by the Superintendent for criminal prosecution, as appropriate. Accidental use of a credit card to make an unauthorized purchase with federal grant funds may be subject to similar disciplinary action but shall require immediate (within 2 days from date of discovery) restitution to the district. **[Note. The fraudulent or accidental charges may not be charged to a federal grant fund, nor drawn-down as allowable expenditures.**

Petty Cash Purchases with Grant Funds

The district shall not use a petty cash account to make purchases with federal grant funds if the purchase is pre-approved and meets all allowable cost guidelines. An original, detailed receipt shall be required for all petty cash purchases with federal funds. If the purchaser does not submit an original, detailed receipt for audit purposes, the expenditure and/or reimbursement may not be charged to a federal fund.

The Grant Manager shall review and approve all petty cash expenditures if the expenditure is referred by the Business Manager for secondary approval.

The administrative review of petty cash purchases shall consist of the following:

1) Original, detailed receipt includes an itemized list of what was purchased
2) The purchaser has documented a valid reason for the purchase which is consistent with the grant guidelines
3) The petty cash purchase meets the allowable costs principles.
4) Other _____

NOTE: The district shall not reimburse any purchases made with a personal cash funds, except for travel-related expenditures, as appropriate.

Payment Authorization Form (PA)
In the event that a purchase order is not appropriate for a payment as noted in the Check Request Procedures, the requestor shall submit a Payment Authorization Form. These procedures shall not be

used for products or services already received by the requestor. The Payment Authorization Form shall be approved and coded by the appropriate budget manager and approved by the business manager and the appropriate Grant Manager.

Approval of Disbursements/Expenditures

The accounts payable department shall adhere to the Accounts Payable Procedures for all check disbursements. Specifically, all checks issued by the district shall be verified, recorded, approved, issued, and reconciled by multiple individuals to ensure segregation of duties. The same procedures shall be used to issue payments to vendors from local, state and federal grant funds. [**Accounts Payable Procedures in the Exhibit Section.**]

Payments for goods and services shall be made within thirty (30) days of receipt of the goods and/or services **and** an invoice in accordance with the Texas Prompt Payment Act.

In addition to the normal approval path of district expenditures, all grant expenditures shall be approved by the business amager and/or the Grant Manager under the following circumstances:

1) Invoice amount exceeds the purchase order by 10% or $200
2) Payment of an invoice will be paid by an account code(s) other than the original account code(s) that were used to encumber the purchase order
3) Travel expenditures, if not encumbered through the purchase order system
4) Non-purchase order payment such as petty cash, credit card, direct invoice, reimbursement, etc.
5) Reclassification of a prior expenditure from one account code(s) to another
6) Other _____

Selected Item of Cost – Contracted Services

Contracted services generally include services provided by a non-district employee. On rare occasions, a district employee may meet the Internal Revenue Service (IRS) rules for an independent contract. Contract originators shall utilize the Independent Contractor or Employee Determination Checklist to determine the worker status prior to submitting a contract for consideration. To ensure compliance with the IRS worker classification regulations, the final worker status classification shall be reviewed and approved by HR clerk before the worker begins services.

All contracted services shall be in compliance with the Professional Services Costs federal regulations [2 **CFR 200.459].** Federal regulations require that professional and consultant services be rendered by individuals of a particular professional or that possess a special skill who are not employees of the district.

Contracted Services - Definitions

A *contract* is defined in EDGAR *as* a legal instrument by which the district purchases property or services needed to carry out the project or program under a federal grant award **[2 CFR 200.1].**

Professional services are defined in the Texas Government Code (Chapter 2254) as services within the scope of the practice or accounting, architecture, land surveying, medicine, optometry, professional engineering, real estate appraising or professional nursing. In addition, it includes professional services in these areas by a person who is licensed or registered in the state.

Other *contracted services* shall be defined as services by a non-employee or entity that do not meet the professional services definition.

The district's **Contract Management Procedures** shall be adhered to in procuring, evaluating, selecting and awarding, and monitoring contracts.

Contract Review and Approval

All contracts and professional services agreements funded with federal grant funds shall be reviewed and approved in accordance with the district policies and procedures for all non-grant funds. For example, if School Board Policy requires that all contracts that exceed $50,000 be approved by the Board of Trustees, all federal grant contracts that exceed $50,000 shall also be approved by the Board.

The Superintendent shall review and approve all contracts. The review shall consist of the district's Contract Review Checklist and any other requirements specific to the contract and/or federal grants.

Federal Regulations Review

The Grant Manager and business manager shall review and approve all contracted/consultant services agreements for compliance with federal regulations regarding professional service costs **(2 CFR 200.459).** The contract review shall consist of the following:

1) Consultant and/or contractor has not been suspended or debarred
2) The contract and/or funds have been approved in the grant application, if specific approval is required from the granting agency
3) The contract's nature and scope of service is directly related to the federal grant award activities **[2 CFR 200.459(b)(1)]**
4) The past pattern of costs, particularly in the years prior to federal awards **[2 CFR 200.459(b)(3)]**
5) The contract does not contain any proposal costs [not allowable under federal regulations]
6) Whether the proposed contracted services can be performed more economically by direct employment rather than contracting **[2 CFR 200.459(b)(6)]**
7) Capability of the proposed vendor to perform the required services
8) The qualifications of the contracting firm or individual and the customary fees charged by the proposed vendor [A Resume, Vita or Statement of Qualifications shall be required for all contracts with Independent Contractors.] **[2 CFR 200.459(b)(7)]**
9) The contract and/or consultant agreement meets the allowable costs principles.
10) A contract subject to Davis Bacon has the appropriate contract language
11) The contract and/or consultant agreement fee for services do not exceed any federal grant or local limits
12) Other

In addition, all contracts must contain applicable provisions described in *Appendix II to Part 200 Contract Provisions for non-Federal Entity Contracts Under Federal Awards* **[2 CFR 200.327].**

All contracts with federal grant funds shall include the 2 CFR Section 200 Required Provisions Addendum for Contracts Funded by US Federal Grants (Rogers, Morris & Grover 2021).

The final approval authority for all contracts shall be the Superintendent, unless the contract is over $50,000, then the final approval authority shall be the Board of Trustees through approval at a regularly scheduled or special board meeting.

Contract Form and Required Contract Provisions

Unless the contractor provides a contract form, the district shall utilize the Consultant Services Agreement to execute a contract for services. The agreement (contract) shall include the following at a minimum, but may include other contract provisions, as appropriate.

- Services to be provided
- Service date(s)
- Contract Rate of Pay – Hourly, Daily, or Flat Amount

- Contract Term – Days, Months or other term length
- Fingerprinting/Senate Bill 9 Compliance
- Independent Contractor Status
- Certificate of Insurance Requirements
- Indemnification clause
- Confidentiality
- Termination clause
- Governing law
- Signatures
- Other _____

All district contracts for professional services to be funded through a federal grant award shall comply with the following contract provisions as recommended in the Texas Education Agency's Guidance and Best Practices for Professional Services Contracts:

- The contract is only effective upon receipt by the district of the NOGA from the awarding agency.
- The contract period is aligned to the grant period of availability as stated on the NOGA from the awarding agency (period of availability).
- All services will be completed during the effective dates of the contract.
- All services will be invoiced monthly after services are received (rather than paid lump sum at the beginning of the period of availability before services are rendered) and paid upon verification of receipt of services.
- The regulations for procurement in **2 CFR 200.318-327** are followed in issuing the contract.
- All professional services provided under the contract will follow the provisions of **2 CFR 200.459** Professional service costs.
- The contract identifies the funding sources that will be charged for the services provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source.
- The contract identifies and lists only reasonable, necessary, and allocable services to be provided during the period of availability of the funding sources listed in the contract.
- The administrative costs charged to the grant in the contract must comply with any limitations for administrative costs for funding sources (if applicable).
- The contract specifies that the invoice provided by the contractor will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.

In addition, the contract provisions shall include:

- The contract shall not have multi-year extensions without a "non-appropriation of funds" cancellation clause

- The contract extensions, if included, shall restrict the contract renewals and/or extensions to either a "sole discretion of the district" or "mutual agreement" and not an "automatic renewal".
- All products created as a result of the district shall be vested in the district and the district shall retain all intellectual property rights

Contractual Obligation

The date the district executes (signs) a contract for professional services shall be defined as the "obligation date". The district cannot obligate federal grant funds, except during the grant period in compliance with **EDGAR 34 CFR 75.703**, the district shall not execute a contract prior to, or after, a grant period; otherwise, the costs of the professional services shall be unallowable under the federal cost principles.

The district shall not execute a Letter of Intent to Contract with a third party prior to the issuance of a Notice of Grant Award (NOGA), as deemed appropriate.

Selected Item of Cost – Travel Expenditures

The district shall use federal grant funds for travel costs. All travel-related expenditures from grant funds shall comply with the allowable federal cost principles **[2 CFR 200.475],** the State Tex-Travel Guidelines, School Board Policy (DEE Legal and Local) and the district's Travel Guidelines and Procedures. **The Travel Guidelines and Procedures are included in the Exhibit Section.**

Federal regulations **(2 CFR 200.475)** define travel costs as: *expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity [district]. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies.* The district has determined that all travel costs shall be paid to the travel and expensed using an actual cost basis or per diem basis or a combination of the two as defined in the district's travel procedures.

The allowable rates of reimbursement shall be the lesser of the federal rates or local rates. For example, if the federal rate of reimbursement for mileage is 58 cents but the local rate established in Board Policy DEE Local is 28 cents, the maximum rate of reimbursement for mileage with federal funds shall be the local rate of 28 cents. The district has elected to use a set mileage rate as established by the General Services Administration (GSA).

The travel-related expenditures with grant funds shall fall within the grant obligation period, unless a specific exception is allowable by the granting agency.

NOTE. No travel expenditures shall be recorded on the general ledger for a federal grant fund until AFTER the travel event has occurred and the actual travel expenditures are known and supported by documentation. Travel pre-paid or advanced expenditures shall be recorded in [the general operating fund] or [a pre-paid account (object code 1410) in the federal grant fund]. Pre-paid or advanced travel expenditures, if any, shall not be drawn-down for reimbursement until **AFTER** the travel event.

Travel Expenditures with Grant Funds (Staff)

The district shall reimburse federal grant-related travel expenses that are reasonable and necessary. Each official and employee of the district has a responsibility to limit travel to purposes that are clearly essential, directly related to federal grant activities, and to consider the most economical means of accomplishing travel. Travelers are encouraged to evaluate the options: driving versus flying, carpooling instead of flying, sharing of rooms when feasible.

The following guidelines shall apply to the expenditure of grant funds for staff, student and/or parent travel, as appropriate.

- All travel expenditures shall be reasonable and necessary to carry out the federal grant activities
- A completed Travel Authorization/Settlement form for all travel expenses
- Submission of a purchase requisition for all anticipated travel expenditures to encumber the anticipated expenditures
- Submission of documentation and receipts to support *actual* travel expenditures within 10 days of the travel event, as required by the travel procedures
- Travel expenses shall not be recorded as travel expenses in a federal grant fund until "after the travel event" in compliance with the Obligation Rules.
    - The district has chosen to record travel expenses as "pre-paid expenses (1410)" until after the travel event in the respective federal grant.
    - After the travel event, the prepaid expenses shall be posted as expenses to a 64XX account via general journal.

Travel Expenditures with Grant Funds (Students)

Educational field trip expenditures require pre-approval from the federal granting agency or pass-through entity. Requests for educational field trip travel shall be submitted on TEA Division of Grants Administration Request for Specific Expenditure Approval: Educational Field Trips for TEA-administered federal grants or the federal granting agency, as appropriate. The Grant Manager shall prepare and submit the pre-approval forms in accordance with local travel procedures.

Allowable Travel Expenditures

- Registration fees – registration fees shall be allowable if the event is directly related to grant activities. Registration fees may be expensed only during the grant period as travel expenditures (64XX). In accordance with TEA guidance, the district may pay for registration fees as contracted services (6299) before the travel event. The district [has or has not] elected to expense

registration fees using a contracted services account. Recreational or social events subject to an additional fee, above and beyond the registration fee, shall not be allowed with local, state, or federal grant funds.

- Meals – meal expenses for overnight travel (in accordance with local travel guidelines) shall be allowed for district employees and students. **Non-overnight travel meals expenses [shall or shall not] be allowed.** The district shall advance or reimburse meal expenses, subject to the GSA limits or local limits, on [an *accountable* per diem basis] or [actual cost reimbursement basis]. The traveler shall submit a written certification [Travel Authorization/Settlement Form] with [the actual meal costs] or [detailed receipts] for work-related meals and shall return the unused meal funds [if any] to the district. The meal per diems shall be adjusted in accordance with IRS regulations regarding the day of departure/return and meals provided as part of the registration fee.
- Lodging – lodging expenses for overnight travel (in accordance with local travel guidelines) shall be allowed if reasonable, necessary and directly related to federal grant activities. The district shall pay for lodging expenses up to the GSA limits with federal grant funds. The district [shall or shall not] pay the actual cost of lodging in excess of GSA limits only with local funds, i.e. General Fund. Receipts shall be required for all lodging expenses. Recreational or personal services such as gyms, spas, etc. shall not be allowed with local, state or federal grant funds.
- Transportation – transportation expenses shall be allowed for *reasonable* expenses such as flights, rental car, taxi, shuttle, mileage reimbursement, etc. (in accordance with local travel guidelines) and federal grant regulations **[2 CFR 200.475(e)].** Receipts shall be required for all transportation expenses to the extent that a receipt is available. Transportation expenses shall be reasonable, necessary and limited to the guidance in the cost principles.

Unallowable Travel Expenditures

The following travel expenditures shall be unallowable with federal, state and local funds:

- Supplies and/or other conference resources. [This type of expense may be allowable as a supply expenditure if a purchase order is submitted and approved before the travel event, typically an Open PO not to exceed a specified amount.]
- Alcoholic drinks or beverages
- Entertainment expenses, such as in-room movies, fee-based hotel amenities such as gyms, spas, etc.
- Expenses for spouses or other non-district employees
- Expenses due to the traveler's failure to cancel a registration or travel arrangements (except for extenuating circumstances – if allowed due to extenuating circumstance only local funds may be used for the expenses)
- Hotel Internet charges (unless expense is work-related and pre-approved on travel authorization – if allowed, the charges shall be expensed to local funds)
- Non-substantiated or fraudulent travel reimbursement requests shall be non-allowable travel expenses from federal, state or local funds. Travelers who submit fraudulent travel

reimbursement requests shall be subject to disciplinary action, up to and including termination of employment.

In addition, in accordance with EDGAR, no federal, state or local funds shall be used for travel expenditures of non-district staff such as spouses. "Family-friendly" travel costs such as dependent care costs **[2 CFR 200.475(c)(1)]** may be allowable with federal grant funds under EDGAR, the district [shall or shall not] allow any "family-friendly" travel expenditures with federal grant funds.

Out-of-State Travel

Out-of-state staff travel expenditures require pre-approval from the federal granting agency or pass-through entity. Requests for out-of-state travel shall be submitted on TEA Division of Grants Administration Request for Specific Expenditure Approval: Out-of-State Travel or other federal granting agency prior to the travel event. The district [shall or shall not] allow out-of-state travel with federal grant funds.

The Grant Manager shall prepare and submit the pre-approval forms and submit approved forms with the Travel Authorization Form.

Review and Approval of Travel Expenditures

The Grant Manager shall review and approve all travel-related expenditures paid with federal grant funds if the expenditure is referred by the business manager for secondary approval.

The Grant Manager review shall consist of the following:

1) All original, detailed receipts include an itemized list of what was purchased
2) The traveler has documented a valid reason for the travel which is consistent with the grant guidelines and purpose
3) The travel expenditures meet the allowable cost principles.
4) The travel is not for the Superintendent or other individual (non-employee such as family member, School Board, etc.).
5) The travel is for students during an educational field trip or other approved activity in accordance with grant guidelines and purpose
6) The travel is not for a contractor or consultant for *their* professional development
7) The travel was approved by the granting agency, as appropriate (for example: out-of-state and educational field trip travel)

Financial Monitoring and Reporting

The district shall ensure that all grant funds are consistently monitored throughout the grant period **[2 CFR 200.329].** The monitoring shall include, but not be limited to:

- Compliance with federal requirements such as cost principles, audit, reporting requirements, etc.

- Compliance with account coding in accordance with the FASRG
- Monitoring of grant expenditures are properly documented and meet all allowable costs
- Monitor grant performance such as internal controls, audit findings, over/under expenditures, etc.
- Implement strategies to deter, mitigate, and eliminate waste and fraud in the expenditure of grant funds
- Other _____

Monitoring of Grant Purchases and Expenditures

The Grant Manager shall monitor the expenditures during the grant period to ensure that the funds are spent in a systematic and timely manner to accomplish the grant purpose and activities. The following timeline shall be used as a general guide for spending thresholds for a grant period of 15 months. The optimal spending thresholds noted below may be adjusted based on programmatic needs. For example, if the federal grant will be used for summer activities such as summer school, a larger percentage of the grant may need to be withheld for those specific activities.

- Within 3 months of the grant start date 25%
- Within 6 months of the grant start date 50%
- Within 9 months of the grant start date 75%
- Within 12 months of the grant start date 100%

The district shall maintain documentation to support all grant expenditures and provide the documentation upon request to the district's external auditors, granting agency or other oversight agency, as appropriate.

In accordance with **2 CFR 200.329(b)(1)**: *the non-Federal entity [district] must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.*

The Grant Manager shall be responsible for compiling and submitting all federal program performance reports as required by the federal granting or pass-through agency.

Auditing findings or deficiencies shall be addressed in a timely manner upon receipt of the notification. The finance, human resources, and grant management staff shall work collaboratively to develop and implement a Corrective Action Plan to resolve the findings or deficiencies. The Superintendent, or designee, shall approve the Corrective Action and monitor the timely implementation of corrective strategies.

The district shall disclose to the granting agency if any federal grant funds have been subject to fraud to district staff and/or contractors (vendors) **[2 CFR 200.113 Mandatory Disclosure].** Corrective actions, as appropriate, shall be implemented to remedy the loss of grant funds due to fraud.

Draw-down of Grant Funds

The district shall on at least a monthly basis [on or around the 10th of the following month], or as allowed or required by the grant guidelines, draw-down grant funds that have been spent in accordance with the grant guidelines. The draw-down shall be for all allowable and documented expenditures to date, less grant funds received to date, as verified by a financial general ledger.

NOTE: The expenditures shall be net of all refunds, rebates, discounts, credits, and other adjustments, if any. Rebates from corporate card programs shall also be applied to federal grant awards based on an allocation method (percentage of expenditures by fund group].

The district has opted to operate under the cash reimbursement program guidelines; therefore, the district shall submit a draw-down of federal grant funds only when the following has occurred:

- The expenditure has been made as evidenced by distribution of a paycheck to a grant funded staff member or mailing, e-paying, or delivering a payment to a vendor.
- Monthly payroll liability payments such as federal taxes, Social Security/Medicare taxes, Teacher Retirement System, wage garnishments, and insurance/elective deductions have been distributed, as appropriate.
- Accrued wages (2161) and accrued liabilities (2211) shall be deducted from the expenditures reflected on the general ledger. [The accrued wages and liabilities represent future disbursements.]

At no time shall the district draw-down any "advanced" cash payments.

Initiation of Draw-Down Request for Reimbursement

The draw-down of grant funds from the granting agency shall be initiated by the Grant Manager. A detailed summary general ledger of each grant fund should be generated to determine if the district is entitled to draw-down funds, i.e. if the granting agency owes the district any funds. If the district has funds available for draw-down, a detailed general ledger should be generated and forwarded to the Grant Manager for his/her review and approval and certification.

If a grant has a matching requirement, the district shall draw-down only the allowable amount after verifying compliance with the level of matching expenditures.

Review and Approval of Draw-Down Request for Reimbursement
The Business Manager and Grant Manager review shall consist of the following:

1) A review of the detailed general ledger for any unusual charges or reclassification of expenditures
2) A test sampling of either unusual or large expenditures to ensure that the expenditures were reviewed and approved by all designated staff
3) Monitor the percentage of expenditures-to-date to ensure that the grant funds are expended on a timely basis throughout the grant period. [NOTE: The federal granting or oversight agency may disallow grant fund expenditures that appear to be made outside of the grant period or so late in the grant period that the district and its student did not benefit from the delayed expenditure.]
4) Authorize [in writing] the finance department to draw-down the available grant funds by signing the Federal Grant Fund Expenditure Reimbursement Drawdown Certification Form.

Upon approval from the Grants Manager, the business manager shall prepare the paper and/or electronic draw-down request. The amount of the receivable shall be recorded on the general ledger (214X) and a copy of all supporting documentation such as the detailed general ledger, approval from the grant management department, and other supporting documentation shall be filed for audit purposes. The business manager shall prepare the journal ledger entry and the business manager shall post the to the finance general ledger.

If additional documentation of an electronic draw-down is required by the granting agency, the business manager shall comply with the additional requirements. For example, TEA as an oversight agency, at times requests supportive information related to a drawn down such as a detailed general ledger, narrative justification, or summary of expenditures by object code. Upon a request from the TEA, the business manager shall respond to the request within the allotted time to avoid designation as a "high risk" grantee.

The grant manager shall be responsible to ensure that the requested draw down amount does not exceed a grant-specific draw down amount, or percentage. [NOTE: The ESSA draw down percentage is 20% per month and aggregates each month.]

Final Draw-Down Request for Reimbursement
The final draw-down of grant funds from the granting agency shall be made within the allowable timeframe. Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the

Federal award **[2 CFR 200.343(b)].** The grant liquidation guidelines shall be adhered to in making final payment for all goods and services received and *placed into service* before the end of the grant period.

The final draw down process shall be the same as a monthly or periodic draw down, except that all refunds, rebates, credits, discounts, or other adjustments to the general ledger must be recorded in the general ledger prior to submitting the final draw down request. The final draw-down shall be reviewed and approved in the same manner as a periodic draw-down.

NOTE: There shall be no outstanding purchase orders or pending liquidations at the time of the final draw down of grant funds.]

The district shall promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the district for use in other projects **[2 CFR 200.343(d)].**

Certification of Draw-Down Requests for Reimbursement

Federal regulations **(CFR 200.415)** require that the district certify the accuracy of the annual and fiscal reports or vouchers requesting payments be signed by the authorized individual(s). The Grant Manager and business manager shall jointly certify every draw-down of funds, including the final expenditure report (draw-down of funds) as noted below:

> *By signing this report, we certify to the best of our knowledge and belief that the reports is true, complete, and accurate, and the expenditures, disbursements and cash receipts are the purposes and objectives set forth in the terms and conditions of the federal award. We are aware that any false, fictitious, or fraudulent information or omission of any material fact, may subject us to criminal, civil, or administrative penalties for fraud, false statements, false claims or otherwise.*

Missed Deadline for Draw-Down Requests for Reimbursement

If a final draw-down deadline is missed, the grant manager shall contact the granting or pass through agency to determine if a process exists to request a filing deadline extension.

NOTE: TEA has developed procedures to request an extension for filing expenditure reports. The request form must be completed, signed by the Superintendent, and filed with TEA within 30 days of the final expenditure report deadline.

Recording Draw-Down Requests for Reimbursement Receivables

The receivable from the granting agency shall be recorded in the general ledger. State grant receivables shall be recorded to object code 1241 and federal grant receivables shall be recorded to object code 1242. The same process for preparation and posting of the general ledger entry as a periodic draw-down shall be adhered to.

NOTE: The revenues realized and the expenditures should be equal at the time of the final draw down of grant funds.

Receipt of Grant Funds

All district staff, especially those assigned with federal grant duties, shall adhere to the Cash Management Procedures. Specifically, all cash received by the district shall be deposited, recorded and reconciled by multiple individuals to ensure segregation of duties.

The district shall record all grant fund receivables upon receipt from the granting agency. The receipt of grant funds shall be posted to the general ledger to the appropriate receivable account code. In the event that the grant funds received do not match the recorded receivable, the grant manager shall contact the granting agency to determine the discrepancy. If the granting agency has reduced and/or increased the grant funds paid to the district, a general ledger adjustment shall be posted to the appropriate revenue and receivable accounts. The business manager shall prepare the adjusting journal ledger entry and the business manager shall post the entry to the finance general ledger.

The district shall not maintain grant funds in a separate bank account. The district has not elected to draw down federal grant funds under the advanced cash reimbursement program guidelines, i.e. after the delivery of the payment to the payee. Bank account interest shall not be earned, recorded, nor returned to the granting agency as a result of the cash reimbursement program.

Tracking and Recording Receivables

On at least a monthly basis, the Grant Manager shall review all pending receivables. Aged receivables, defined as greater than 60 days from the date of recording, shall be investigated and resolved by contacting the granting agency. The grant manager shall be notified if aged receivables are not resolved within 90 days of recording the receivable.

At the end of the fiscal year, all known and measurable receivables shall be recorded to the general ledger to the appropriate grant code. The business manager shall prepare the journal ledger entry and the business manager shall post the entry to the finance general ledger.

Grant Compliance Areas

The district shall ensure that it is in compliance with all provisions and assurances of all grant programs. In addition, the district shall comply with grant requirements such as *supplement not supplant*, comparability, indirect cost, and maintenance of effort spending levels.

Supplement, Not Supplant

The term supplement, not supplant is a provision common to many federal statutes authorizing education grant programs. There is no single supplement, not supplant provision. Rather, the wording of the provision varies depending on the statute that contains it.

Although the definition may change from statute to statute, supplement not supplant provisions basically require that grantees use state or local funds for all services required by state law, State Board of Education (SBOE) rule, or local policy and prohibit those funds from being diverted for other purposes when federal funds are available. Federal funds must supplement—add to, enhance, expand, increase, extend—the programs and services offered with state and local funds. Federal funds are not permitted to be used to supplant—take the place of, replace—the state and local funds used to offer those programs and services. [TEA Supplement, Not Supplant Handbook, 2019]

The Penalties for supplanting are often severe. All federal funds involved in a supplant normally must be returned to the federal government. Since audits are usually conducted after the grant period has ended, there is often no other alternative correction action available other than returning the funds. **[Excerpt: TEA Supplant, Not Supplant Handbook, 2019]**

The district process to ensure that all grant funded activities are supplemental shall be a collaborative effort between the Grants Manager and finance [purchasing] departments. Both departments shall receive training and be aware of the supplement not supplant provisions.

TEA has established "presumptions of supplanting". In other words, there are three (3) scenarios in which the US Department of Education will presume that a supplant has occurred, unless the grantee can rebut the presumption with documentation. The burden of proof is on the district.

1. Providing Services Required Under State or Local Law
2. Providing Same Services as Those Provided in Prior School Year with State or Local Funds
3. Providing the Same Services in Federal and Non-Federal Programs

The Grants Manager shall review and approve all purchase orders (and non-purchase order payments) as noted in the district's Purchase Order Approval Path. The Grant Manager review shall include a determination if the planned purchase and/or expenditure meet one of the following guidelines:

1) The grant funds will be used to enhance, expand, or extend required activities. Examples may include before/after tutoring, additional research-based instructional programs, or other supplemental expenditures not required by state law or local policy.

2) The grant funds will be used for specific grant activities included the grant application that are above and beyond the activities funded with local funds
3) The grant funds will be used to supplemental grant activities as noted on the DIP or a CIP.

Program-specific supplement not supplant provisions shall be complied with in addition to the overall federal fund requirements.

Comparability

Comparability of services is a fiscal accountability requirement that applies to local educational agencies (LEAs) that receive funds under Title I, Part A of the Every Student Succeeds Act (ESSA). The intent of the comparability of services requirement is to ensure that an LEA does not discriminate (either intentionally or unintentionally) against its Title I schools when distributing resources funded from state and local sources simply because these schools receive federal funds. [TEA Title I, Part Comparability of Services Guidance Handbook, 2017]

The Grant Manager shall conduct the comparability test on an annual basis and complete the Title I Part A Comparability Assurance Document (CAD), as appropriate. **NOTE: The district is currently exempt from the comparability requirements due to the single campus grade spans.** If the district is not exempt, the business manager shall complete and submit the Comparability Computation Form (CCF) to TEA by the mid-November annual deadline.

In completing the CAD and CCF, the business manager shall follow the process outlined below:

1) Determine if the district is exempt from the comparability requirement. If so, complete and submit CAD and stop here.
2) If not exempt, the comparability testing process should continue as noted below:
    a. List all campuses in the CCF comparability testing
    b. Identify all campuses on the CCF as Title I Part A, skipped, or non-Title I Part A
    c. Determine whether to include dedicated EE and/or PK campuses in the comparability testing
    d. Select test method 1, 2, or 3 and use it consistently to all campuses being tested
    e. Complete the CAD for review by the grant management department. After review and approval by the grants management department, the CAD and CCF should be forwarded to the Superintendent for signature.
    f. Submit the CAD and CCF to TEA by the mid-November deadline

If TEA determines that the district is non-compliant, the Grant Manager and business manager shall work collaboratively to address the non-compliance. In addition, the district shall adjust the budgets as appropriate, until the district is in compliance with the comparability requirement.

Indirect Cost

Grantees must have a current, approved federal indirect cost rate to charge indirect costs to the grant. The indirect cost rate is calculated using costs specified in the grantee's indirect cost plan. Those specified costs may not be charged as direct costs to the grant under any circumstances. [TEA Indirect Cost Guidance.

The district has applied for an Indirect Cost Rate through the pass-through entity (TEA) for the fiscal year period(s), from FY 2021 to FY 2022. The business manager shall complete and submit an Indirect Cost Rate Proposal by the established deadline as specified by the pass-through entity (TEA) on the Indirect Cost webpage at: Indirect Cost Rates | Texas Education Agency.

The district's Indirect Cost Rate, or the maximum allowable rate, whichever is less shall be used to post Indirect Costs for federal funds to the General Fund. The business manager shall prepare a general ledger entry for the indirect costs. The business manager shall post the entry to the finance general ledger.

Maintenance of Effort

The district shall comply with the Every Student Succeeds Act (ESSA) and Individuals with Disabilities Act (IDEA) maintenance of effort requirements.

ESSA MOE

Federal statute requires that local education agencies (LEAs) receiving Title I, Part A funds must continue to maintain fiscal effort with state and local funds. An LEA may receive its full Title I, Part A entitlement if either the combined fiscal effort per student or the aggregate expenditures for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. Maintenance of Effort (MOE) is determined using state and local operating expenditures by function, excluding expenditures for community services, capital outlay, debt service, and supplementary expenses as a result of a Presidential declared disaster, as well as any expenditures from funds provided by the federal government. [TEA ESSA MOE Handbook]

The Grant Manager shall compute the MOE using the TEA ESSA LEA MOE Determination Calculation Tool during the budget adopted process and at the end of the fiscal year. Non-compliance with ESSA MOE will result in a reduction of ESSA funds in the exact proportion by which the district fails to meet the MOE requirement; therefore, the finance department shall plan for the reduction of grant funds at the local level. If the ESSA MOE falls below the required level, the finance and grant management departments shall collaborate to develop a plan to bring the district into compliance with the MOE requirements.

IDEA-B MOE

An LEA that accepts IDEA-B funds is required under IDEA-B to expend, for services to students with disabilities, at least an amount equal to 100% of the state and/or local funds it expended on students with disabilities during the previous year. Federal law provides four methods of demonstrating

compliance (or "maintaining effort"), as described in the Methods of Determining Compliance section. [TEA IDEA-B MOE Guidance Handbook, 2014]

The grant manager shall compute the MOE using the TEA IDEA-B LEA MOE Calculation Tool during the budget adopted process and at the end of the fiscal year. Non-compliance with IDEA-B MOE will result in a reduction of IDEA-B funds in the exact proportion by which the district fails to meet the MOE requirement; therefore, the finance department shall plan for the reduction of grant funds at the local level. If the IDEA-B MOE falls below the required level, the finance and grant management departments shall collaborate to develop a plan to bring the district into compliance with the MOE requirements.

NOTE: The finance department shall code all special education expenditures that qualify as exceptions to a specific sub-object for tracking purposes. For example, if the district makes a long-term purchase of equipment for a special education student, the district should track that expense separately (using a sub-object) to apply that cost as an exception during the MOE calculation.

As part of the IDEA-B grant application process, the Grant Manager will need to know the prior year Special Education expenditures and the next fiscal year budgeted Special Education Expenditures. The business manager shall provide these amounts to the Grants Manager not later than June 30th to ensure that the most accurate amounts are reflected in the grant application. Changes to these amounts, as they are known, by the business manager shall be submitted to the Grant Manager, as appropriate.

Single Audit

In compliance with 2 CFR 200, Subpart F – Audit Requirements, the district shall engage an independent audit firm to conduct a Single Audit of federal awards. The scope of the Single Audit shall require the following:

- The audit must be conducted in accordance with GAGAS and cover the entire operations of the district during the audit period,
- Determination if the financial statements are presented fairly in all material aspects in accordance with generally accepted accounting practices,
- Evaluate the internal controls over federal programs including testing to determine the risk level,
- Determination if the district has complied with federal statutes, regulations, and terms and conditions of the federal awards,
- Follow up on prior audit findings, and
- Submit the Data Collection Form.

Upon receipt of the Single Audit, the business manager shall determine if the audit contains any Corrective Actions of Questioned Costs.

- If there are any Corrective Actions, an Action Plan to remedy the deficiencies shall be developed and implemented by the business office.

- If there are any Questioned Costs, an Action Plan to reclassify the un-allowed expenses shall be developed and implemented by the business manager.

The business manager shall electronically submit the Single Audit to the Federal Audit Clearinghouse at the end of the fiscal year. Verification of the submission shall be maintained for audit purposes.

Reporting Requirements

The district shall ensure that all reporting requirements for grant programs are met within the established timelines. A master list of all activity, progress, evaluation, and expenditure reports shall be created to include the grant program, report type, responsible person(s), and due date. Completion of the reports may require the collaboration of several departments; however, the ultimate responsibility for the reporting requirement shall be as noted below:

1) Programmatic reports such as activity, progress and evaluations – Grants Manager
2) Expenditure reports such as interim, draw down, and final expenditure reports – Grants manager
3) Compliance reports such as Comparability, Maintenance of Effort, Indirect Cost, etc. – Grants manager
4) Highly Effective Staff reports – Human Resources Administrator

The Grant Manager shall monitor the overall master list to ensure that all reporting requirements have been completed by the appropriate campus and/or department. The reporting requirements for TEA-administered grants are posted by grant on the TEA Grant Opportunities webpage.

An illustration of the ESSA Consolidated Application for 2020-2021 Critical Events are noted below:

Critical Events

Grant Description	Event	Reporting Period	Due Date
All	ADC Availability Date	-	05/15/2020
All	Application Availability Date	-	06/02/2020
All	Application Due Date	-	09/03/2020
All	Last Amendment Due Date	-	06/02/2021
Title I, Part A	Revised Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title I, Part C Migrant	Revised Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title I, Part D Subpart 1	Revised Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title I, Part D Subpart 2	Revised Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title II, Part A	Revised Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title III, Part A ELA	Revised Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title III, Part A Immigrant	Revised Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title IV, Part A - SSAEP	Revised Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title I, Part A	Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title I, Part C Migrant	Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title I, Part D Subpart 1	Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title I, Part D Subpart 2	Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title II, Part A	Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title III, Part A ELA	Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title III, Part A Immigrant	Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021
Title IV, Part A - SSAEP	Final Expenditure Report	07/01/2020-09/30/2021	11/01/2021

Remedies for Non-Compliance

The district may be subject to consequences due to non-compliance with federal regulations. The district shall strive to maintain compliance and shall respond appropriately to all notifications of non-compliance from the federal granting agency or pass-through agency (TEA).

Grant Closeout Procedures

The district shall submit all grant closeout documents to the granting agency or pass-through agency, as appropriate **[2 CFR 200.344].** Grant closeout procedures shall include, but not be limited to:

- Ensure that no obligations are made after the grant period end date
- Liquidate all obligations incurred during the grant period
- Submit the final grant program performance report, if any
- Submit the final grant expenditure report, if any
- Drawdown all the expended grant funds (reimbursement request) – Match the grant expenditure draw-downs with the finance general ledger
- Certify that the final drawdown of federal grant funds is accurate (Certification)
- Refund any excess grant funds, interest, or other payables to the granting agency or pass-through agency
- Account for any real and/or personal property on hand at the end of the grant period

The grant manager must ensure that all grant close-out provisions are met on a timely basis and resolved with the awarding agency to avoid a termination of the grant award.

Under **2 CFR 200.344(h),** if the non-Federal entity does not submit all reports in accordance with this section and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to close out with the information available within one year of the period of performance end date.

Grant Awards

List of Grant Awards (including grant funding source, grant period, and grant amount]

Grant Title/#	Award Date	CFDA #	Grant Period	Amount	Federal Regulations
ESSA 2020-2021	7/01/2021	84.010A, 84.424A 84.367A	07/01/2021 09/30/2022	$198,099.00	EDGAR
ESSER II	8/05/2021	84.425D	08/05/2021-09/30/2022	$565,132.00	EDGAR
ESSER III	6/29/2021	84.425U	06/29/2021 09/30/2023	$846,137.00	EDGAR

Forms, Exhibits & Procedures

Forms/Exhibits	Page #	Procedures	Page #
Confidentiality Agreement		End of Month Procedures	
Journal Voucher Form		Fixed Asset Procedures	
Responsible Use Form (RUG)		Internal Control Procedures	
Sample Staff FTE Report		Purchasing Procedures	
PEIMS Population Served Table C030		Adding/Renewing Vendors Procedures	
Local Government Officer Conflict of Interest Form		Contract Management Procedures	
Lobbying Certification Form LLL		Hiring Procedures	
Vendor Application Form/Package		Timekeeping Procedures	
IRS Form W-9		Accounts Payable Procedures	
Conflict of Interest Questionnaire		Travel Guidelines & Procedures	
Felony Conviction Form		Cash Management Procedures	
Fingerprinting Form – Vendors		Incentive & Award Procedures	
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Allowability/Allocability Costs Worksheet			
Supplemental Duties Job Description and Pay Notice			
Summary of Employee Benefits			
Teacher Hiring Schedule			
Mid-Point Pay Scale			
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Personnel Recommendation Form			
Stipend & Extra Duty Pay Scale			
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Time & Effort Worksheet			
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Procurement Card Transaction Report			
Purchase Order Flowchart			
Quotation Tabulation Form			
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STATE OF TEXAS

PROCUREMENT AND CONTRACT MANAGEMENT GUIDE

STATEWIDE PROCUREMENT DIVISION



Glenn Hegar
Texas Comptroller of Public Accounts

VERSION 2.1

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INTRODUCTION

The Texas Comptroller of Public Accounts' (CPA) Statewide Procurement Division (SPD) is the central authority for state agency procurement guidance, education, and statewide contract development services. The SPD director serves as the Chief Procurement Officer (CPO) for the State of Texas.[1]

The CPO has authority over state agency procurement. Authorized to provide leadership on procurement issues, the CPO may analyze state purchasing data to leverage state purchasing power, provide functional support to agencies, and provide training on state purchasing and contract management. The CPO may also review solicitations for major contracts for information technology projects monitored by the Quality Assurance Team (QAT), review solicitations for major contracts reviewed by the Contract Advisory Team (CAT) and delegate certain purchasing authority to agencies.[2] Agencies are required to comply with any request for information from the CPO that is necessary to conduct an analysis of state purchasing data to leverage state purchasing power.[3]

SPD publishes this *State of Texas Procurement and Contract Management Guide* (Guide) to aid public procurement professionals in the execution of their duties and to provide step-by-step guidance and a framework for the continued development of public procurement processes and best practices.

The procedures in this Guide primarily focus on the implementation of Title 10, Subtitle D of the Texas Government Code as well as Chapters 2261 and 2262 of the Texas Government Code. Other procurement authority is addressed in the Guide to provide a broad working knowledge of commonly utilized procurement methods, but this is not meant to be exhaustive. For example, the procedures in this Guide do not address statute that govern the construction of public works.

The content of this Guide is generally organized to align with the procurement activities specified in the Procurement Cycle. To facilitate a better understanding of the roles performed by state agency employees during the various procurement activities, this Guide differentiates between *procurement* and *purchasing*. The term *procurement* refers to all aspects of the sourcing activities, including drafting and issuing the solicitation, evaluation of responses, selection of successful respondents, the negotiation of contracts, and the actual purchasing of goods or services. By contrast, the term *purchasing* refers to the mechanical or administrative process of how goods and services are ordered. Purchasing can usually be described as the transactional function of the procurement process, whereas procurement is, essentially, the overarching or umbrella activity within which purchasing can be found.

When using this Guide, care should be taken to gain an understanding of the referenced terms. The term "state agency," for example, has different meanings depending upon statutory context. As used in this Guide, the terms "state agency" and "agency" are synonymous. Legal citations are included throughout the Guide to provide assistance to the reader. Also, a glossary of procurement terms and a list of selected acronyms and abbreviations are provided in Appendix 1 and Appendix 2, respectively.

This Guide cites state statutes and administrative rules authorized by state statutes as support for its guidance, and includes essential and recommended contract clauses. A state agency shall comply with such guidance unless it has an exemption to the underlying law. However, although this Guide serves as a reference manual for implementing the requirements of the State of Texas procurement laws included within it, it is not an exhaustive compilation of every statute, rule, and standard that may pertain to a particular transaction. Furthermore, this Guide is not intended to be a manual on the law of contracts or constitute legal advice. Agencies are expected to be knowledgeable about legal requirements within their enabling statutes and any federal law associated with their operations. Public procurement professionals are advised to seek assistance from their agency legal counsel to ensure that procurements comply with state law and, if applicable, federal law as well as the best practices implemented by their agency.[4] This Guide also includes guidance that is not supported by a citation to statutes or administrative rules. All guidance that is not supported by a legal citation is provided to ensure robust and fair competition, transparency, integrity, fiscal restraint, and the other values underlying the statutory procurement system.

This Guide supersedes the *State of Texas Procurement Manual* and the *Contract Management Guide* issued by the former Texas Procurement and Support Services (TPASS) division. SPD is the successor to TPASS. Consequently, any reference to the TPASS division in forms, templates, or other publications held by an agency is now a reference to SPD. All published materials and guidance

1 TEX. GOV'T CODE § 2155.091.
2 TEX. GOV'T CODE §§ 2155.091(b), (d), (e).
3 TEX. GOV'T CODE § 2155.091(c).
4 Agencies making grant awards to other entities, in contrast to the procurement of goods or services, must follow the standards published by SPD under Chapter 783 of the Texas Government Code *e.g.*, Texas Grant Management Standards (TXGMS).

documents referencing the TPASS division are no longer current and agencies are directed to update and, as applicable, replace the outdated materials with the current SPD documents.

In June 2018, the Guide was first published as Version 1.0. When modifications are made to this Guide, the version number of the Guide will be updated and the Version History will be revised to include a summary of the revisions. SPD may post a notification on the CPA website of any occurrence (*e.g.,* change in law) which affects the Guide prior to a formal update to the Guide. A current version of this Guide is maintained by SPD and is available on the CPA website.[5]

[5] The CPA website is located at Comptroller.Texas.Gov.

PROFESSIONAL CERTIFICATION AND TRAINING PROGRAM

SPD administers a training, continuing education, and certification program for Texas public procurement professionals. For members of the governing bodies of agencies, SPD also provides an abbreviated training program to provide an understanding of the ethical and professional responsibilities of public procurement professionals.[6]

The term "public procurement professional" refers to any agency employee that conducts Purchasing, Contract Development, or Contract Management activities. A description of the three procurement roles is summarized in the table below.

Procurement Roles	
Purchasing	The receipt and processing of requisitions, development of specifications, development of statement of work, the issuance of purchase orders against existing statewide, cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the *Electronic State Business Daily* (ESBD) or in the *Texas Register*.
Contract Development	The term applies to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation and advertising of solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.
Contract Management	The term applies to actions taken following contract execution, including the assessment of risk, verification of contractor performance, monitoring compliance with deliverable and reporting requirements, enforcement of contract terms, monitoring and reporting of vendor performance, and ensuring that contract performance and practices are consistent with applicable rules, laws and the *State of Texas Procurement and Contract Management Guide*.

All public procurement professionals, including those from agencies exempted from the purchasing authority of SPD, must receive training and continuing education to the extent required by SPD.[7] An agency employee who is required to receive the training may not participate in purchases by the employing agency unless the employee has received the required training.[8]

SPD offers two levels of certification: Certified Texas Contract Developer (CTCD) and Certified Texas Contract Manager (CTCM). Contract Developers and Contract Managers working in Texas state government must attend mandatory courses and pass an exam to become certified as either CTCD or CTCM. SPD also provides the continuing education required for public procurement professionals to maintain certification. A licensed attorney employed by an agency is not required to be certified as a CTCD or CTCM.[9] An overview of the training and certification requirements for public procurement professionals is located the CPA website.[10]

Information regarding the course schedules is available on the CPA website.[11] In addition to state agencies, employees of political subdivisions, other governmental entities, and entities participating in the Texas SmartBuy Membership program may attend the training courses hosted by SPD.[12]

The SPD training program provides public procurement professionals with a clear understanding of statewide procurement rules and best practices. Agencies may also make specific requests for training in areas of interest. The SPD training program encourages an open dialogue with agencies regarding the State's procurement training to ensure that public procurement professionals are receiving the best possible education.

6 TEX. GOV'T CODE § 656.053.
7 TEX. GOV'T CODE § 656.051(c).
8 TEX. GOV'T CODE § 656.051(c).
9 34 TEX. ADMIN. CODE § 20.133(c)(5).
10 The CPA website is located at Comptroller.Texas.Gov.
11 The CPA website is located at Comptroller.Texas.Gov.
12 TEX. GOV'T CODE § 656.051(d).

ETHICS LAWS AND PROFESSIONAL STANDARDS

Overview

Public procurement professionals are the gatekeepers for the proper expenditure of the government's limited financial resources. They are entrusted to uphold the highest ethical standards and be good stewards of public funds with every purchasing decision they make. Ethical behavior and integrity are fundamental tenets of the public procurement profession that derive from values like "fairness," "honesty," and "accountability." When an individual's official duties clash with the individual's personal interests, a "conflict of interest" may occur; this conflict may impair one's judgment when trying to determine the proper course of action. Any erosion of public trust or perception of impropriety is detrimental to the integrity of the procurement process; therefore, all state employees involved in procurement activities must act in an ethical, impartial, transparent, and professional manner.

Nepotism. Nepotism is a form of conflict of interest that involves an explicit act of using one's position to favor a relative. Relationships between family members are classified by consanguinity or affinity.

- A relationship by consanguinity is one established through bloodlines. The consanguinity relationship may be either lineal (persons in a direct line of descent) or collateral (persons not in a common line of descent but with a common ancestor).
- A relationship by affinity arises by virtue of marriage. A relationship by affinity exists between an individual and either the blood relatives of the individual's spouse or the spouses of the individual's blood relatives. Stated simply, if at least two marriages are required to establish a link between two persons, they are not related by affinity.[13]

There are different ways of computing degrees of relationship. Texas law computes degrees of relationship by the civil law method.[14] The table below provides descriptions of the consanguinity and affinity relationships[15] that may be referenced in the various nepotism laws which prohibit certain types of activities based on an employee's job responsibilities, employment within a particular branch of government, or employment by a particular agency.

Consanguinity and Affinity Relationship Chart From Public Official or Employee

Consanguinity (Includes individuals related by blood to the official or employee)[1]			Affinity (Includes an officials' or employee's spouse and individuals related to the spouse)[2]	
First Degree	**Second Degree**	**Third Degree[3]**	**First Degree**	**Second Degree**
Parents	Grandparents Grandchildren	Great-grandparents Great-grandchildren	Spouse Spouse's Parents	Spouse's Grandparents Spouse's Grandchildren
Children	Brothers & Sisters	Nephews & Nieces Uncles & Aunts	Children's Spouses Spouse's Children	Spouse's Brothers & Sisters Brothers & Sisters' Spouses

TABLE NOTES

1 An adopted child is considered a child of the adoptive parent for this purpose.

2 Divorce or death ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue until the death of that child.

3 An aunt related in the third degree by consanguinity includes only aunts who are sisters of a parent of the official or employee. An uncle includes only uncles who are brothers of a parent of the official or employee. A nephew includes only nephews who are children of a brother or sister of the official or employee. A niece includes only nieces who are children of a brother or sister of the official or employee.

13 *See Johnson /. State*, 332 S.W.2d 321, 322 (Tex. Crim. App 1960).

14 TEX. GOV'T CODE § 573.021.

15 Degrees of relationships may be even more complicated and nuanced if there are any divorces and/or remarriages in either the consanguinity or affinity trees. This Guide will not attempt to explain the various combinations and permutations that may arise under those circumstances.

Appearance of Impropriety. The root of ethical behavior in public procurement is the commitment of public procurement professionals to ensure they neither gain personally from, nor unduly favor anyone, in the execution of their official duties. They are guided by a duty to serve the public for whom they are employed. Accordingly, public procurement professionals must not only comply with the minimum legal standards of ethical conduct established by statutes, agency rules and policies, and professional certifications, but they should also conduct themselves in a manner that avoids even the appearance of impropriety.

Resolving Ethical Dilemmas. Ethical dilemmas may arise in a variety of situations. This Guide does not contain a comprehensive list of every statute, agency rule, agency policy, or professional code of conduct that may apply to procurement activities; it does provide guidance on the most commonly applicable ethics laws and professional standards. SPD expects each public procurement professional to comply with all applicable legal requirements and use sound reasoning and best judgment to act ethically and with integrity. A public procurement professional's ethical dilemma may often be resolved by following this simple rule of thumb: If it *feels* wrong, it probably *is* wrong. When faced with an ethical dilemma, public procurement professionals should seek assistance from a supervisor, legal counsel, or agency ethics officer.

Certain Employment Restrictions and Disclosure Statements. Selected statutory state employment restrictions, post-employment restrictions, and required disclosures applicable to public procurement personnel are located in Appendix 4. Purchasers certify their compliance with Section 2155.003 of the Texas Government Code by completing a Non-Disclosure and Conflict of Interest Certification. A sample of this document is located in Appendix 5.

State Ethics Policy

It is the policy of the State of Texas that a state officer[16] or state employee[17] may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur an obligation of any nature that is in substantial conflict with the proper discharge of the officer or employee's duties in the public interest.[18]

To accomplish this policy objective, the Legislature has enacted statutes that detail the ethical responsibilities and disclosure obligations of state officers and employees; it also authorized the Texas Ethics Commission to oversee and enforce many of these laws and provided civil and criminal penalties for certain violations of these provisions.

State Standards of Conduct

The Legislature has established standards of conduct for state officers and employees. A state officer or employee should not:

- accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties, or that the officer or employee knows or should know is being offered with the intent to influence the officer or employee's official conduct;
- accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- accept other employment or compensation that could reasonably be expected to impair the officer or employee's independence of judgment in the performance of the officer or employee's official duties;
- make personal investments that could reasonably be expected to create a substantial conflict between the officer or employee's private interest and the public interest; or
- intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer or employee's official powers or performed the officer or employee's official duties in favor of another.[19]

A state employee who violates the state standards of conduct or the agency's ethics policy is subject to termination of employment or another employment-related sanction, and any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.[20] Additionally, agencies may not use appropriated funds to compensate a state employee who violates the state standards of conduct.[21]

Bribery

Bribery is a criminal offense. Bribery occurs if a person intentionally or knowingly *offers*, *confers*, or *agrees to confer on another*, or *solicits*, *accepts*, or *agrees to accept* any benefit as consideration

[16] A "state officer" is defined as an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency. TEX. GOV'T CODE § 572.002(12).

[17] A "state employee" is defined as an individual, other than a state officer, who is employed by a state agency, Texas appellate courts or the Texas Judicial Council, either house of the Texas legislature or a legislative agency, council, or committee, including the Legislative Budget Board, Texas Legislative Council, State Auditor's Office, and Legislative Reference Library. TEX. GOV'T CODE § 572.002(11).

[18] TEX. GOV'T CODE § 572.001(a).

[19] TEX. GOV'T CODE § 572.051(a).

[20] TEX. GOV'T CODE § 572.051(b).

[21] TEX. GOV'T CODE § 2113.014(a).

for a violation of a public servant's legal duty or a public servant's decision, opinion, recommendation, vote, or any other exercise of discretion.[22] A salary is a benefit.[23] A state employee, therefore, is subject to criminal prosecution if the employee accepts employment as consideration for an official act.[24] A bribery offense occurs even if the benefit is offered after the employee has acted in a manner desired or after the employee has ceased working for the State.[25] However, bribery does not occur if the benefit is a political contribution defined by Title 15 of the Election Code or an expenditure made and reported in accordance with the lobby statute.[26]

Gift to Public Servant

It is a criminal offense for a public servant to accept a benefit from a person subject to his jurisdiction.[27] This statute prohibits seven (7) types of conduct by state employees and these prohibitions apply regardless whether the donor seeks or expects anything in consideration for the benefit.[28] A regulatory agency employee, for example, may not solicit, accept, or agree to accept any benefit from a person the employee knows is subject to regulation, inspection, or investigation by the agency.[29]

It is also an offense for a public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government to solicit, accept, or agree to accept any benefit from a person who the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of the public servant's discretion.[30] Acceptance of a gift may also be prohibited if the donor of the gift is a registered lobbyist.[31]

Not all gifts are prohibited.[32] Under this statute, some state employees may accept non-cash items of less than $50 in value.[33] For example, promotional or commemorative items of minimal value such as caps, coffee mugs, t-shirts, key rings, and discount coupons, do not constitute an improper benefit if such items are not solicited and not offered or accepted in exchange for any action or inaction on the part of public servants.[34] It is also permissible to accept a gift from a friend, relative, or business associate with whom a state employee has a relationship independent of the person's official status, provided that the gift is given on account of the personal relationship and not on account of the official status.[35]

Misuse of Official Information

As a result of employment with the State of Texas, a state employee may have access to information the public does not. A state employee faces criminal liability if the person uses information that has not been made public and was obtained during the course of official duties for a private purpose. The term "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code.[36] A public servant commits an offense if, by relying on nonpublic information, the person (1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information, (2) speculates or aids another to speculate on the basis of the information, or (3) as a public servant, coerces another into suppressing or failing to report that information to a law enforcement agency.[37] A public servant also commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, the person discloses or uses information for a non-governmental purpose that the person has access to by means of office or employment and that information has not been made public.[38]

22 TEX. PENAL CODE § 36.02(a).
23 Tex. Ethics Comm'n Op. No. 155 (1993).
24 Tex. Ethics Comm'n Op. No. 205 (1994) (although the laws subject to interpretation by the Ethics Commission do not specifically address negotiations for future employment, the bribery law would prohibit a legislator from accepting or soliciting future employment in exchange for some official action on the part of the legislator during the remainder of the term of office and statutory standards of conduct prohibit a state officer or employee from accepting employment or compensation that might impair his or her independence of judgment in performing official duties).
25 TEX. PENAL CODE § 36.02(c).
26 TEX. PENAL CODE § 36.02(d).
27 TEX. PENAL CODE § 36.08; Tex. Ethics Comm'n Op. No. 139 (1993) (the purpose of the prohibition on gifts is to prevent even the appearance that government decisions are influenced by personal gifts to government officers and employees).
28 *Id.*; Tex. Ethics Comm'n Op. No. 425 (2000); *c.f.* TEX. PENAL CODE § 36.02 (providing that bribery occurs when a benefit is in consideration for a discretionary act or duty).
29 TEX. PENAL CODE § 36.08(a).
30 TEX. PENAL CODE § 36.08(d).
31 TEX. GOV'T CODE §§ 305.024, 305.025 (provisions relating to lobby activities); Tex. Ethics Comm'n Op. No. 118 (1993) (explaining that for a state employee to accept a gift or other expenditure, it must be permissible under both the lobby statute and the Texas Penal Code).
32 TEX. PENAL CODE § 36.10. Whether a state employee may accept a gift, even one of de minimis value, depends on the status of the donor as well as the nature of the gift. Tex. Ethics Comm'n Op. No. 130 (1993).
33 TEX. PENAL CODE § 36.10(a)(6); but see general discussion of ethics laws including TEX. GOV'T CODE § 2155.003.
34 Tex. Ethics Comm'n Op. Nos. 61, 66 (1992).
35 TEX. PENAL CODE § 36.10(a)(2).
36 TEX. PENAL CODE § 39.06(d).
37 TEX. PENAL CODE § 39.06(a).
38 TEX. PENAL CODE § 39.06(b).

Misuse of Government Property

State law prohibits the misuse of governmental resources.[39] Governmental resources include computers, copiers, supplies, and staff time.[40] A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, the person intentionally or knowingly misuses anything of value belonging to the government that has come into the person's custody or possession by virtue of the person's office or employment.[41] A public servant, for example, may face criminal prosecution for use of a state-issued credit card for a personal expenditure that is not an agency-authorized state business expense.[42]

Suspected Fraud, Waste, or Abuse

Each agency must develop and comply with a purchasing accountability and risk analysis procedure that includes an assessment of the risk of fraud, abuse, or waste in the contracting process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts.[43] The State Auditor's Office (SAO) investigates allegations of fraud, waste, or abuse.[44] Administrative heads of agencies who have reasonable cause to believe that money was lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred are required to report this information to the SAO.[45] A reasonable cause to believe exists when a set of facts would lead a reasonable and prudent person to believe that an offense may have been committed.[46] Employees and vendors who become aware of a situation that involves suspicious activities or fraudulent acts may also report the allegations to SAO.

The SAO coordinates investigatory work with internal auditors, federal and state prosecutors, and law enforcement agencies at the city, county, state, and federal levels. Criminal offenses investigated by SAO include, but are not limited to, the following:

- theft,
- forgery,
- tampering with a governmental record,
- securing execution of document by deception,
- misapplication of fiduciary property,
- conversion of funds,
- abuse of official capacity,
- gift to a public servant by a person subject to his or her jurisdiction, and
- bribery.

Reports of fraud, waste, or abuse involving state resources may be submitted through the SAO website,[47] by phone at 1-800-TX-AUDIT (892-8348), or by mail to State Auditor's Office, Attn: IAS, P.O. Box 12067, Austin, TX 78711-2067. Someone who reports fraud may choose to remain anonymous.[48]

39 TEX. PENAL CODE § 39.02(a)(2).
40 *See e.g.,* Tex. Ethics Comm'n Op. No 134 (1992).
41 TEX. PENAL CODE § 39.02(a)(2).
42 Tex. Ethics Comm'n Op. No. 147 (1993).
43 TEX. GOV'T CODE § 2261.256.
44 TEX. GOV'T CODE § 321.013, *et seq.*
45 TEX. GOV'T CODE § 321.022(a).
46 FAQ posted to SAO website at www.sao.texas.gov.
47 The SAO website is located at www.sao.texas.gov.
48 https://sao.fraud.texas.gov/.

VENDOR COMMUNICATION

Communication between public procurement professionals and vendors is imperative and encouraged. If used effectively, communication with industry representatives is a vital resource for public procurement professionals. Steps must be taken, however, to maintain a fair opportunity to compete for all vendors and avoid any appearance of favoritism. Agency personnel must be mindful that one-on-one communications with vendors occurring prior to contract award are subject to enhanced scrutiny due to the importance of maintaining a "level playing field" among all eligible vendors during competitive procurements. If there is any doubt about appropriate communications with vendors, consult with agency legal counsel.

Communication Model. Agencies are expected to develop and publish a communication procedure to assist procurement professionals and vendors in establishing appropriate vendor communication. A sample Communication Model is available in Appendix 3. Agency legal counsel should be consulted for any communication outside the parameters of the agency's established Communication Model.

Fact Gathering. Texas law authorizes the exchange of information between an agency and a vendor related to future solicitations.[49] Vendors are often experts in their respective fields and can offer insight on potential purchases, such as current trends, industry practices, and available products or solutions. The procurement team should develop a plan to obtain any vendor input, which may include issuing a Request for Information (RFI), holding a formal pre-solicitation meeting with the vendor community, attending industry days, contacting industry leaders directly, or contacting vendors directly. The result of these interactions may lead to increased competition, a more detailed and up-to-date description of technical requirements or scope of work, and ultimately better value for the State. However, Contract Developers must never tailor specifications to benefit a particular vendor, as this limits competition. Care should be taken to avoid the appearance of favoritism towards certain vendors in the fact-gathering process. When possible, agencies should avoid consulting exclusively with incumbents or a small number of vendors, which could give the appearance of favoritism. RFIs and invitations to a formal pre-solicitation meeting should be sent to all vendors listed under the applicable code on the CMBL, as well as any incumbent vendors who may not be listed on the CMBL.

Drafting the Solicitation. Contract Developers may communicate with vendors for the limited purpose of answering questions that arise during drafting specifications. For example, it may be necessary to consult a group of vendors to ensure that specifications are not needlessly restrictive, are accurate, and avoid the appearance of favoritism. When communicating with vendors, Contract Developers should always be careful about sharing information and should avoid creating an unfair competitive advantage or an appearance of favoritism. Any information disclosed to one or more vendors that could potentially affect the response to the solicitation must be made publicly available in the solicitation. This provides equal access for all vendors and maintains procurement integrity. If a vendor is compensated by an agency for its assistance in drafting specifications or scope of work for a solicitation, the vendor is not eligible under Texas law to bid on the resulting contract.[50]

After the solicitation is posted. When the solicitation is issued, only vendor communication methods established in the solicitation are permitted. Designated points of contact should be established within the solicitation by the soliciting agency to receive inquiries from vendors. Agencies may provide opportunity to instruct vendors on statutory requirements such as HUB subcontracting plans or provide access to a HUB coordinator not involved in the procurement award decision to review draft HSPs for compliance prior to submission. Opportunities for formal communication including pre-bid conferences that are open to all interested parties, and written question and answer (Q&A) periods are recommended, particularly for complex procurements. These opportunities are the only times when an agency can benefit from vendors' input after a solicitation is issued to make any necessary corrections to the solicitation through the addendum process. Failure to allow for vendor input during the Q&A period may result in vendors bidding higher-than-necessary prices to cover unforeseen costs if the specifications are unclear. This could result in higher costs to the agency or cause the solicitation to fail, thus necessitating a new solicitation.

If any information relevant to the procurement such as evaluation methods or projected ordering volumes is provided to any vendor, that information should be released to the public without delay. This includes information shared at conferences attended by some but not all potential vendors. To ensure a "level playing field," any contact between vendors and end users or evaluators should be avoided during the solicitation posting period, and if a vendor fails to obey the guidelines regarding vendor communication posted in the agency solicitation, the vendor's proposal may be subject to disqualification.

[49] TEX. GOV'T CODE § 2155.090(b).

[50] TEX. GOV'T CODE §§ 2155.004, 2155.090(b).

Evaluation and Negotiation. Allowable vendor-public procurement professional interactions between the response due date and contract award include:

- clarification of a respondent's ability to meet the solicitation requirements;
- negotiations, as appropriate based on the procurement method, including request for best and final offer (BAFO); and
- the exchange of information as necessary to facilitate a potential contract award.

Evaluation and vendor selection should be based on response documents formally submitted by each vendor, not other communications. If one vendor is provided an opportunity to clarify its response, similarly situated vendors should receive the same opportunity.

SPD, DIR, SAO, OVERSIGHT TEAMS, AND PLANNING DOCUMENTS

Overview

SPD and DIR each operate independent statewide centralized purchasing programs. Both agencies leverage the State's buying power in order to maximize competition to provide cost-effective products and services to agencies and other eligible public sector customers. SPD and DIR serve on two interagency oversight teams — the Contract Advisory Team (CAT) and Quality Assurance Team (QAT) — which seek to improve agency procurement and contract management practices, as well as the Procurement Coordination Committee. The Procurement Coordination Committee was created by the Legislature in 2013 and is charged with reviewing DIR and SPD procurement functions to identify areas of overlap, mutually beneficial contracting methodologies, data management, customer relations, and consolidation opportunities; developing standard data collection and cost savings methodologies; and reporting findings to the Sunset Advisory Committee.[51]

SPD

SPD is the State's central authority for the procurement of non-IT goods and services.[52] SPD's primary functions include managing statewide contracts, exercising procurement authority delegation of specific purchases to individual agencies, and providing guidance on procurement practices which foster effective competition and ensure the quality and integrity of state purchases.

SPD leverages the State's buying power by developing statewide Term Contracts and establishing TXMAS contracts for large-volume non-IT goods and services. These contracts are available on Texas SmartBuy. Texas SmartBuy, managed by SPD, is the State's central e-procurement system for non-IT goods and services. Almost 2 million items are available through Texas SmartBuy for agencies as well as local governments and state-funded non-profit organizations through SPD's Texas SmartBuy Membership program.[53]

SPD provides procurement support services to agencies, entities participating in SPD's cooperative purchasing program, and the vendor community. SPD publishes and maintains this Guide and administers the State's professional procurement certification and training program. In addition, SPD manages the following programs that are utilized for both IT and non-IT procurements:

- Centralized Master Bidders List (CMBL),
- Historically Underutilized Business Program (HUB),
- Electronic State Business Daily (ESBD), and
- Vendor Performance Tracking System (VPTS).

A summary of SPD programs and online systems is located in Appendix 6.

DIR

DIR is the State's information technology and telecommunications agency. DIR leverages the buying power of the State and utilizes strategic sourcing methods to select vendors offering the best value on IT commodity items to the State.[54] DIR provides a range of IT and telecommunications products and services to agencies and eligible voluntary customers, including local governments and universities.

DIR coordinates and supports the IT and telecommunications needs of the State by carrying out the following key functions:

- provides statewide IT strategic planning, reporting, and standards setting;
- provides guidance and oversight of state information security which includes operation of the Network Security Operations Center, creation of the State Information Security Advisory Committee and Texas Cybersecurity Council, and education and outreach for Information Resources Managers;
- oversees Data Centers Services; Texas.gov, the official website of Texas; Managed Security Services; and Open Data Portal;
- procures and manages statewide cooperative contracts for IT products and services; and
- operates the Capitol Complex Telephone System (CCTS).

DIR also provides technology policy, planning, and standards that help shape consistent and effective use of technology across the state, addressing areas such as statewide project planning, electronic information resources (EIR) accessibility, and best practice guidance in new technologies. Furthermore, as the State's

[51] TEX. GOV'T CODE § 2155.007.

[52] In 2007, the functions of the Texas Building and Procurement Commission were divided between the TFC, its successor agency, and CPA. House Bill 3560 of the 80th Legislature transferred to CPA the statewide procurement function, fleet management, historically underutilized business program, and support services of the Texas Building and Procurement Commission. At that time, CPA became the State's purchasing manager, awarding and managing hundreds of statewide contracts on behalf of more than 200 state agencies and 1,600 cooperative purchasing members.

[53] TEX. GOV'T CODE §§ 2155.061, 2155.202-2155.205; TEX.LOC.GOV'T CODE § 271.082.

[54] TEX. GOV'T CODE § 2157.068(b).

technology agency, DIR provides state leadership with updates on technology issues relevant to agencies.

SAO

The State Auditor's Office (SAO) assigns contract monitoring ratings to each of Texas' twenty-five (25) largest state agencies as determined by the Legislative Budget Board (LBB).

The ratings are assigned to the identified agencies at three specific time periods during the procurement process: contract solicitation development, contract formation and award, contract management and termination.

The ratings are "additional monitoring warranted," "no additional monitoring warranted," and "reduced monitoring warranted."

SAO RATINGS[1]	CONTRACT TIMELINE		
	Contract Solicitation & Development	Contract Formation & Award	Contract Management & Termination
Additional monitoring warranted			X
No additional monitoring warranted	X		
Reduced monitoring warranted		X	

TABLE NOTES

[1] TEX. GOV'T CODE § 2261.258; 34 TEX. ADMIN. CODE § 20.166.

Agencies that are identified with a rating of "additional monitoring warranted" during Contract Solicitation and Development may not request expedited CAT reviews. Contract Managers at agencies assigned the rating "additional monitoring warranted" during Contract Management and Termination must complete the SPD-provided Enhanced Contract Monitoring training by December 31 of the year of the rating assignment.

Contract Advisory Team

The Contract Advisory Team (CAT) was created in 2001 to assist agencies in improving contract management practices. In addition to reviewing and making recommendations on the solicitation documents for contracts by agencies that have an estimated value of at least $5 million, the CAT also

- reviews any findings or recommendations made by the state auditor, including those made regarding an agency's compliance with this Guide;
- provides recommendations to SPD regarding the development of this Guide and training;
- provides recommendations and assistance to agency personnel throughout the contract management process;
- coordinates and consults with the QAT on all contracts relating to a major information resources project;
- develops and recommends policies and procedures to improve agency contract management practices;
- develops and recommends procedures to improve agency contracting practices by including consideration for best value; and
- creates and periodically performs a risk assessment to determine the appropriate level of management and oversight of contracts by agencies.[55]

The CAT consists of members from each of the following agencies: CPA, DIR, Health and Human Services Commission, Office of the Governor, TFC, and DPS as well as several representatives from institutions of higher education as identified in Texas Education Code § 55.165. Agency membership on the CAT is either designated by statute or appointment by the CPO.[56] SAO and LBB serve as technical advisors to the CAT and the OAG provides legal assistance to the CAT.[57]

Quality Assurance Team

The Quality Assurance Team (QAT) is an interagency working group established in 1993 to provide on-going oversight to reduce risk of project overruns and failures of major information resources projects that receive appropriations from the Legislature. Risk, for purposes of the QAT, is defined as the likelihood that a project will not deliver a quality solution based on the timeline, budget and scope commitments made to state leadership.

The QAT fulfills its purpose primarily by executing the following strategies:

- reviews and provides recommendations on contracts for the development or implementation of a major information resources project with a value of at least $10 million;
- implements a standard, repeatable, predictable, and transparent quality assurance process;
- reviews deliverables produced by projects, including proactive monitoring of project outcomes;
- requires development of a corrective action plan for projects based on identification of project risks;

[55] TEX. GOV'T CODE § 2262.101(a).
[56] TEX. GOV'T CODE § 2262.102(a-1).
[57] TEX. GOV'T CODE § 2262.102(b)-(c).

- reports to stakeholders (state leadership, agency leadership, agency project team) the QAT assessment of the health and overall status of projects; and
- elevates significant issues to state leadership and advises on alternative methods for correction.

All agencies are subject to QAT oversight, with the exception of institutions of higher education and self-directed, semi-independent state agencies.[58] The QAT is composed of representatives of the LBB, DIR, and CPA, with SAO participating as an advisor.[59]

Agency Procurement Plan

Each agency must complete an agency procurement plan that identifies its management controls and purchasing oversight authority in accordance with the policy guidance contained in this Guide.[60] Agencies must submit a current procurement plan to SPD annually by November 30. The Agency Procurement Plan Template and submission information are located on the CPA website.[61] SPD uses information submitted in the procurement plans to analyze state spend and opportunities for contract consolidation at the statewide level, and as a reference for agency personnel's authority to submit procurement requests, such as open market requisitions or delegation requests.

Historically Underutilized Business Program Reports

Each agency must maintain, and compile monthly, information relating to the agency's and each of its operating divisions' use of Historically Underutilized Businesses (HUBs), including information regarding subcontractors and suppliers.[62] On a monthly basis, each agency must require its prime contractors to report to the agency the identity and amount paid to each HUB and non-HUB subcontractor to whom the prime contractor has awarded a subcontract for the purchase of supplies, materials and equipment.[63] Prime contractors must report to the applicable agency the progress payments made to subcontractors and suppliers each month in which such payment is made.[64]

On a form prescribed by SPD, each agency must report to SPD, not later than March 15 of each year regarding the previous six-month period and on September 15 of each year regarding the preceding fiscal year, the total dollar amount of HUB and non-HUB contracting and subcontracting participation in all of the agency's contracts for the purchase of goods, services and public works payments.[65] Agencies must include contracting and subcontracting participation paid from treasury and non-treasury funds.[66]

SPD will prepare a consolidated report based on a compilation and analysis of the reports submitted by each state agency and other information available to SPD.[67] These reports of HUB purchasing and contracts shall form a record of each agency's purchases in which the agency selected the contractor.[68] SPD will submit to the presiding officer of each house of the Legislature, by May 15 of each year, a report regarding the previous six-month period and, by November 15 of each year, a report on the preceding fiscal year.[69]

Agency Contract Management Handbook

Each agency must publish a contract management handbook that establishes consistent contracting policies and practices to be followed by the agency and that is consistent with this Guide.[70] The agency's handbook may include standard contract provisions and formats for the agency to incorporate in contracts.[71]

Agency Contract Management Procedures

Each agency must develop and comply with a purchasing accountability and risk analysis procedure. The procedure must provide for

1. assessing the risk of fraud, abuse, or waste in the vendor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts;
2. identifying contracts that require enhanced contract monitoring or the immediate attention of contract management staff; and
3. establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.[72]

The agency shall post on the agency's website the procedures described in paragraphs (2) and (3) above and submit to SPD a link to the web page that includes the procedures.[73] The link to each agency's contract management procedures is located on the CPA website.[74]

58 *See* Quality Assurance Team Policies and Procedures Manual located on the QAT website at www.qat.dir.texas.gov.
59 TEX. GOV'T CODE § 2054.158.
60 TEX. GOV'T CODE § 2155.132(c); 34 TEX. ADMIN. CODE § 20.132(b).
61 The CPA website is located at Comptroller.Texas.Gov.
62 TEX. GOV'T CODE § 2161.122(a).
63 TEX. GOV'T CODE § 2161.122(a).
64 TEX. GOV'T CODE § 2161.122(b).
65 TEX. GOV'T CODE § 2161.121(b).
66 TEX. GOV'T CODE § 2161.121(c).
67 TEX. GOV'T CODE § 2161.121(a).
68 TEX. GOV'T CODE § 2161.122(e).
69 TEX. GOV'T CODE § 2161.121(d).
70 TEX. GOV'T CODE § 2261.256(b).
71 TEX. GOV'T CODE § 2261.256(b).
72 TEX. GOV'T CODE § 2261.256(a).
73 TEX. GOV'T CODE § 2261.256(c).
74 The CPA website is located at Comptroller.Texas.Gov.

THE PROCUREMENT CYCLE

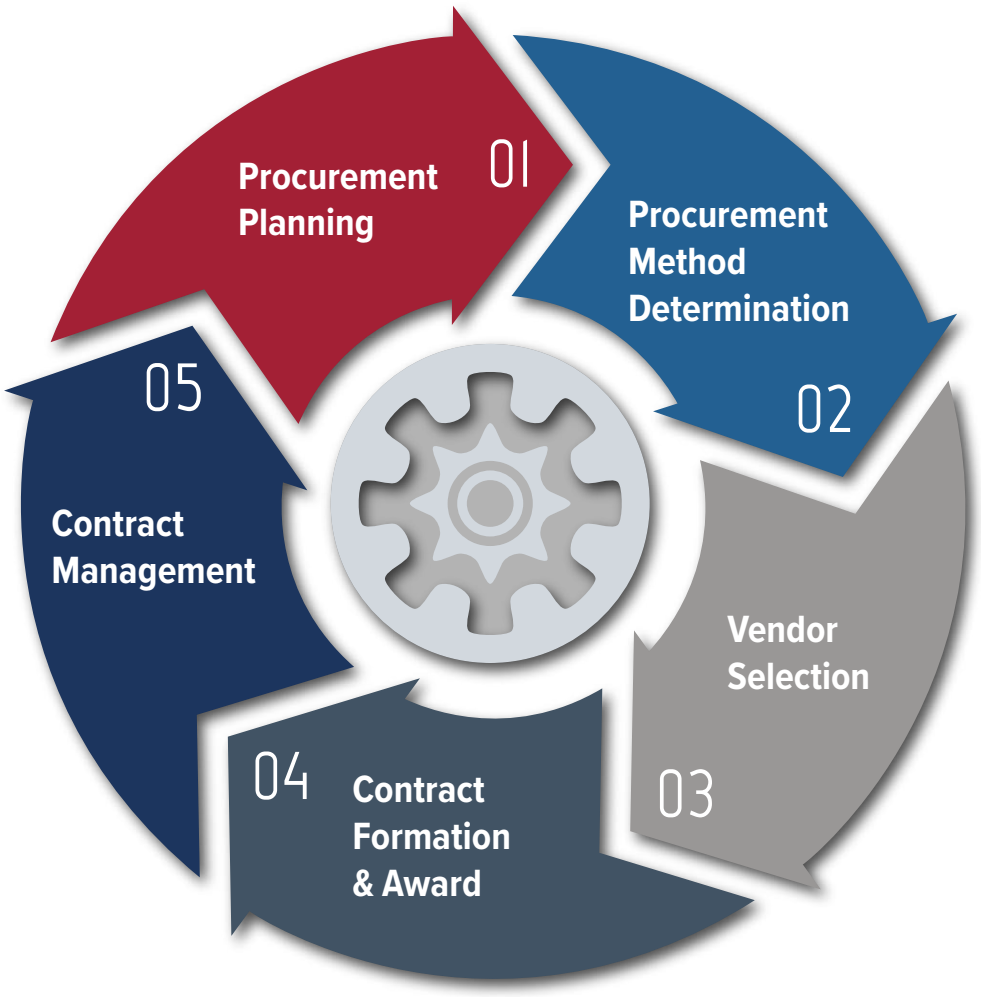
Before engaging in any public procurement activities, it is important to understand that there are common characteristics between all procurements and following each of the processes outlined below ensures that the procurement is conducted in a transparent and efficient manner.

The Procurement Cycle identifies the five steps performed by public procurement professionals for every procurement.

The steps of the Procurement Cycle are summarized as follows:

1. Procurement Planning: Define the business need and establish the procurement objectives;
2. Procurement Method Determination: Identify the appropriate Procurement Method and, if applicable, issue a solicitation;
3. Vendor Selection: Fairly and objectively select the vendor that provides best value to the State;
4. Contract Formation & Award: Ensure that the awarded contract complies with applicable procurement law and contains provisions that achieve the procurement objectives; and
5. Contract Management: Administer and enforce the terms of the contract.

The remainder of the Guide is organized to provide practical suggestions as well as best practices for the procurement activities associated with each step of the Procurement Cycle.



PROCUREMENT PLANNING

Overview

The procurement process begins with procurement planning. This is a crucial step to the successful outcome of any procurement because, with proper planning, an agency is likely to achieve its procurement objectives in an efficient and timely manner. Planning activities, at a minimum, include developing a needs assessment, a cost estimate and an Acquisition Plan. The most common procurement planning document is the purchase requisition.

Vendors also need time to plan for solicitations. To achieve a strong pool of responses, agencies are encouraged to develop a six-month calendar of upcoming solicitations and post it on their agency website. This will allow interested vendors time to allocate sufficient staffing resources for a response and foster greater competition for goods and services. Solicitations calendars are tentative and non-binding and remain subject to change at the agency's discretion.

Needs Assessment

The success of the procurement is often dependent upon how well the business requirements are documented during the Procurement Planning phase. The needs assessment, therefore, must contain sufficient detail to identify the key business requirements. As part of the needs assessment, the agency may conduct market research, study historical spend, use benchmarking, and issue a Request for Information (RFI) to the vendor community.

When conducting the needs assessment, public procurement professionals must be mindful that an agency may not accept a response or award a contract to a vendor that received compensation from the agency to participate in the preparation of the specifications or solicitation on which the proposal or contract is based.[75] A respondent or contract participant, however, may provide free technical assistance to an agency.[76]

Market Research. Market research is routinely used by public procurement professionals to obtain information relating to the size of the potential vendor pool, pricing, applicable industry standards, market trends, and to determine if the item or service to be purchased is readily available in the commercial marketplace. Market research may include online research, review of industry periodicals and information obtained from professional organizations, attendance at trade shows, discussions with other customers, and consultations with industry representatives.

Historical Spend Analysis. Historical spend analysis is a tool used to optimize an agency's buying power. By studying an agency's purchasing data, public procurement professionals seek, among other things, to identify cost savings, which may be available by consolidating purchases or diversity, and areas for improvement of administrative efficiencies.[77] For instance, a study of an agency's spending pattern may reveal that the agency is missing a volume discount opportunity when it makes multiple single purchases rather than consolidating the individual purchases together as a bulk purchase.

Benchmarking. Benchmarking is used by public procurement professionals to compare a particular item, service, or process with other entities or an established industry standard. The objective of benchmarking is to obtain a "measure" that can then be used to identify opportunities for improvement. For example, for a product that an agency is using under an expiring contract, benchmarking for the subsequent procurement would include an analysis of the product capabilities currently available in the market and the associated price per standard unit. This practice helps to ensure that the agency is not procuring an outmoded replacement product for the same or similar price as a product with far more advanced capabilities.

Request for Information (RFI). An RFI is a formal research method used by an agency to gather information directly from the industry about a particular type of product or service. One of the benefits of the RFI process is that information, pertinent to an agency's business need, is obtained in real-time directly from the vendor community regarding applicable industry standards, best practices, potential performance measures, cost structures or pricing methodologies, and feedback on innovative items.

A common practice is to publish the RFI on the ESBD or submit the RFI to an appropriate professional or trade organization. This practice has the benefit of not only utilizing a venue that optimizes access by the vendor community, but also serves to control vendor communications so that they only occur with designated agency contacts. By establishing a prescribed communication protocol at the beginning of the RFI process, the agency is ensuring that a "level

[75] TEX. GOV'T CODE § 2155.004(a).
[76] TEX. GOV'T CODE § 2155.004(e).
[77] *See* General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 17.09(c) (directing agencies to make a good faith effort to identify and execute savings and efficiencies in their use of contracted goods and services).

playing field" is maintained within the vendor community if there is a subsequent procurement initiative.

It is important to note that an RFI is not a procurement opportunity; a contract cannot be developed from a response to an RFI.[78] Responses to an RFI are strictly voluntary and there is no downside for vendors who choose not to participate; consequently, an RFI cannot be used to establish a pre-qualified vendor list as voluntary participation in the RFI process cannot disadvantage vendors that choose not to participate. Vendors may choose not to participate in RFIs for a variety of reasons. For instance, a vendor may have a company policy of not responding to RFIs. Vendors may also decide, on a case-by-case basis, not to respond to RFIs seeking information readily available on the internet. The number of responses to an RFI, therefore, should not be used to gauge industry interest in any subsequent procurement initiative.

An agency may choose to use information received from RFI responses to develop specifications for a solicitation. Responses to RFIs, therefore, are public information. Public procurement professionals must be mindful not to provide any information during the RFI process that would give a vendor an advantage in a later procurement or could be construed as preliminary negotiations. If RFI respondents are requested to deliver oral presentations, the same agency staff should attend all presentations and the respondents should be offered the same amount of time to conduct their presentations. It is best practice for RFI activities to conclude prior to commencement of specifications drafting.

Cost Estimate

The agency must develop a cost estimate as well as make an initial determination of the funding source that will be used for the procurement during the Procurement Planning phase. Depending on the procurement, a cost estimate may be developed from a vendor's advertised price list, developed through online research, or may be prepared using standardized estimation methods and based on historical spend. The purchaser may contact someone within the agency who has knowledge in the subject area to assist with the cost estimate. The cost estimate must be developed in good faith as it will be used not only in the selection of the appropriate procurement method, but also for compliance with statutory requirements that may be applicable to the purchase based on contract value, funding source or expenditure restrictions and prohibitions.[79]

Informal Budget Quotes. When preparing a cost estimate, the agency may choose to contact several vendors to obtain pricing information by means of an "informal budget quote." The agency must clearly explain to all contacted vendors that the price estimate is sought for informational purposes only and that the agency's request for an estimate is not a formal solicitation. When obtaining price estimates from vendors, care must be taken to avoid giving a vendor any competitive advantage in a future procurement initiative.

Funding Source. As part of the procurement planning activities, the agency should determine the funding source that will be used to pay the vendor. Sources of funding include: General Revenue, General Revenue-Dedicated accounts, Federal Funds, and Other Funds. The agency must ensure that the procurement complies with any laws, special regulations, restrictions or limitations applicable to the source of funding. Information regarding funds and accounts may be found in the Texas Comptroller Manual of Accounts posted on the CPA website.[80] In addition, agencies planning to use grant funds must also comply with any applicable grant requirements or special conditions imposed by the underlying grant award that will fund the procurement.

Allowable Use of Appropriated Funds. The agency must ensure that the procurement is not prohibited by law, including the General Appropriations Act. For example, agencies may not use appropriated funds for the following goods and services unless the procurement falls within a statutorily authorized exemption:

- alcoholic beverages;[81]
- an audit of the financial records or accounts of the agency;[82]
- postage or a post office box from an entity other than the U.S. postal service;[83]
- membership in or dues for professional organizations;[84]
- live or artificial indoor plants;[85]

[78] There is no prescribed format for an RFI. For RFIs issued in the form of a draft solicitation-style document published on the ESBD, the document must be conspicuously identified as an RFI *i.e.,* a document issued for the purpose of seeking vendor community feedback that will be considered by the agency in the development of the actual solicitation.

[79] 34 TEX. ADMIN. CODE § 20.82(b)(6).

[80] The CPA website is located at Comptroller.Texas.Gov.

[81] TEX. GOV'T CODE §§ 2113.001(2), 2113.101 (exception for authorized law enforcement purposes).

[82] TEX. GOV'T CODE §§ 2113.001(2), 2113.102 (exception for public junior colleges, the Texas lottery, the Texas Department of Housing and Community Affairs, the Texas Turnpike Authority division of the Texas Department of Transportation, certain audits of payments received from the federal government, audits for certain grants, loans, or other money to an entity other than a state agency, and certain internal auditors or to a contract with the state auditor).

[83] TEX. GOV'T CODE §§ 2113.001(2), 2113.103 (multiple exceptions).

[84] TEX. GOV'T CODE §§ 2113.001(2), 2113.104 (exception for public junior colleges, a state library, and prior review and approval of the expenditure by the administrative head or designee of the state agency).

[85] TEX. GOV'T CODE §§ 2113.001(2), 2113.105 (exception for public junior colleges and plants purchased by institutions of higher education for education or research purposes).

- private facilities for meetings, conferences or exams;[86] and
- generally informational, promotional, or educational periodicals and publications issued by the agency intended for use by the general public and not essential for achievement of a statutory objective of the agency.[87]

Information regarding how to properly carry out purchase transactions while complying with certain provisions of the constitution, statutes, and rules related to expenditures may be found on eXpendit State Purchase Policies located on the CPA website.[88] Public procurement professionals should seek guidance from agency legal counsel to determine if an exception exists when there is a need to purchase a generally prohibited item.

Acquisition Plan

The Contract Developer, using the needs assessment and the cost estimate, will determine the procurement strategy or approach for obtaining the requisite goods or services. For relatively simple and routine procurements, like purchases using the set aside programs (State Use program and TCI program), Texas SmartBuy, or informal bidding, the Acquisition Plan may be documented as an agency procedure. For other procurements, the Contract Developer will develop a unique Acquisition Plan for each purchase. Factors to be considered by the agency in determining which procurements require individual Acquisition Plans include the following: procurement type (*e.g.*, furniture, software maintenance, consulting services), contract complexity, dollar value, and whether the procurement is part of a larger organizational project.

An agency may develop its own internal version of an Acquisition Plan. A sample Acquisition Plan is located in Appendix 7. DIR has also developed an Acquisition Plan template, which is available on the DIR website,[89] for technology procurements as part of the Texas Project Delivery Framework.

The objective of the Acquisition Plan is to ensure that the procurement is solicited, negotiated, executed, and managed in a way that delivers best value to the State. Accordingly, the Acquisition Plan tracks all of the procurement activities that take place throughout the Procurement Cycle. The Acquisition Plan identifies the procurement team (including the Contract Developer, Contract Manager, and end user), the team's roles and responsibilities, the schedule of events, as well as the activities necessary to ensure that the contract requirements are satisfied, the goods and services are delivered in a timely manner, and the financial interests of the agency are protected.

To aid public procurement professionals in the development of an Acquisition Plan, a procurement value threshold chart is located in Appendix 8. Also, a sample procurement file checklist is located in Appendix 9. A procurement file checklist is a tool used for documenting compliance with applicable procurement laws, rules, and agency practices.

Prior to contract award, the Acquisition Plan should be updated to address significant changes to the overall procurement effort, including changes to any identified assumptions that may impact the procurement scope or constraints to the procurement process. After contract award, the Acquisition Plan is used during the transition from Contract Developer to Contract Manager. A well-drafted Acquisition Plan will assist the Contract Manager in managing the contract throughout its term.

[86] TEX. GOV'T CODE §§ 2113.001(2), 2113.106 (exception for public junior colleges or if state facilities are not available when needed, are not adequate to accommodate the meeting, conference, or examination, or are not an economically favorable alternative to other facilities).
[87] TEX. GOV'T CODE §§ 2113.001(2), 2113.107(b) (multiple exceptions).
[88] The CPA website is located at Comptroller.Texas.Gov.
[89] The DIR website is located at www.dir.texas.gov.

PROCUREMENT METHOD DETERMINATION

Overview

The second step of the procurement process is to determine which procurement method would best achieve the identified business requirements and procurement objectives. SPD and DIR are charged with the responsibility of establishing and overseeing statewide contracts for use by agencies. Agencies must use SPD and DIR designated procurement methods unless the procurement is subject to a statutorily specified exclusion or authorized exemption.

This Guide primarily focuses on procurement methods that are within SPD and DIR's procurement authority. Public procurement professionals are expected to be knowledgeable about any exclusions or exemptions from SPD or DIR statewide procurement authority that pertain to their agencies. An exclusion or exemption occurs when

1. the procurement is not within the general grant of statutory authority to SPD or DIR, or
2. a particular agency, procurement type, or contract value is designated to be outside of SPD or DIR's authority.

Upon written request, SPD shall determine the source of purchasing authority for a particular procurement.[90]

Best Value to the State. Texas law mandates that contract awards may only be made to responsive vendors providing best value to the State. The best value standard may vary depending on the procurement method;[91] therefore, public procurement personnel must ensure that the appropriate best value standard is used as the basis for the contract award.

Procurement Methods

Procurement Method Identification Process

When identifying the appropriate procurement method, including relevant exclusions and exemptions, public procurement personnel will need to know the following for each purchase: procurement type, cost estimate, and purchasing entity. For certain procurements, SPD and DIR may delegate specific procurement authority to an agency. A delegation of authority may be provided for a pre-approved class of procurements, such as particular procurement type or contract value, or obtained on a case-by-case basis upon request by the agency.[92]

The importance of selecting the proper procurement method cannot be overstated. Particular care must be taken to ensure that the correct procurement method is identified early in the procurement process. If the incorrect procurement method is selected, the purchase will not result in best value to the State and will most likely be more expensive and less efficient than if the correct method was used, and, in the worst case, may result in a void contract that must be re-solicited.

The process for selecting the appropriate Procurement Method is outlined below.

Step 1: Is the purchase subject to a Declaration of Disaster by the Governor?

If yes, follow acquisition procedures for the Texas Disaster Act of 1975.

If no, proceed to Step 2.

Step 2: Can the purchase be completed using State or Federal surplus property?

If yes, follow acquisition procedures for the State and Federal Surplus Property Programs, as applicable.

If no, proceed to Step 3.

Step 3: Is the purchase for professional services, consulting services, or legal services?

If yes, follow the acquisition procedures for Professional Services, Consulting Services, or Legal Services, as applicable.

If no, proceed to Step 4.

Step 4: Can the purchase be completed using the TCI Program?

If yes, follow the acquisition procedures for TCI Purchases.

If no, proceed to Step 5.

Step 5: Can the purchase be completed using the State Use Program?

If yes, follow the acquisition procedures for the State Use Program.

If no, proceed to Step 6.

[90] TEX. GOV'T CODE § 2261.001(c).

[91] Best value standards include, but are not limited to, the following: Sections 2155.074, 2156.007, 2157.003, 2254.003, and 2254.027 of the Texas Government Code.

[92] Delegation of purchasing authority for construction contracts is held by SPD but occurs after the agency solicitation or project has been approved by TFC per Chapter 2269 of the Texas Government Code.

Step 6: Is the purchase for Automated Information Systems (NIGP Class/Item with an *)?

If yes, follow the acquisition procedures for Automated Information Systems Purchases.

If no, proceed to Step 7.

Step 7: Can the purchase be completed by contracting with another state agency or local government?

If yes, follow the acquisition procedures for Interagency Cooperation Contracts (IAC) or Interlocal Cooperation Contracts, as applicable.

If no, proceed to Step 8.

Step 8: Can the purchase be completed using SPD Term Contracts?

If yes, follow the acquisition procedures for Term Contracts.

If no, proceed to Step 9.

Step 9: Is the purchase for printing services or equipment, or mail and messenger services?

If yes, follow the acquisition procedures for Printing Services and In-House Copy Centers or Mail and Messenger Services, as applicable.

If no, proceed to Step 10.

Step 10: Does the purchase involve used equipment or supplies?

If yes, follow the acquisition procedures for Used Equipment.

If no, proceed to Step 11.

Step 11: Can the purchase be completed using one of the following:

SPD Delegated Purchases,

SPD TXMAS Contracts,

Contract Established by Another State Agency,

Federal Government Purchases, or

Interstate Compacts & Cooperative Agreements?

If yes, follow the applicable acquisition procedure.

If no, proceed to Step 12.

Step 12: Is the purchase for goods valued at over $50,000 or services valued at over $100,000?

If yes, follow the acquisition procedures for SPD Administered Agency-Specific Procurements.

If no, consult SPD or agency legal counsel for the appropriate procurement method.

Procurement Method – SPD Non-Delegated Purchases

Overview

Chapters 2155 and 2156 of the Texas Government Code are the primary sources of SPD's procurement authority. SPD Non-Delegated Purchases include set aside programs and Term Contracts as well as procurements for which SPD's purchasing authority has not been delegated to agencies by rule. For procurements and procurement methods within SPD's purview, agencies must comply with SPD's rules and procedures.

Texas SmartBuy. Texas SmartBuy, maintained by SPD, is the State of Texas online marketplace for non-IT goods and services. As the State's central e-procurement system, it is utilized by agencies and local governments to access hundreds of competitively bid and awarded state contracts. The web-based ordering system houses almost 2 million items.

Set Aside Programs. For purposes of this Guide, set aside programs refer to

1. Prison Made Goods governed by Chapter 497 of the Texas Government Code, and
2. the State Use Program authorized by Chapter 122 of the Texas Human Resources Code.

These set aside programs do not require competitive procurement.

Texas Correctional Industries Purchases

Texas Correctional Industries (TCI) is a division of the Texas Department of Criminal Justice (TDCJ) that manufactures goods and services using primarily offender labor for purchase by Texas governmental entities.[93] The Prison Made Goods Act requires that agencies purchase goods made by and services offered by TCI. Competitive bidding is not required for items purchased from TCI under the Prison Made Goods Act.

TCI offers most goods through Texas SmartBuy. For goods not available through Texas SmartBuy, the agency may find them in the TCI Catalog published on the TCI website.[94] For TCI Catalog products, the PO must be issued directly to TDCJ via email to tci@tdcj.texas.gov with the following notation: "The award was made under the Prison Made Goods Act and is non-competitive."

Purchases of items that are in the TCI catalog, but not on Texas SmartBuy, are subject to SPD delegation of purchasing authority.[95]

93 TEX. GOV'T CODE Chapter 497.
94 The TCI website is located at www.tci.tdcj.texas.gov.
95 TEX. GOV'T CODE § 497.025.

An agency may decline to procure a good or service from TCI if

- TCI grants a waiver,
- SPD determines that the good or service produced by TCI does not meet the requirements of the agency, or
- SPD certifies that the good or service can be purchased elsewhere at a lower price after the agency gives TCI final opportunity to negotiate on price.[96]

Printing. Procurements for printing must comply with the Printing Services and In-House Copy Centers procedures. For competitively procured printing purchases, including those solicited using CPA's State Print Shop Request Form, TCI must be given the final opportunity to meet or beat the lowest price.[97] Bids for printing must include a bid or no bid response (in lieu of the waiver) from TCI.

TCI Waiver Process. A waiver must be obtained from TCI if an agency desires to procure a product or service offered in the TCI catalog from a source other than TCI. The TCI waiver request form can be found in the Procurement Forms Library located on the CPA website.[98] The waiver request can be based on substantial differences in specifications, which may include the inability for TCI to provide deliverables on the requested delivery date, price differences, or precise specifications required by the agency that cannot be met by TCI. An agency may not evade the intent of Prison Made Goods Act by requesting a product that varies slightly from standards for products established under Section 497.027 of the Texas Government Code, if TCI produces a similar product that is in compliance with established standards and is reasonably suited to the actual needs of the agency.[99]

The waiver request must be submitted by fax or email to TCI, as indicated on the form. TCI will evaluate waiver requests on a case-by-case basis and reply with a written approval or a denial of each request. As a best practice, the procurement file must include the TCI waiver request and waiver response.

If TCI denies an agency's waiver request, the agency may send an appeal letter to SPD by emailing spd.policy@cpa.texas.gov. To expedite processing, the agency must provide the waiver identification number from the TCI waiver denial letter as well as any supporting documentation. SPD will provide a written notice of the approval or denial of the agency's appeal.

SPD Certification Process. For requests to certify a lower available price, the purchasing agency must send to SPD the appropriate bid documents. If the certification is approved, SPD will provide a written certification to the agency in a form similar to the following: "SPD has reviewed the agency's documentation and certifies that the goods or services can be purchased elsewhere at a lower price."

The State Use Program

The Texas Workforce Commission (TWC) oversees the Purchasing from People with Disabilities Program, commonly referred to as the State Use Program.[100] TWC contracts with a Central Nonprofit Agency, currently WorkQuest (formerly TIBH Industries), to administer the day-to-day operations of the program. WorkQuest partners with Community Rehabilitation Programs (CRP), which employ disabled workers to develop products or provide services for the State Use Program. WorkQuest is the management link between the CRP work centers (*e.g.*, Lighthouse for the Blind), agencies, and TWC. Only products and services approved by TWC qualify as a set aside purchase available for agencies to purchase on Texas SmartBuy.

Agencies must purchase products and services offered through WorkQuest that meet the applicable specifications of the agency and that are available within the time specified.[101] Competitive bidding is not required for purchases from WorkQuest. Any time the quality of a WorkQuest product or service is deemed unacceptable or failed to meet agency specifications, this information should be reported to WorkQuest and a vendor performance report must be filed with SPD.

State Use Program Exceptions. Agencies are not required to purchase products and services using the State Use Program under the following circumstances:

1. under the rules of SPD, a WorkQuest-provided or -produced product or service does not meet the reasonable requirements of the agency; or
2. the requisitions made cannot be reasonably complied with using products or services produced by persons with disabilities.[102]

Agency purchases from other sources of products and services generally offered through the State Use Program are subject to enhanced scrutiny. Accordingly, specifications must satisfy a reasonable requirement by the agency and not be used to avoid the State Use Program. For example, if the purchase is for a pen with orange ink and WorkQuest only offers pens in black, blue, or red ink, the agency should document why black, blue, or red ink pens would not satisfy the agency's business need. To determine whether a WorkQuest-offered product or service meets the reasonable requirements of the agency, the agency must not consider price. An

96 TEX. GOV'T CODE § 497.024(b).
97 TEX. GOV'T CODE § 497.025(c).
98 The CPA website is located at Comptroller.Texas.Gov.
99 TEX. GOV'T CODE § 497.024(c).
100 TEX. HUM. RES. CODE Chapter 122.
101 TEX. HUM. RES. CODE § 122.008.
102 TEX. HUM. RES. CODE § 122.016(a); 34 TEX. ADMIN. CODE § 20.306(b).

exemption is not needed to document the purchase of a product or service that is unavailable through the State Use Program.

For products and services offered through the State Use Program, agencies are not required to use WorkQuest provided products or services if they do not meet the agency's specifications as to quantity, quality, delivery time, or life cycle costs.[103] If a WorkQuest-offered product or service is obtained from another source, the agency must document which of the four (4) authorized exceptions to the State Use Program is being utilized for the purchase. Price is not a factor used in the comparison of other sources to WorkQuest-provided products or services.

- **Exception for Quantity.** Quantity exceptions can be made when WorkQuest has a minimum order requirement that is more than is needed by the agency, or when an agency has a need for a quantity greater than WorkQuest is able to fill. For example, if an agency requires 3 toner cartridges and the WorkQuest minimum order quantity for toner cartridges is 10, on the exception report, the agency must state that quantity is the reason for procuring from another source because the agency need is less than the minimum order quantity specified in Texas SmartBuy by WorkQuest. As a best practice, quantity should not be used as an exception when the WorkQuest minimum order requirement could be met by combining the business need of several teams or divisions within the agency. Nor should orders be split to avoid a minimum quantity requirement.
- **Exception for Quality.** Quality exceptions can be made when a WorkQuest good or service does not meet specific performance standards (*e.g.*, the WorkQuest item is not functionally equivalent to commercial sources). This exception cannot be based on opinion or preference. The determination must be based on an identical and/or similar comparison of specifications and performance. For example, when purchasing self-adhesive note pads, the agency's determination, based on employee feedback after prior WorkQuest self-adhesive note pad purchases, is that the WorkQuest product does not adhere as well as other brands. On the exception report, the agency must state that quality is the reason for the decision to procure from another source. The procurement file must be documented with a justification as to why the WorkQuest product does not meet the specifications or performance criteria of the agency.
- **Exception for Delivery Time.** Exceptions based on delivery time may only be made after WorkQuest has been contacted and WorkQuest has confirmed its inability to meet an essential schedule or delivery date requirement. For example, if an agency is purchasing 50 boxes of name tag labels and the WorkQuest delivery for the goods is 10 days from the date the PO is received, but the name tags are needed within 5 calendar days, the agency must state on the exception report that delivery time is the reason for the decision to purchase from a source other than WorkQuest. The procurement file must be documented with a justification explaining why the 10-day delivery will prevent the end user from conducting its normal business or will present a hazard to life, health, safety, welfare, or property.
- **Exception for Life Cycle Costs.** Life cycle cost exceptions can be made when the purchaser determines the WorkQuest product or service is not the most cost-effective option to meet the business requirements of the agency. For example, when an agency needs to procure a large number of folding tables and chairs for an agency hosted meeting that occurs once every two years, the agency may decide to rent, rather than purchase, the tables and chairs after considering the life cycle costs (*e.g.*, costs associated with purchasing, owning, operating, maintaining, storing, and disposing of an item). On the exception report, the agency must state that life cycle cost is the reason for the decision to procure from a source other than WorkQuest.

The State Use Program Exception Reporting. Each agency that purchases products or services through WorkQuest must:

1. designate an agency employee to ensure that the agency complies with the requirements of the State Use Program; and
2. report through SPD's State Use Program exception reporting tool each month[104] the reason that products or services that could have been purchased from WorkQuest on behalf of a CRP, were purchased from another source.[105]

The purpose of exception reporting is to provide SPD and TWC with the data to identify and address deficiencies and to evaluate whether additional commercially sourced products should be added to SPD statewide contracts for situations where WorkQuest products do not meet agency needs.

Term Contracts

OVERVIEW

SPD establishes Term Contracts for the purchase or lease of goods and services used in large quantities by several agencies.[106] Best value is achieved by using SPD established Term Contracts, therefore, competitive bidding by agencies is not required for items purchased from Term Contracts.

The Term Contracts are categorized according to the NIGP Class/Item codes which are located in the NIGP Commodity Book maintained on the CPA website. With the exception of Managed Term Contracts, agencies must order goods or services on Term Contracts through the Texas SmartBuy online ordering system. Blanket POs and Confirmation Orders are not permitted in Texas SmartBuy.

[103] 34 TEX. ADMIN. CODE § 20.306(b).

[104] TEX. HUM. RES. CODE § 122.016(b).

[105] TEX. HUM. RES. CODE § 122.0095(a).

[106] 34 TEX. ADMIN. CODE § 20.220.

All agencies are encouraged to use Term Contracts whenever possible. Agencies are not allowed to use delegated authority to purchase goods or services that are available through a statewide Term Contract unless the quantity required is less than the minimum order quantity specified in the relevant Term Contract.[107]

MANAGED TERM CONTRACTS

A "Managed" Term Contract is a type of Term Contract that requires manual processing by the ordering entity. These contracts typically have different pricing structures or require a quote that is based on a discount percentage due to the agency's business need or for regular scheduled deliveries or flexible delivery dates. General Contract Information (GCI) listings for Managed Term Contracts are located on Texas SmartBuy; however, the purchase cannot be made through the online ordering system. Instead, the agency issues a PO directly to the awarded vendor. A purchaser may contact SPD's Contract Management Office for questions relating to a purchase from a Managed Term Contract. Blanket POs can be issued to the vendors of Managed Term Contracts; however, Blanket PO terms, including date range, must not exceed the Managed Term Contract term. When the Managed Term Contract expires, orders cannot be placed against any Blanket PO issued by the agency for that contract.

TRAVEL SERVICES CONTRACTS

As part of the State Travel Management Program (STMP), SPD negotiates contracts with private travel agents, travel and transportation providers, and credit card companies that provide travel services and other benefits to the State. SPD monitors travel reservations and other travel arrangements required for business travel by state employees and Texas SmartBuy members and provides travel-related services.[108] By establishing contracted rates with commercial lodging establishments, motels, inns, and bed & breakfasts, SPD obtains cost-effective lodging for state employees and Texas SmartBuy members traveling on official business.[109]

Agencies[110] may not enter into a contract for travel services without prior approval from SPD.[111] As part of the review process, SPD considers whether the proposed contract offers the best value for the State and the impact of the proposed contract on existing travel service contracts. Reimbursement of certain travel expenses and purchase requests by agencies for commercial airline or rental car transportation at an amount that exceeds SPD's contracted fares or rates or certain limitations as prescribed by Chapter 660 of the Texas Government Code, the General Appropriations Act, and rules adopted by CPA, will not be granted unless the agency has a valid exception.

Exceptions to the Use of SPD Travel Services Contracts. The following are exceptions to the use of the Travel Services Contracts:

- **Lower cost to the State.** Agencies may use any travel services obtained at a price lower than SPD's travel services contract price. Agencies are encouraged to obtain lower-priced travel services through the use of 14-day or other advanced reservations programs, promotional price reductions, or any method that provides a lower overall cost of travel.[112]
- **Unavailability of contract travel services.** SPD's travel services contracts are not available during the time or at the location necessary for the business purpose; or the travel service contract does not provide the service required; or the contractor is unable to provide the contract services due to a force majeure event.[113]
- **Special needs.** The traveler's health, safety, physical condition, or disability requires accommodations, including medical emergency or other necessary services, not available from SPD's travel service contracts.[114]
- **Custodians of persons.** The traveler has custody of a person pursuant to statute or court order and the traveler is required to provide a degree of security and safety that is not available from SPD's travel services contracts.[115]
- **In travel status.** The traveler is in the course of travel and changes in scheduling render the use of SPD's travel services contracts impractical or the appropriate travel services are not available. The traveler must make reasonable efforts to secure rates equal to or lower than SPD's travel service contract rates.[116]
- **Group program.** The traveler is using a group program wherein reservations were made through a required source to obtain a particular rate or service.[117]
- **Emergency response.** The traveler is responding to a public health or safety emergency situation.[118]
- **Legally required attendance.** The traveler is required by a court, administrative tribunal, or other entity to appear at a

[107] TEX. GOV'T CODE § 2155.132(f); 34 TEX. ADMIN. CODE § 20.82(b)(3).

[108] TEX. GOV'T CODE § 2171.051, 2171.055; 34 TEX. ADMIN CODE § 20.406(2); *see also* TEX. GOV'T CODE Chapter 660.

[109] For more information on rates, allowances, exceptions, and further resources, please see the State Travel Management Program at https://comptroller.texas.gov/purchasing/programs/travel-management/#skip-scroll. On October 1, 2018, the individual Hotel Rate Agreements were replaced with a 24/7 online hotel reservation platform for lodgings located in Texas as well as other states and certain countries.

[110] State agencies in the executive branch of state government shall participate under CPA rules in SPD contracts for travel services, provided that all travel agents approved by SPD are permitted to contract with the State and provide travel services to all state agencies. TEX. GOV'T CODE § 2171.055(a).

[111] 34 TEX. ADMIN. CODE § 20.409(a).

[112] 34 TEX. ADMIN. CODE §§ 20.408(a)-(b).

[113] 34 TEX. ADMIN. CODE § 20.408(c).

[114] 34 TEX. ADMIN. CODE § 20.408(d).

[115] 34 TEX. ADMIN. CODE § 20.408(e).

[116] 34 TEX. ADMIN. CODE § 20.408(f).

[117] 34 TEX. ADMIN. CODE § 20.408(g).

[118] 34 TEX. ADMIN. CODE § 20.408(h).

particular time and place without sufficient notice to obtain services under an SPD travel services contract.[119]

In its written request seeking SPD approval of a requested exception, an agency may request that SPD consider additional exceptions.[120] The request must include a reasonable justification for the need for the exception. SPD will not grant exceptions for longer than the term of existing state travel services contracts.[121]

Travel Coordinators. Each agency shall designate an employee as its travel coordinator; this person will serve as the single point of contact between STMP and the agency for disseminating and collecting travel data and information. The following information must be provided to STMP about the travel coordinator:

- name,
- business telephone number,
- email address,
- business mobile telephone number, and
- other requested and relevant contact information.

It is recommended that agency travel coordinators participate in travel advisory, proposal evaluation, education, and any other groups needed to assist SPD in contracting for the most economical, efficient, and useful travel services. CPA may conduct audits of travel reimbursement requests for compliance with rules and to enforce travel requirements.

SPD-Administered Agency-Specific Procurements

For procurements not delegated to the agencies under the SPD Review and Delegation Process, SPD will establish and administer an agency-specific procurement. The ordering agency initiates the process by submitting a delegation request to SPD either as an Open Market Requisition (OMR) or via the Procurement Oversight & Delegation portal.

The Contract Developer is responsible for providing current and complete specifications to SPD — providing out-of-date or incomplete specifications may prolong the procurement timeline. If the request includes items distributed to various geographic regions, the Contract Developer must ensure that the estimated quantity per region is provided to SPD. Also, the Contract Developer must indicate on the delegation request if all or any part of the purchase is considered to be proprietary.

SPD will communicate with the ordering agency point of contact throughout solicitation development, posting, evaluation, and award. For SPD administered agency-specific contracts, the agency PO(s) submitted to the contractor must reference the SPD contract number. The ordering agency must notify the assigned SPD Contract Manager of any contractor performance matters. In addition, the agency should enter vendor performance reports to Vendor Performance Tracking System (VPTS).

Proprietary Purchases

A proprietary purchase is one where the specifications or conditions of the proposed purchase are proprietary to one vendor and do not permit an equivalent product or service to be supplied.[122] The term "proprietary" refers to a product or service that has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.[123] Proprietary purchases include products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law.[124]

Proprietary purchases, by definition, preclude competition because an attribute of the purchase limits consideration to only one product or supplier. In today's robust marketplace, it is unusual for only one product or one vendor to be capable of addressing an agency's business need. Because Texas procurement law promotes the use of competitive bidding for purchases,[125] proprietary purchases are subject to enhanced scrutiny.

Proprietary purchases may be either sole source or competitive.

- **Sole Source:** The specified product or service is only available for purchase through a single vendor *e.g.,* manufacturer, publisher, service provider. Examples of sole source proprietary purchases include a back issue of a magazine available from only the publisher and an educational conference available from only the conference sponsor.
- **Competitive:** The specified product or service is available for purchase through more than one vendor *e.g.,* dealers, distributors, resellers, authorized service providers. Examples of competitive proprietary purchases include brand-specific replacement parts for equipment available through multiple OEM-authorized dealers and software that a software publisher makes available to the public through several resellers.

When a specification for a proposed purchase is drafted so narrowly that there is only one viable product or one vendor eligible for

119 34 TEX. ADMIN. CODE § 20.408(i).
120 34 TEX. ADMIN. CODE § 20.409(b).
121 34 TEX. ADMIN. CODE § 20.409(b).
122 TEX. GOV'T CODE § 2155.067(a).
123 34 TEX. ADMIN. CODE § 20.25(45).
124 34 TEX. ADMIN. CODE § 20.25(45).
125 TEX. GOV'T CODE § 2155.063 (Except as otherwise provided by Subtitle D of Title 10 of the Texas Government Code, a purchase of or contract for goods or services shall, whenever possible, be accomplished through competitive bidding.).

contract award, the agency must document the rationale for the restrictive specification by placing a written Proprietary Purchase Justification in the procurement file.[126] The Proprietary Purchase Justification must include the following information in order to document best value to the State:

1. describe the product or service the agency proposes to purchase, and provide a statement regarding the agency's business need and planned use;
2. explain why the agency specifications for the product or service are written as they are, and why those specifications are necessary to accomplish the agency's goal for the procurement;
3. state the reason that no other competing products or services will satisfy the need of the agency and provide examples of the technical, practical, or operational risks that would occur if competing products or services are selected; and
4. specify whether the purchase is sole source or competitive.

The Proprietary Purchase Justification must be signed by the agency head, the chairman of its governing body, or a person to whom such signature authority has been properly delegated in the Agency Procurement Plan, or in the case of an institution of higher education, by a person properly designated as a purchasing officer for the institution.[127] A Proprietary Purchase Justification template is located in Appendix 10.

Proprietary purchases, regardless of whether they are sole source or competitive, are subject to ESBD posting requirements as well as requirements applicable to SPD delegation, CAT reviews, and QAT reviews.

Examples of Non-Compliant Proposed Proprietary Purchase Justifications.

- "Our professionals have identified [vendor's product] as the most durable, safe, and efficient system of its kind."
- "[The vendor] has claimed their technology is proprietary and we agree."
- "[Vendor] is the exclusive patent holder of US Patents [X, Y, and Z]. No other manufacturer can legally produce [the product] with the same properties."
- "Our agency has performed research [on these products]. The manufacturer can provide [a range of products] that will enable [our agency] to [meet our statutory requirement]."
- "Our staff tested [these products] against others, and only [the identified products] that passed our rigorous qualification process were placed on the agency's approved products list. We can only buy products on our approved products list; therefore, these products are proprietary."
- This is the only vendor the feds will let us spend this money with.
- This vendor is our incumbent and only their products will work with the equipment we already have.
- "The [brand] furniture purchased will be used to provide a comfortable and aesthetically pleasing work environment for employees' working in the office so they may provide customers frequenting the building excellent customer service in a welcoming atmosphere."

Proprietary Sole Source Procurements ≤ $25,000. No competitive bidding is required if the total value of the proprietary sole source contract is $25,000 or less.

Proprietary Purchases under SPD Delegation by Rule. For purchases made under SPD's delegated authority by rule, agencies are required to maintain the Proprietary Purchase Justification in the agency procurement file and to provide it to SPD upon request. A Proprietary Purchase Justification is not required for procurements valued at $10,000 or less.

For proprietary purchases exceeding $10,000, the solicitation must include the following statement:

> "These specifications are being advertised under Section 2155.067 of the Texas Government Code. Only bids on items conforming exactly to these specifications, which include proposing only the brand name(s), make and model number(s) specified, will be considered in determining an award."

Proprietary Purchases under the SPD Review and Delegation Process. For procurements made under the SPD Review and Delegation Process, additional information must be submitted with the agency's delegation request. For goods valued at more than $50,000, the Proprietary Purchase Justification must be submitted to SPD along with the OMR at open.market@cpa.texas.gov. For services valued at more than $100,000, the agency must submit the Proprietary Purchase Justification on agency letterhead along with its delegation request submission to the Procurement Oversight & Delegation portal.

SPD will notify the agency in writing if the proprietary procurement is authorized by SPD. For proprietary purchases exceeding $10,000, the solicitation must include the following statement:

> "These specifications are being advertised under Section 2155.067 of the Texas Government Code. Only bids on items conforming exactly to these specifications, which include proposing only the brand name(s), make and model number(s) specified, will be considered in determining an award."

[126] TEX. GOV'T CODE §§ 2155.067(a), (c).
[127] 34 TEX. ADMIN. CODE § 20.209(b)(4).

If a review of the agency's proposed specifications and Proprietary Purchase Justification does not show that the procurement is proprietary, then SPD will inform the agency that the proprietary procurement, as currently drafted, is not authorized. If SPD does not authorize the proprietary purchase, the agency may choose either to submit a revised Proprietary Purchase Justification and specifications for SPD review and approval or proceed with a non-proprietary procurement.

Proprietary Purchases using the RFO Procurement Method. For proprietary purchases made using the RFO procurement method, agencies are required to maintain the Proprietary Purchase Justification in the agency procurement file and to provide it to SPD upon request. In addition, for proprietary purchases exceeding $10,000, the RFO must include the following statement in bold and prominent type at the beginning of the solicitation:

> "The issuing office believes that the requested items in this request for offers may be proprietary to one vendor under Section 2155.067 of the Government Code; however, the issuing office strongly encourages offers from all qualified respondents that may be able to provide the requested items."

Mail and Messenger Services Contracts

SPD's Statewide Mail Operations provides and operates an interagency mail and messenger service to deliver unstamped or non-metered written communications and packages between the Legislature, state agencies, and legislative agencies located in Travis County.[128] Mail may also be delivered to and from the United States Postal Service by agreement of the agency and SPD.[129] In addition, the mail and messenger service may process and meter outgoing mail for agencies upon agreement of the agency and the CPA. Each agency must furnish funds to cover amounts of postage to be metered.[130]

When utilizing the metered mail service, a monthly report showing the amounts of postage used and volume of mail metered will be provided to the agencies. Mail may not be metered for an agency in excess of funds provided by the agency, unless approved by SPD as to avoid undue delays in processing mail. Any deficit in an agency's postage account must to be promptly reimbursed to SPD.[131]

Agencies located in Travis County are required to consult with SPD before renting, purchasing, upgrading, or selling mail processing equipment, contracting with a private entity for mail processing services, or taking any action that will significantly affect the agency's first-class mail practices.[132] The agency must submit the following:

1. For mail equipment or private entity service contracts under $10,000, an agency must submit a written justification to SPD stating why the equipment or service is needed and what benefits are expected to be received.[133]
2. For mail equipment or private service contracts over $10,000, an agency must submit a detailed life cycle cost benefit analysis to SPD that includes all expected costs and benefits over the life of the equipment or service. The analysis must be in a format prescribed by SPD.[134]
3. For any action that will significantly affect its first-class mail practices, an agency must provide a written statement of the need for the action and anticipated benefits.[135]

SPD will provide a written response to the agency indicating whether or not it agrees with the intended action and any suggested alternatives.[136]

Printing Services and In-House Copy Centers

Agencies are authorized to provide for their own incidental copying needs by using available local and networked printers and office copy machines either purchased or leased. DIR establishes and manages statewide contracts for these purposes. Incidental copying is day-to-day production and copying of documents within a quantity limit and job specification that does not reasonably require high-volume duplication equipment or services.

Agencies are not authorized to establish full service print shops without the approval of SPD.[137] Some agencies' production volumes may require centralized in-house copy centers with multiple pieces of printing and reproduction equipment, typically with dedicated staff assigned to the locations and operating order fulfillment process to support the agencies' functions. Staffing and equipment located within a copy center should be appropriate to the size, scope and mission of the agency. The purchase or lease of equipment is subject to review by SPD, not only in regard to the merit of the individual purchase, but also in the context of the copy center's entire equipment inventory.[138] Equipment typically associated with print shop operations (*e.g.,* printing presses, folding machines, etc.) should not be deployed in agency copy centers.

128 TEX. GOV'T CODE §2176.051; 34 TEX. ADMIN. CODE § 20.381(a).
129 34 TEX. ADMIN. CODE § 20.381(d).
130 34 TEX. ADMIN. CODE § 20.381(e).
131 34 TEX. ADMIN. CODE § 20.381(e)(1).
132 TEX. GOV'T CODE § 2176.104.
133 34 TEX. ADMIN. CODE § 20.381(f)(1).
134 34 TEX. ADMIN. CODE § 20.381(f)(2).
135 34 TEX. ADMIN. CODE § 20.381(f)(3).
136 34 TEX. ADMIN. CODE § 20.381(f)(4).
137 TEX. GOV'T CODE § 2172.003.
138 *See* 34 TEX. ADMIN. CODE §§ 20.382(b), (d).

Agencies must utilize SPD approved State Print Shops[139] to competitively procure print services for printing procurements estimated to be $2,500 dollars or more. State Print Shops provide services through interagency contracts with SPD. The State Print Shops provide design, digital, and traditional offset printing, binding, fulfillment, mailing, and other print-related services to agencies.

SPD Approved State Print Shops	
Agency Name	**Interagency Contract No.**
Texas Correctional Industries (TCI)	PSIAC-06-2017
Texas Department of Public Safety (DPS)	PSIAC-01-2017
Texas Department of Transportation (TxDOT)	PSIAC-03-2017
Texas Department of State Health Services (DSHS)	PSIAC-02-2017
Texas Workforce Commission (TWC)	PSIAC-05-2017
The University of Texas at Austin (UT)	PSIAC-04-2017
University of North Texas (UNT)	PSIAC-07-2017

To submit specifications to the State Print Shops, the agency must complete the Print Shop Job Request Form located on the CPA website.[140] The Print Shop Job Request Form provides the agency with an opportunity to enter the "Project Due Date," the "Estimate Needed by," and the "Time Needed by" fields for the job. If no required date is submitted, the State Print Shops that are able to perform the work should respond to the request within three business days of the job request. Once the Print Job Request is submitted, the agency must print or save a copy of the results page for the procurement file.

If an agency has a print job that it needs fulfilled on a more-or-less regular schedule and is identical or substantially the same job each time, the agency should complete only one Print Shop Job Request Form. The agency will provide the estimated print schedule for the fiscal year and the estimated quantity. Estimates should be based on historical information, where available, to assist the State Print Shops in their bid efforts.

Examples of scheduled print jobs include, but are not limited to, the following:

- newsletters;
- forms, brochures, and other similar jobs that need to be printed on a regular basis or as stock levels are depleted;
- reports; and
- business cards, letterhead, and other agency specific stationery.

Agencies will need to resubmit the job request each fiscal year. Agencies are also encouraged to submit a new Print Shop Job Request Form should the job change dramatically at any point in the fiscal year.

Print Services of less than $2,500. For print and print-related service requests of less than $2,500, agencies are encouraged to establish internal procurement procedures; these requests may be sourced directly from any of the contracted state print shops or by soliciting bids through the web form.

Best Value Determination. An agency intending to purchase print services must conduct a best value determination before issuing a PO. State Print Shops should respond with a bid within the requested time frame and the purchasing agency is required to tabulate these bids

[139] Beginning in 2017, SPD took over management of the State Print Shop Program (Contract No. 966-M2) from the Council for Competitive Government which was dissolved by the 85th Legislature.

[140] The CPA website is located at Comptroller.Texas.Gov.

using the SPD Print Bid Tabulation Template to identify the lowest bid that meets the specifications.

For print purchases, TCI must be given the final opportunity to meet or beat the lowest price.[141] If TCI submitted a bid and TCI is not the lowest bid, the purchasing agency is required to request a final bid from TCI. The purchasing agency should not disclose the other bids to TCI during this stage of the competitive bid process. Upon award, the completed bid tabulation noting the successful bidder should be sent to all State Print Shops and SPD with the email subject line: "Print Bid Tabulation for Requisition No. XXX."

No Bids Received From State Print Shops. If none of the State Print Shops respond to the Print Job Request, agencies may solicit competitive bids from commercial vendors. ESBD posting requirements apply to printing services contracts.

Agencies Hosting State Print Shops. An agency hosting a State Print Shop is not required to follow the competitive bidding procedures if the print job is performed at the agency's print shop. If there is a need to outsource the work, the agency must follow the competitive bidding procedures by submitting its specifications to the State Print Shops using the Print Shop Job Request Form.

State Data Center Printing. DIR's Data Center Services (DCS) program allows participating customers to use Print, Mail, and Digitization services. State agencies may opt to leverage these high-speed production print output and presort/barcode mail services instead of the services available through the State Print Shops.

Used Equipment

PURCHASE OF USED EQUIPMENT

As a general rule, an agency should procure new equipment. Sometimes, however, it is necessary or advantageous to purchase used or demonstrator equipment and supplies. The most common reasons are:

- the inability to secure new equipment,
- the lack of adequate funds for new equipment, or
- used equipment that will satisfy the agency's need is available at a substantial savings.

To acquire used or demonstrator equipment, the agency must utilize the procurement method applicable to the estimated amount for the procurement.

For procurements not delegated to the agency under the SPD Review and Delegation Process, the procurement file must contain the following:

1. a statement from an authorized person of the agency that the equipment or supplies have been personally examined,
2. a description of the condition and value of the equipment or supplies, and
3. the reasons for inability to secure new equipment and/or that the used equipment or supplies would provide a substantial savings.

If the value of the procurement exceeds the agency's delegated authority, the agency must comply with the SPD Review and Delegation Process. The OMR submitted to SPD must include the following information:

1. a statement from an authorized person of the agency that the equipment or supplies have been personally examined,
2. a description of the condition and value of the equipment or supplies, and
3. the reasons for inability to secure new equipment and/or that the used equipment or supplies would provide a substantial savings.

TRADE-IN OF USED EQUIPMENT

An agency may trade in agency-owned equipment for new equipment of the same or similar type if it is in the best interest of the State. An agency may not trade in property that has been declared either surplus or salvage; such property must be disposed of through the State Surplus Property Program. Trade-ins are not allowed through orders placed against Term Contracts unless specifically allowed within the contract terms.[142]

The agency must have documentation supporting the equipment's value in order to make a decision whether to process as surplus or trade-in the equipment for new equipment utilizing a solicitation.

Trade-In Surplus. If the State could reasonably realize greater cost savings by declaring the equipment as surplus or salvage, the equipment should be disposed of under the State Surplus Property Program.

Trade-In Through Solicitation. If an agency determines that a trade-in will provide the greater cost savings, the procurement file must contain an estimated approximate value for that determination and the solicitation must include the following:

1. **Requirements and Clauses:**
   - The acceptance of the trade-in amount is at the State's option,
   - Release of trade-in equipment will not be allowed until final delivery and acceptance of the new equipment,

[141] TEX. GOV'T CODE § 497.025(c).

[142] For more information and procedures, review the contract page on Texas SmartBuy or contact SPD's Contract Management team.

- Deadline for pickup of the equipment by awarded respondent "where is, as is"

2. Equipment Description:

- Age of equipment,
- Condition of equipment,
- Make (Manufacturer/Brand),
- Model Number, and
- Serial Number (if applicable).

Contract Established by Another State Agency

When a contract created by another state agency fulfills an unmet need, the SPD director may either (1) endorse the contract of the other agency as an SPD contract and make it generally available for agency use or (2) authorize the use of the contract of the other agency on a case-by-case basis.[143] For case-by-case reviews, the requesting agency must provide written notification to SPD that the purchase is being considered. The notification must be signed by the agency's purchasing director and include a confirmation that an SPD contract does not exist for similar goods or services.[144] The agency notification should also disclose the terms of the other agency contract, capabilities of the vendor, and a justification that addresses how using the other agency contract will be more advantageous than creating a new contract.[145] SPD will inform the requesting agency of its determination. If SPD approves the use of the other contract, the requesting agency may proceed with the procurement utilizing established purchasing procedures.[146]

Federal Government Purchases and Interstate Compacts & Cooperative Agreements

SPD or the governing body of an institution of higher education may negotiate purchases of goods of any kind needed by a state agency or the institution of higher education with the appropriate agency of the federal government as long as the price of goods that are purchased from the federal government does not exceed the fair market value of the goods.[147] In addition, SPD may enter into one or more compacts, interagency agreements, or cooperative purchasing agreements directly with one or more state governments, agencies of other states, or other governmental entities or may participate in, sponsor, or administer a cooperative purchasing agreement through an entity that facilitates those agreements for the purchase of goods or services if SPD determines that the agreement would be in the best interest of the State.[148]

A compact or agreement may not be used to purchase services that are defined as part of the practice of engineering under Section 1001.003 of the Texas Occupations Code or architecture under Section 1051.001 of the Texas Occupations Code.[149] For assistance with federal government purchases and procurements utilizing interstate compacts and cooperative agreements, agencies should contact SPD at spd.policy@cpa.texas.gov.

Procurement Method – SPD Delegated Purchases

Overview

SPD is authorized to delegate its purchasing functions to agencies.[150] A delegation of authority may be

1. provided by SPD rule for a pre-approved class of procurements, such as a particular procurement type (*e.g.,* emergency purchases) or contract value (*e.g.,* one-time purchases of goods that do not exceed $50,000), or
2. obtained on a case-by-case basis by the agency through the SPD Review and Delegation Process.

A delegated purchase is made by an agency under the authority of SPD and subject to SPD's rules and procedures. Delegated purchases shall, whenever possible, be accomplished through competitive bidding.[151] Delegated purchases exempt from the competitive bidding requirement are expressly identified on the Summary of Minimum Requirements for Delegated Purchases chart. An agency may not divide a purchase into small lot purchases to match the delegation dollar thresholds.[152] If an agency does not comply with procurement rules or laws under delegated purchasing authority, SPD may revoke that agency's purchasing authority and report the violations to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and the LBB.[153]

Procurements made under SPD's delegation authority are subject to ESBD posting requirements as well as requirements applicable to CAT and QAT reviews.

143 34 TEX. ADMIN. CODE § 20.236(b), (d).
144 34 TEX. ADMIN. CODE § 20.236(b).
145 34 TEX. ADMIN. CODE § 20.236(b).
146 34 TEX. ADMIN. CODE § 20.236(c).
147 TEX. GOV'T CODE § 2155.084(a)-(b).
148 TEX. GOV'T CODE § 2156.181(a), 34 TEX. ADMIN. CODE § 20.237. *See also* TEX. GOV'T CODE § 2158.241 (SPD may enter into compacts and cooperative agreements with other states and government entities for procuring products made of recycled materials when SPD determines it is in the best interest of the State.).
149 TEX. GOV'T CODE § 2156.181(a-1).
150 TEX. GOV'T CODE § 2155.131.
151 TEX. GOV'T CODE § 2155.063; 34 TEX. ADMIN. CODE § 20.206(c).
152 TEX. GOV'T CODE § 2155.132(g).
153 TEX. GOV'T CODE §§ 2155.132(a),(c); 34 TEX. ADMIN. CODE § 20.82(c).

Determining Contract Value

For SPD reporting, review, and delegation requirements, contract value is defined as "the estimated dollar amount that an agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions and renewals of the contract."[154] Contract value, therefore, is not limited to just the cost for the initial term; it is determined by the total value of the contract over a contract's term as well as any modifications, renewals, or extensions of the contract.[155]

> **EXAMPLE:** A contract with a one-year initial term and three optional one-year renewal periods, costing $4 million annually, would have a contract value of $16 million and would be subject to CAT review.

In contracts when a state agency does not make direct payments to the contractor from its allocated funds, it is recommended to include all payments the contractor may receive as the contract value.

Public procurement professionals must be mindful that other oversight agencies may not use the same standard for determining contract value.

Summary of Minimum Requirements for Delegated Purchases

The following chart provides a summary of the delegated purchases, each of which will be discussed in further detail in the Guide. A thorough explanation of each Purchase Category Code (PCC) is available in Appendix 31.

MINIMUM REQUIREMENTS FOR SPD DELEGATED PURCHASES*

Contract Value	Purchases of Goods**	Purchases of Services**	Direct Publication Purchases	Professional Memberships Purchases	Perishable Goods Purchases	Distributor Purchases	Fuel, Oil and Grease Purchases	Internal Repair Purchases	Emergency Purchases**
$0.00 to $10,000.00	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E	Competitive Process Not Required PCC K	Competitive Process Not Required PCC K	Competitive Process Not Required PCC L	Competitive Process Not Required PCC M	Competitive Process Not Required PCC P	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E
$10,000.01 to $25,000.00	Informal Competitive Solicitation PCC F	Informal Competitive Solicitation PCC Q	Competitive Process Not Required PCC K	Competitive Process Not Required PCC K	Informal Competitive Solicitation PCC L	Informal Competitive Solicitation PCC M	Informal Competitive Solicitation PCC P	Informal Competitive Solicitation PCC Q	Informal Competitive Solicitation PCC Q
$25,000.01 to $50,000.00	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation When Possible PCC T
$50,000.01 to $100,000.00	Non-delegated PCC S	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation When Possible PCC T
Over $100,000.00	Non-delegated PCC S	Non-delegated PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation When Possible PCC T

* Procurements made under SPD's delegation authority are subject to ESBD posting requirements as well as requirements applicable to CAT and QAT reviews.
** Purchases for printing must comply with the Printing Services and In-House Copy Centers procedures.

[154] 34 TEX. ADMIN. CODE § 20.25(b)(13).
[155] TEX. GOV'T CODE §§ 322.020(a), 2254.006, 2254.0301; 34 TEX. ADMIN. CODE 20.25(b)(13).

SPD Delegation by Rule

OVERVIEW

SPD has by rule delegated its purchasing authority to agencies for the following types of procurements:

- one-time purchases of goods that do not exceed $50,000;
- purchases of services that do not exceed $100,000;
- direct publications;
- professional memberships;
- purchases of perishable goods;
- distributor purchases;
- fuel, oil, and grease purchases;
- internal repair purchases; and
- emergency purchases.

For procedures applicable to proprietary purchases, refer to Proprietary Purchases.

Request for SPD-Administered Agency-Specific Procurement. Although SPD has by rule delegated its purchasing authority to agencies for certain procurements, agencies may request assistance from SPD for procurements under the delegated threshold. Agencies must submit their procurement assistance requests to SPD using the SPD Review and Delegation Process.

PURCHASES OF $10,000 OR LESS ("SPOT" PURCHASES)

With the exception of printing services,[156] competitive bidding is not required if the total value of the contract is $10,000 or less.[157] For Spot Purchases, an agency may supplement the CMBL with non-CMBL vendors. Dividing purchases to avoid the competitive bidding requirement is explicitly prohibited.[158]

ONE-TIME PURCHASES OF GOODS OF $50,000 OR LESS

SPD delegates the purchasing functions of one-time purchases of goods, including goods for resale, which do not exceed $50,000. Goods refer to supplies, materials, and equipment. For the purposes of determining contract value for delegation of purchasing authority, an agency's cost estimate must be developed in good faith using a method that is reasonable under the circumstances.[159]

PURCHASES OF SERVICES OF $100,000 OR LESS

SPD delegates the purchasing functions of services, including services for resale, the estimated cost of which does not exceed $100,000. A service is defined as the furnishing of skilled or unskilled labor or professional work. Delegated purchases of services do not include the following:

- Professional or consulting services as defined by Chapter 2254 of the Texas Government Code,
- Services of an employee of an agency, or
- Services of public utilities.[160]

For the purposes of determining contract value for delegation of purchasing authority, an agency's cost estimate must be developed in good faith using a method that is reasonable under the circumstances.[161]

DIRECT PUBLICATIONS

An agency may purchase publications directly from the publisher only when such publications are not available through statewide contract (*e.g.*, TCI Purchases, State Use Program purchases, Term Contracts) or through competitive bidding, including proprietary competitive purchases. Direct publication orders shall be made by following guidelines established by SPD. Examples of direct publications include, but are not limited to, the following:

- foreign publications;
- out-of-print or rare publications;
- back issues of magazines, journals, and newspapers;
- publications produced by professional societies;
- audio, visual, or audiovisual materials (films, audio presentations, etc.);
- computer software;
- collections of any of the foregoing items, and microfilm or microfiche copies of any of the foregoing items; and
- Library of Congress cards.[162]

In order for computer software to be purchased as a direct publication, the procurement must satisfy the requirements of direct publication and be subject to an exemption or exclusion from state set aside programs and DIR procurement authority. Refer to the Procurement Method Identification Process and the RFO Procurement Method. Hardware and IT services may not be purchased as a direct publication. Procurements made under SPD's delegation authority are subject to ESBD posting requirements as well as the requirements applicable to CAT reviews and QAT reviews.

156 TEX. CONST. art. XVI, § 21; purchases for printing must comply with the Printing Services and In-House Copy Centers procedures.
157 TEX. GOV'T CODE § 2155.132(e); 34 TEX. ADMIN. CODE § 20.82(b)(1).
158 TEX. GOV'T CODE § 2155.132(g).
159 34 TEX. ADMIN. CODE 20.82(b)(6).
160 TEX. GOV'T CODE § 2155.001.
161 34 TEX. ADMIN. CODE 20.82(b)(6).
162 34 TEX. ADMIN. CODE §20.82 (d)(5).

Direct Publication Declaration. The following statement should be placed on POs for the Direct Publication purchases: "Direct Publication - Not available from any other source."

Direct Publication Purchases ≤ $25,000. No competitive bidding is required if the total value of the direct publication contract is $25,000 or less.

PROFESSIONAL MEMBERSHIPS

An agency may purchase professional memberships[163] directly from a professional organization when such memberships are not available through competitive bidding, the purchase has been approved by the administrative head of the agency, the membership will serve a public purpose, and the agency will receive adequate consideration in exchange for the purchase of the membership.[164]

PERISHABLE GOODS PURCHASES

Perishable goods are items that are subject to spoilage within a relatively short time. Perishable goods include, but are not limited to, the following: fresh fruit, fresh vegetables, and meat. The NIGP Class 390 perishable goods category, NIGP Class 375 (bakery products, fresh), and NIGP Class 380 (dairy products, fresh) qualify for this delegation using competitive bidding processes.

DISTRIBUTOR PURCHASES

The purchase of repair parts for a unit of major equipment that is needed immediately, or a maintenance contract for laboratory/medical equipment may qualify as a distributor purchase. Complete components, such as engines, transmissions and compressors do not qualify as repair parts under this description. A distributor purchase must be made from a dealer or distributor of the equipment being repaired. For a major component that is built by another manufacturer, such as an engine in a vehicle, the distributor purchase can be made from the component manufacturer.

Examples of major equipment include, but are not limited to, the following:

- motor vehicles, aircraft, boats,
- farm tractors and equipment,
- road building machinery and equipment,
- heavy construction machinery and equipment,
- traffic signal lights or traffic signal controller equipment,
- Intelligent Transportation Systems (ITS),
- laboratory or medical equipment, and
- industrial manufacturing machinery.

Purchasers must verify that the installation of distributor parts will not void the equipment's warranty before proceeding with this type of procurement. An agency may not purchase any of the following on a distributor purchase basis: consumable items, labor of any kind, "will fit" parts (non-OEM), parts for stock, contract items, electrical parts for electric motors, electrical switch panel boards, and electrical accessories.

FUEL, OIL, AND GREASE PURCHASES

The following goods may be purchased by an agency in either bulk or packaged form: fuel, oil, and lubricants/grease purchases including gasoline, diesel fuel, kerosene, aviation fuels, transmission fluids, motor oil and other lubricants, liquefied petroleum gas (LPG), and compressed natural gas (CNG).

Lubricants. The solicitation and award of lubricants should be based on firm-fixed prices or a discount from a manufacturer's published list price.

Indexed Fuel Pricing. Because fuel prices fluctuate, agencies should construct bulk fuel solicitations using indexed pricing based on the contractor's terminal price. The posted terminal price is the contractor's cost per gallon for the fuel from the refiner's depot. The posted terminal price for a contract may be:

- The contractor's actual cost, as shown on fuel receipts.
- A standard industry quote such as Oil Price Information Service (OPIS).
- Data Transmission Network (DTNrgy).
- A current index price from The Federal Department of Energy, Energy Information Administration.

The contractor's constant is the difference between the posted terminal price per gallon and the selling price per gallon. The constant includes applicable taxes, environmental fees, freight charges, load fees, operational overhead and contractor's profit margin. It is recommended that the agency, in the agency terms and conditions, prohibit contractors from changing the constant during the term of the contract. To determine the actual cost of the fuel, add the contractor's constant price to the terminal price:

EXAMPLE: $1.10/gallon Posted Terminal Price
+ $0.24/gallon Contractor's Constant
$1.34/gallon Selling price

[163] TEX GOV'T CODE § 2113.104.
[164] 34 TEX. ADMIN. CODE § 20.82(d)(7).

Fuel, Oil, and Grease Purchase Procedure. If the specification and requirement is for:

1. Service station point of sale transactions (amounts of fuel, oil or grease required for continued operation of a motor vehicle such as pump-delivered gasoline, pump-delivered diesel fuel, and less than case lots of oil or other fluids), may be purchased using a State of Texas Retail Fuel Card issued through SPD 946-M3 contract.
2. For bulk fuel, the contract should include the following information:
    - The term of the contract, including beginning and ending dates.
    - Estimated total quantities to be purchased during the contract term.
    - Estimated frequency and quantity for each delivery.
    - The delivery destination or destinations.
    - Storage capacity of the agency's tank or tanks.
    - Any requirements for contractor-provided storage tanks.
    - A statement that the state is exempt from federal fuels excise tax.

INTERNAL REPAIR PURCHASES

An internal repair is a repair to state-owned equipment where the extent of the work cannot be determined until the equipment is disassembled. An internal repair must contain labor and may also include parts. Internal repairs are usually the result of an unexpected, basic service outage. If an internal repair qualifies as an emergency, it must be processed as an emergency purchase.

EMERGENCY PURCHASES

For purposes of an emergency purchase under SPD's delegated authority,[165] an emergency purchase occurs when the agency must make the procurement quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. Proper procurement planning for anticipated business need is expected. Pending expiration of funds does not constitute an emergency. Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat or to avoid undue additional cost to the state.

Note: Emergency purchases discussed in this section are different from agency purchases conducted under a Declaration of Disaster by the Governor. SPD authority does not extend to purchases made under the Texas Disaster Act of 1975. Refer to Procurement Method – Texas Disaster Act of 1975.

For procurements under SPD's authority,[166] SPD has delegated to all agencies the authority to make emergency purchases. Notwithstanding this delegation, emergency purchases are subject to SPD's rules and procedures. Upon request, SPD will assist in advising agencies on the proper procedures for emergency purchases, but SPD will not certify the existence of an emergency.

The decision to declare an emergency purchase is the sole responsibility of the agency. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor shall be included in the procurement file. For an emergency purchase of goods or services exceeding $25,000, the agency must retain a full written explanation of the emergency along with other documentation required by SPD in the contract file.[167]

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. For situations where a solicitation is not posted to the ESBD, the agency should make a reasonable attempt to obtain at least three informal bids.[168] Solicitations for emergency purchases greater than $25,000 must be posted to the ESBD; however, the minimum time for posting the solicitation does not apply to the extent necessary to address the emergency.[169] In addition, emergency purchases are subject to CAT and QAT reviews; expedited reviews are available upon request to these oversight teams. Emergency purchases of goods or services should not exceed the scope or duration of the emergency.

[165] TEX. GOV'T CODE § 2155.137; 34 TEX. ADMIN. CODE § 20.210. *Compare* TEX. GOV'T CODE § 2254.025(e).

[166] Chapters 2155 and 2156 of the Texas Government Code are the primary sources of SPD's procurement authority.

[167] 34 TEX. ADMIN. CODE § 20.82(d)(2)(B).

[168] *See* TEX. ADMIN. CODE § 20.82(d)(2)(A).

[169] TEX. GOV'T CODE § 2155.083(i).

SPD Review and Delegation Process

OVERVIEW

Agencies seeking a delegation of SPD's purchase authority for a procurement that is not addressed by SPD rule must submit a procurement-specific delegation request to SPD as either an Open Market Requisition (OMR) for goods via email or through the Procurement Oversight & Delegation portal for services, as applicable.



When determining whether to grant a delegation request, SPD considers factors relevant to an agency's ability to perform purchasing functions, including:

- the capabilities of the agency's purchasing staff and the availability of automated purchasing tools at the agency;
- the certification levels held by the agency's purchasing personnel;
- the results of SPD's procurement review audits of an agency's purchasing practices; and
- whether the agency has adopted and published protest procedures as part of its purchasing rules that are consistent with SPD's procedures.[170]

SPD's delegation to an agency may be conditioned on the agency's compliance with certain recommendations identified in the delegation letter. SPD may provide recommendations regarding mitigation of identified risk and best contracting practices. Prior to proceeding with the procurement (*e.g.*, posting the solicitation to the ESBD), the agency must provide a written explanation to SPD if it does not implement SPD's recommendations.

A delegation request will be reviewed, processed, and prioritized in the order received. Delegation reviews may take up to 30 days to complete. Even if the review period exceeds 30 days, the agency does not have the authority to issue the solicitation until it receives a letter of delegation from SPD. If the agency proceeds with the procurement without receiving a letter of delegation from SPD, the resulting contract may be voidable. For procurements not delegated to the agencies, refer to SPD-Administered Agency-Specific Procurements.

Lease transactions are "services" for purposes of the SPD review and delegation process. For procedures applicable to proprietary purchases under SPD's purchase authority, refer to Proprietary Purchases.

[170] TEX. GOV'T CODE § 2155.132(b).

DELEGATION REQUEST FOR GOODS EXCEEDING $50,000

For the non-delegated purchase of goods with an estimated contract value of more than $50,000, the agency must submit its delegation request as an OMR to SPD. The procuring agency is responsible for downloading the most current OMR form posted on the CPA website.[171] The OMR with all applicable attachments must be submitted to open.market@cpa.texas.gov. If the delegation request is denied, SPD will procure the goods on behalf of the agency. Refer to SPD-Administered Agency-Specific Procurements.

DELEGATION REQUEST FOR SERVICES EXCEEDING $100,000

For the non-delegated purchase of services with an estimated contract value of more than $100,000, the agency must submit its delegation request and its solicitation through the Procurement Oversight & Delegation portal. Once an agency has submitted a solicitation for review, the procurement is analyzed from a contract management and business perspective. If the delegation request is denied, SPD will procure the services on behalf of the agency. Refer to SPD-Administered Agency-Specific Procurements.

PROCUREMENT OUTSIDE OF SPD DELEGATION AUTHORITY

SPD does not have the authority to procure or delegate certain procurements. The following list identifies the most common procurements outside of SPD's delegation authority, but is not exhaustive:

- Insurance[172]
- Professional services[173]
- Legal services[174]

[171] The CPA website is located at Comptroller.Texas.Gov.
[172] TEX. LABOR CODE § 412.011(c)(2).
[173] TEX. GOV'T CODE § 2254.003.
[174] TEX. GOV'T CODE §§ 402.021, 402.0212(a).

- Consulting services[175]
- Real Estate (Leasing)[176]
- Automated Information Systems (AIS)[177]

Agencies are encouraged to consult with their legal counsel when seeking to procure these goods or services.

Competitive Bidding (IFBs, Informal Bidding)

Procurements for goods and services must, whenever possible, be accomplished through competitive bidding.[178] A competitive bidding procurement method is used when the requirements are so clearly defined that they may be described by detailed specifications listed in a PO.

Competitive bidding may be accomplished either by a formal solicitation or informal bidding.

- **Invitation for Bids (IFB).** An Invitation for Bid (IFB) is a formal written competitive sealed bid method[179] used to obtain written bids. An IFB must be used for procurements exceeding $25,000 and may be used for procurements of $25,000 or less. If the total value of a solicitation is greater than $25,000,[180] an IFB must be posted on the ESBD and all eligible vendors within the NIGP Class and/or Class/Items designated for the procurement that are active on the CMBL must be solicited for formal bids. Guidance on how to draft a solicitation can be found in the Solicitation – Preparation section of this Guide.
- **Informal Bidding (Purchases $25,000 or Less).** If the total value of a contract is over $10,000[181] but not more than $25,000, a Contract Developer must provide bid opportunities to vendors active on the CMBL within the NIGP Class and/or Class/Item designated for the solicitation.[182] These vendors may be chosen in the geographic region that serves the agency. The Contract Developer must solicit bids from a minimum of three active vendors on the CMBL, two of which must be current Texas-certified HUBs; the last vendor who was awarded a contract for the same goods or services may be provided the request for bid, if applicable. The acceptable methods for receiving informal responses for purchases greater than $10,000 but not greater than $25,000 are in person, via direct mail, via facsimile transmission, over the telephone, or via email.[183]

Negotiations are not permitted by the competitive bidding procurement method. However, if there is only one qualified bidder then the Contract Developer may negotiate with the sole bidder, including price, provided the negotiation does not result in a material change[184] to the advertised specifications.[185] Proprietary procurements must also follow the procedures set forth in Proprietary Purchases.

Best Value Standard. Each agency shall purchase goods and services that provide the best value for the State.[186] For a purchase made through competitive bidding, the agency must specify in the solicitation the factors other than price that will be considered in determining which bid offers the best value for the State and the proposal criteria the agency will use when considering the factors.[187] In determining the best value for the state, the purchase price and whether the goods or services meet specifications are principal considerations that must be balanced with other relevant factors.[188] The agency may, however, consider other relevant factors, including:

1. installation costs;
2. life cycle costs;
3. the quality and reliability of the goods and services;
4. the delivery terms;
5. indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
6. the cost of any employee training associated with a purchase;
7. the effect of a purchase on agency productivity;
8. the vendor's anticipated economic impact to the state or a subdivision of the State, including potential tax revenue and employment;
9. the impact of a purchase on the agency's administrative resources; and
10. other factors relevant to determining the best value for the State in the context of a particular purchase.[189]

Competitive Sealed Proposals (RFPs)

A Request for Proposals (RFP) is a written solicitation document for purchases acquired by means of the competitive sealed proposals procurement method. Generally, an RFP is recommended when factors other than price are to be considered, negotiations are desired, requirements cannot be described by detailed specifications included in a PO, or the vendor is expected to provide innovative ideas. This solicitation type must be used when an IFB

175 TEX. GOV'T CODE § 2254.023.
176 TEX. GOV'T CODE § 2165.004.
177 TEX. GOV'T CODE § 2157.006.
178 TEX. GOV'T CODE § 2155.063; 34 TEX. ADMIN. CODE § 20.206(c).
179 34 TEX. ADMIN. CODE § 20.206(a)(1).
180 TEX. GOV'T CODE § 2155.083(a); TEX. GOV'T CODE § 2155.264.
181 TEX. GOV'T CODE § 2155.132(e).
182 TEX. GOV'T CODE § 2155.132(h).
183 TEX. GOV'T CODE § 2156.063.
184 TEX. GOV'T CODE § 2155.088.
185 34 TEX. ADMIN. CODE § 20.206(d)(5).
186 TEX. GOV'T CODE § 2155.074(a).
187 TEX. GOV'T CODE § 2155.074, 34 TEX. ADMIN. CODE § 20.207 (a)(1)(A).
188 TEX. GOV'T CODE § 2155.074(b).
189 TEX. GOV'T CODE § 2155.074(b).

is not practicable or advantageous.[190] One of the key differences between an IFB and an RFP is that negotiations are allowed in an RFP and not allowed in an IFB.

For goods and services acquired under SPD's purchasing authority, SPD shall determine whether to delegate to the agency sole oversight of the use of the competitive sealed proposal procurement method or retain oversight of the procurement.[191] For purchases made under SPD's delegation authority, SPD delegates to the agency the assessment whether to use the competitive sealed proposals procurement method. Agencies must follow the SPD Review and Delegation Process to submit delegation requests to SPD procurements of goods with a value of more than $50,000 and services with a value of more than $100,000. Proprietary procurements must follow the procedures set forth in Proprietary Purchases. Guidance on how to draft a solicitation can be found in the Solicitation – Preparation section of this Guide.

Best Value Standard. Each agency shall purchase goods and services that provide the best value for the State.[192] For a purchase made through competitive sealed proposals, the agency must specify in the solicitation the known factors other than price that the agency will consider in determining which proposal offers the best value for the State.[193] The agency shall make a written award of a contract to the respondent whose proposal offers the best value for the state, considering price, past vendor performance, vendor experience or demonstrated capability, and any other evaluation factors in the RFP.[194]

Procurement Method – SPD Texas Multiple Award Schedule (TXMAS) Contracts

SPD establishes Texas Multiple Award Schedule (TXMAS) contracts to supplement the Term Contracts. The TXMAS Program adapts existing competitively awarded government contracts to service the procurement needs of state agencies and Texas SmartBuy members.[195] A contract award through the TXMAS Program must be based on an existing contract that was previously awarded by the federal government or any other governmental entity in any state using a competitive process that is adaptable to the laws of the State of Texas. Neither consulting services nor certain professional services (such as engineering and architecture) are offered as part of the TXMAS program.[196]

Unlike some other procurement methods, agencies may utilize TXMAS contracts developed by SPD without obtaining delegated authority from SPD to make purchases that exceed $50,000 for goods and exceed $100,000 for services. Prior to purchasing from a TXMAS contract, however, the Contract Developer must follow applicable procedures to purchase first from TCI, the State Use Program, and the Term Contracts. For purchases that exceed $25,000, the agency must post the award notice on the ESBD.[197]

Best Value Determination. An agency intending to purchase from a TXMAS contract must conduct a best value determination before issuing a PO. For purchases with a value of no more than $50,000, the agency may directly award a PO to an SPD TXMAS contractor without submitting a price request to other contractors in the same category. SPD recommends that for contracts that exceed $50,000 the agency submit a pricing request to at least three TXMAS vendors included in the TXMAS category to which the contract relates or all TXMAS vendors included in the applicable TXMAS category if the category has fewer than three vendors.

Negotiation Permitted. Orders placed between the minimum and maximum dollar limits listed on the contract details page are subject to TXMAS catalog pricing. Although certain negotiations are permitted, a TXMAS vendor is not required to accept orders or honor contract prices below the minimum and above the maximum dollar limits shown on its contract details page.

The price listed on the TXMAS contract is the maximum price allowable. The agency may negotiate lower prices when purchasing from a TXMAS contract; however, the TXMAS vendor may not charge a price higher than the price published in the TXMAS contract. A TXMAS vendor may provide a lower price than the price listed in its Texas SmartBuy catalog. For orders above the maximum PO dollar limit and offers through a promotional program, the agency may negotiate lower prices than those listed in the Texas SmartBuy catalog. Lower prices must be noted in the file by the agency along with the vendor representative's name. The agency must document the description of the good(s) or service(s) for TXMAS purchases and include pricing documentation in the agency's procurement file.

Orders Entered on Texas SmartBuy. POs for TXMAS contracts must be entered through the Texas SmartBuy online ordering system. The guidelines below are to be used when submitting a TXMAS PO entry into Texas SmartBuy.

1. Review the order. The Texas SmartBuy shopping cart allows up to 45 line items. Once 45 line items are added to the shopping cart, the additional order items must be totaled and entered using the quote order line on line 46. State agencies must

190 TEX. GOV'T CODE §§ 2156.121(a), 2156.122, 2157.121(a); 34 TEX. ADMIN. CODE § 20.208.
191 TEX. GOV'T CODE § 2156.121.
192 TEX. GOV'T CODE § 2155.074(a).
193 TEX. GOV'T CODE § 2155.075(b)(1).
194 34 TEX. ADMIN. CODE § 20.208(e)(1).
195 TEX. GOV'T CODE § 2155.502.
196 TEX. GOV'T CODE §§ 2155.001(2), 2155.502(c)(4).
197 TEX. GOV'T CODE § 2155.509.

enter at least 20 items into the Texas SmartBuy shopping cart before utilizing the quote line option. Texas SmartBuy Members are encouraged to add items to the Texas SmartBuy cart before utilizing the quote line option.

2. All POs containing a quote line item must include an uploaded attachment of the vendor's quote containing the core items with a detailed breakdown of the price. The ordering entity is responsible for validating the quoted price in its best value determination.
3. The ordering entity may request SPD assistance to validate prices before the order is entered into Texas SmartBuy by submitting a request to: txmasquote@cpa.texas.gov.

Offline Sales. Offline sales are TXMAS contract sales issued outside of Texas SmartBuy and directly with the vendor. All orders against TXMAS contracts must be entered on Texas SmartBuy unless the contract details page expressly states that offline sales are authorized. SPD encourages all TXMAS orders to be issued in Texas SmartBuy in lieu of placing the order through a vendor authorized to accept offline sales.

Incidental, Off-Schedule Items. Only products or services listed in the underlying contract may be purchased from the TXMAS contract, with one exception. Incidental, off-schedule items may be purchased as "best value, open market" items provided that they are necessary for product integration or product completeness. The purchasing entity is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. These incidental items may be added to the TXMAS purchase order if they are clearly labeled as "open market (OM), best value" items.

Incidental items may not exceed $5,000 or 50 percent of the purchase order total, whichever is less. If the pending order includes incidental items that exceed the stated limits, a request may be submitted to SPD for review and consideration of an exception. Exception requests shall be submitted to txmasquote@cpa.texas.gov. The request must include a copy of the complete vendor quote listing all core items and a detailed incidental charge breakdown.

Procurement Method – Reverse Auction Procedure

Agencies may purchase goods or services using the reverse auction procedure. This procedure, which is not commonly used in Texas state agency procurement, may be conducted in either of two ways:

1. Multiple vendors submit bids (anonymously to other vendors) at a previously scheduled time and Internet location (lasting usually less than an hour) to provide solicited goods or services;[198] or
2. Multiple vendors submit bids (anonymously to other vendors) during a specific time period (usually two weeks or less) and at a previously scheduled Internet location, to provide solicited goods or services.[199]

Procurements made under the reverse auction procedure are subject to SPD's delegation authority as well as the requirements applicable to ESBD posting and reviews by CAT and QAT.

Procurement Method – Automated Information Systems

Automated Information Systems

Agencies are required to use contracts established by DIR to obtain Automated Information Systems (AIS) unless the procurement is subject to an exclusion or exemption.[200] AIS type products and services are associated with computers (automation) or telecommunications systems.

The term AIS is defined to include the following:

1. computers and computer devices on which an information system is automated, including computers and computer devices that SPD identifies in guidelines developed by SPD in consultation with DIR and in accordance with Chapter 2054 and rules adopted under that chapter;
2. services related to the automation of an information system, including computer software or computers;
3. telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network, and services related to telecommunications that are not covered under paragraph (4); and
4. for DIR, as telecommunications provider for the state, the term includes any service provided by a telecommunications provider, as that term is defined by Section 51.002 of the Texas Utilities Code.[201]

As an aid in determining the appropriate procurement method, classification codes with an AIS component are noted with an asterisk (*) on the NIGP Commodity Book maintained on the CPA website.[202]

DIR Contracts

Under DIR's statewide procurement authority, DIR establishes and manages contracts under the following program areas for use by eligible customers:[203] (1) Cooperative Contracts program, (2) Shared

[198] TEX. GOV'T CODE §§ 2155.062(d)(1), 2155.085.

[199] TEX. GOV'T CODE §§ 2155.062(d)(2), 2155.085.

[200] TEX. GOV'T CODE § 2157.006.

[201] TEX. GOV'T CODE § 2157.001(1).

[202] The CPA website is located at Comptroller.Texas.Gov.

[203] DIR contracts cover a wide variety of information technology products and services. Customer eligibility varies with each program.

Technology Services (*e.g.,* Private Cloud, Public Cloud, Print/Mail/Digitization), (3) Telecommunications. DIR may consider strategic sourcing and other methodologies to select the vendor offering the best value on IT commodity items.

Note: This section of the Guide provides a summary of the contracts established by DIR. Agencies are directed to DIR for guidance on applicable procedures and best practices to be utilized in procuring IT commodity items under DIR contracts and telecommunications services.

IT Commodity Items. IT commodity items are a subset of AIS. IT commodity items refer to commercial software, hardware, or technology services, other than telecommunications services, that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists from two or more eligible DIR Customers.[204] The term includes seat management, through which a customer transfers its personal computer equipment and service responsibilities to a private vendor to manage the personal computing needs for each desktop of the customer, including all necessary hardware, software, and support services.[205]

The correlation between AIS and DIR IT commodity items is illustrated below:



Determining Contract Value of IT Commodity Item Procurements. An agency must use its best judgement to determine the monetary value of the anticipated contract. The dollar value of a contract is determined by the total value of the contract over its term as well as any modifications, renewals, or extensions of the contract.[206] It does not include the following for purposes of determining the monetary threshold applicable to an IT commodity item procurement under a DIR contract:

1. documents executed for purposes of encumbering funds but not constituting a binding transaction; or
2. any related document without an accompanying purchase order, including but not limited to statements of work, license agreements, maintenance agreements, or service agreements.[207]

Cloud Computing Services. Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (*e.g.*, networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.

The Texas Risk and Authorization Management Program (TX-RAMP) is a standardized approach to the assessment and evaluation of cloud computing services.[208] Beginning January 1, 2022, state agencies[209] may only enter or renew contracts to receive cloud computing services that comply with TX-RAMP certification requirements.[210]

For more information, refer to the Texas Risk and Authorization Management Program (TX-RAMP) page on the DIR website.[211]

DIR COOPERATIVE CONTRACTS PROGRAM

DIR develops master contracts for the procurement of IT commodity items. All master contracts established by DIR within the Cooperative Contracts Program are awarded through an open and competitive procurement process, beginning with a formal and public Request for Offers. DIR offers the following technology categories through DIR Cooperative Contracts Program: hardware, software, technology services including: managed services, IT Staff Augmentation Contracts (ITSAC), and Deliverables-Based IT Services (DBITS).

DIR establishes and maintains a catalog of active contracts on the DIR website that contain IT commodity items available for purchase by state agencies and other eligible customers.[212] The DIR Cooperative Contracts Program leverages the volume buying power of the State to negotiate competitive pricing, which translates into savings for agencies. The DIR master contracts offer negotiated *minimum* discounts on hundreds of products and services. DIR customers may negotiate even deeper discounts based on individual purchase volumes by issuing pricing requests to multiple DIR vendors in order to drive price competition for the final purchase award.

Monetary Thresholds for Competitive Action. A state agency, not including state institutions of higher education, purchasing an IT commodity item under a DIR contract must follow the following procedure:

1. For a contract with a value of no more than $50,000, the agency may directly award the contract to a vendor included in the category to which the contract relates without submitting a price request to other vendors in the same category;

204 TEX. GOV'T CODE § 2157.068(j); 418.193; 2054.003(13); 2151.002; 2170.004(5); 2175.001; TEX. EDUC. CODE §§ 5.001; 43.062; 61.003; TEX. TAX CODE §152.001(11).
205 TEX. GOV'T CODE § 2157.068(a).
206 TEX GOV CODE §§ 322.020(a), 2054.008; 34 TEX ADMIN CODE 20.25(b)(13).
207 1 TEX. ADMIN. CODE § 212.1(2)(B).
208 TEX. GOV'T CODE § 2157.007.
209 TEX. GOV'T CODE § 2054.003(13).
210 TEX. GOV'T CODE § 2054.0593.
211 The DIR website is located at www.dir.texas.gov.
212 The DIR website is located at www.dir.texas.gov.

2. For a contract with a value of more than $50,000 but not more than $1 million, the agency must submit a request for pricing to at least three vendors or resellers included in the category to which the contract relates; and
3. For a contract with a value of more than $1 million but not more than $5 million, the agency must submit a request for pricing to at least six vendors included in the category to which the contract relates or all vendors in the category if the category has fewer than six vendors.[213]
4. For a contract with a value of more than $5 million but not more than $10 million, if an agency utilizes DIR Cooperative Contracts, the agency must submit a request for pricing to at least six vendors included in the category to which the contract relates or all vendors in the category if the category has fewer than six vendors.

For a contract with a value of more than $5 million but not more than $10 million, an agency may opt to utilize DIR cooperative contracts or may make the purchase using the RFO purchasing method, as designated by the Comptroller under Section 2157.006(a)(2) of the Texas Government Code. An agency may not enter into a contract to purchase a commodity item through the DIR Cooperative Contracts Program if the value of the contract exceeds $10 million unless it is a DIR coordinated bulk purchase.[214]

Coordinated Bulk Purchases of Commodity Items. DIR periodically schedules "bulk" purchase events to support information technology replacement. The coordinated bulk purchase effort focuses on productivity software, seat management services, and personal computers, laptops, and tablets and any additional IT commodity items that may produce cost savings from bulk purchases.[215] DIR facilitates this streamlined procurement process, which is not subject to the contract value cap of $10 million,[216] by serving as the sole point of contact between the agencies and vendors. DIR works with eligible customers to develop standardized configurations suited to the participating customers' business needs. DIR also uses its technology contracting experience to conduct the negotiations for all of the participating agencies. During a coordinated bulk purchase initiative, agencies leverage their combined purchasing power to purchase a large quantity of like items during a designated timeframe. Agencies participating in the coordinated bulk purchase initiatives obtain competitive pricing beyond the discounts already available to DIR customers through DIR cooperative contracts.

DIR Review and Signature Approval of Certain Statements of Work. Some DIR contracts for IT commodity items require a state agency to develop and execute a Statement of Work (SOW) to initiate services under the contract. Before submitting a SOW to the vendor, the agency is required to submit it to DIR for approval. This must occur prior to soliciting and upon award.[217] This review is required for certain services that exceed $50,000 and includes, but is not limited to, the following technology categories:

DIR contracts that require DIR SOWs include, but are not limited to, the following:

- DBITS;
- Managed Services for IT;
- IT Security Services;
- Web Development;
- Cloud Services; and
- IT staffing services (when a SOW is issued).

A SOW Review is not applicable to:

- contracts exclusively for hardware or software and not including services;
- IT Staffing Services when using Request for Resumes;
- the vendors' standard commercially available support, maintenance, and warranties as documented in the DIR cooperative Contract; [218]
- or state institutions of higher education, and other eligible DIR customers that are not state agencies.

The agency must submit a completed draft DIR SOW to DIR for review at least 30 business days before anticipated submission of the DIR SOW to vendors. The DIR submission must include:

- the completed DIR SOW which at a minimum includes: the scope of the project, milestones, deliverables description, schedule, acceptance criteria, and any other items DIR may require; and
- a list of DIR cooperative contracts to which the DIR SOW will be advertised.

DIR may accept or reject the submitted DIR SOW. An agency shall not submit the DIR SOW to vendors until DIR has issued written approval. If rejected, the agency may resubmit with required modifications.[219]

If an agency experiences an unforeseeable circumstance that requires immediate attention but is not considered an Emergency Procurement as defined in 34 TAC §20.25(b)(20), the agency may

213 TEX. GOV'T CODE § 2157.068(e-1).
214 TEX. GOV'T CODE § 2157.068(e-2).
215 General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 9.04(b)-(c).
216 TEX. GOV'T CODE § 2157.068(e-3).
217 TEX. GOV'T CODE § 2157.0685.
218 1 TEX. ADMIN. CODE § 212.1(10).
219 1 TEX. ADMIN. CODE § 212.41(a).

submit an expedited request for review. The expedited request for review must include a statement from the head of the requesting agency, or his/her designee, describing the circumstances and justification for expedited review by DIR. DIR will provide an expedited review of the SOW within five (5) business days.[220]

Following execution of the final DIR SOW by the agency and vendor, the agency must submit the signed DIR SOW to DIR for its signature. DIR will review the signed DIR SOW and determine whether it will be signed or rejected by DIR. If DIR rejects the SOW, DIR will notify the agency of the reason(s) for rejection. DIR must sign the DIR SOW before it becomes valid and any money is paid to a vendor. The DIR signature affixed to the DIR SOW verifies only that the statement of work is within the scope of the DIR contract being utilized. The DIR signature does not make DIR a party to the agreement, and DIR will not be responsible for any other agency obligations in connection with the purchase. The DIR signature does not verify or assure any other relevant fact including, but not limited to, the following:

1. that funding is appropriate or sufficiently available;
2. that the appropriate procurement method was chosen by the agency;
3. that the appropriate vendor was selected; or
4. that the statement of work documented by the agency will successfully achieve a goal or projected outcome.[221]

Upon execution of the DIR SOW, each DIR SOW entered into by an agency must be posted on the agency's internet website as follows:

1. post the DIR SOW in its entirety, subject to the exceptions in the Texas Public Information Act and opinions of the Office of Attorney General;
2. maintain the posting, at a minimum, throughout the term of the DIR SOW, including any renewals or extensions;
3. maintain a listing of the DIR SOWs in alphabetical order by vendor name or numerical order by contract number in a central location; and
4. maintain a current agency contact person with related email address and phone number to contact for information regarding the DIR SOW.[222]

Exemptions and Exclusions. An agency may obtain an exemption or waiver from the requirement to use a DIR Contract to purchase an IT commodity item in one of three ways: DIR exemption, LBB approval, or DIR certification.

1. **DIR Exemption.**[223]
   a. Blanket Exemption. DIR may determine that under certain circumstances it is reasonable to grant a blanket exemption to all agencies. Procurements utilizing blanket exemptions must be made in accordance with the exact scope, terms, and requirements specified in the blanket exemption.[224] A current list of blanket exemptions is located on the DIR website.[225]
   b. One-Time Exemption Request.
      - If a blanket exemption is unavailable, an agency must submit an exemption request on a prescribed form through the DIR portal. DIR will review each exemption request on a case-by-case basis to determine if the proposed purchase is in the best interest of the State. DIR will notify the requesting agency of its decision to approve or deny the exemption request. If DIR has not issued a written denial of the exemption request within 15 business days following the date of its receipt of the request, or the date of receipt of requested additional information, the request for the exemption is deemed to have been approved for an amount equal to the total value of the proposed purchase or for the period of time described in the exemption request.[226]
      - If an agency experiences an unforeseeable circumstance that requires immediate attention but is not considered an Emergency Procurement as defined in 34 TAC §20.25(b)(20), the agency may submit an expedited exemption request.[227] DIR must issue a written approval or denial of an exemption request within three business days of receipt of the expedited exemption request. The expedited exemption request must include a statement from the head of the requesting agency, or his/her designee, describing the circumstances and justification for expedited review.
2. **LBB Approval**. With express prior approval from the LBB for the expenditure necessary for the purchase, an agency may procure an IT commodity item without using a contract established by DIR.[228] The agency must request an exemption from DIR before seeking LBB approval.[229] The LBB's approval of a biennial operating plan is not an express prior approval for the purpose of obtaining an exemption from the use of DIR contracts.[230]
3. **DIR Certification of Unavailability**. A state agency may submit a request to DIR for certification that a commodity item is not available for purchase under an existing DIR contract, so that the state agency may procure the IT commodity item through an avenue other than a DIR contract. The state agency

220 1 TEX. ADMIN. CODE § 212.42.
221 1 TEX. ADMIN. CODE § 212.41(b).
222 1 TEX. ADMIN. CODE § 212.41(c).
223 TEX. GOV'T CODE § 2157.068(f).
224 1 TEX. ADMIN. CODE § 212.22.
225 The DIR website is located at www.dir.texas.gov.
226 1 TEX. ADMIN. CODE § 212.20.
227 1 TEX. ADMIN. CODE § 212.21.
228 TEX. GOV'T CODE §§ 2157.068(f), 2157.068(g).
229 TEX. GOV'T CODE § 2157.068(g).
230 TEX. GOV'T CODE § 2157.068(g).

shall not take any action on the contemplated purchase until the request is either approved or denied by DIR.[231]

Certain agency purchases are not within DIR's procurement authority for IT commodity items. These include procurements that are

1. over the $10 million monetary threshold for IT commodity items established by statute,[232] and
2. exclusions expressly authorized by statute.[233]

TEXAS.GOV SERVICES

Texas.gov, the official website of the State of the Texas, provides portal and payment services for Texas state agencies and eligible local governmental organizations, enabling them to cost-effectively conduct online business with their customers. Texas.gov is one of DIR's Shared Technology Services. The program provides services for more than 300 publicly-funded customers, including:

- licenses and permits;
- utility, fee or fine payments;
- vital records;
- driver license renewals, driver records, vehicle registration renewals and specialty license plates;
- the Texas Veterans Portal; and
- the Open Data Portal.

Texas.gov leverages enterprise-wide services and infrastructure components to provide solutions that meet or exceed state mandated requirements regarding accessibility, security, privacy, and integration with certain CPA financial systems *e.g.*, the Uniform Statewide Accounting System (USAS). Any Texas state agency or local government entity is eligible to use the Texas.gov contract by entering into an Interagency or Interlocal agreement, respectively, with DIR.

DATA CENTER SERVICES

The Texas Data Center Services (DCS) program allows state and local governmental entities to outsource management of technology infrastructure services and receive the benefit of aggregated volume discounts by sharing technology services.

DCS provides secure connectivity to select public and private clouds designed around government security and disaster recovery requirements, and flexible service tiers to meet differing needs and budgets. Joining the program allows customers to delegate infrastructure management while increasing focus on delivering direct, mission-related value to their business users and clients. Agencies that are mandated to participate in the DCS program cannot contract with other vendors for services for which DCS provides.

As part of the Texas DCS program, customers enter into agreements with DIR to consume infrastructure services and benefit from the following program offerings:

- secure public to private cloud connectivity;
- uptime Institute Tier 2 Level equivalent state facilities;
- disaster recovery and testing;
- FBI Criminal Justice Information Services (CJIS) minimum security, Texas State Auditor requirements, annual SOC 1/SOC 2 audits, and biannual IRS audit compliance;
- automated server self-provisioning and service catalog;
- bulk print/mail services;
- governance model ensuring customer engagement; and
- DIR contract management, oversight, and budgeting support.

The monetary threshold requirements and SOW review and signature process associated with the DIR Cooperative Contracts Program do not apply to services procured through the DCS program under contracts signed by the contracted vendors.

TELECOMMUNICATION SERVICES

DIR provides a variety of telecommunications services to eligible customers throughout the State, through the operation of major and secondary networks and numerous contracts for communications-related services. Agencies in the Capitol Complex are required to use the Capitol Complex Telephone System (CCTS) for landline services. All agencies are required to use the Texas Agency Network (TEX-AN) for telephone, internet, data, and video services. If a telecommunications service is offered by DIR, an agency must purchase the service through DIR or must request and be granted a waiver before procuring the service through an avenue other than DIR.[234]

RFO Procurement Method

The Request for Offers (RFO) procurement method is intended as the designated, primary purchasing method for procuring AIS other than under DIR's IT commodity program.[235] Agencies may only choose alternative procurement methods authorized by Title 10, Subtitle D of the Texas Government Code when an RFO procurement method is not practicable or will not obtain the best value for the state.[236] When using methods other than the RFO procurement method to purchase AIS, the agency must follow the guidelines published by

231 TEX. GOV'T CODE § 2157.068(f).
232 TEX. GOV'T CODE § 2157.068(e-2).
233 TEX. GOV'T CODE §§ 2157.002, 2157.068(i).
234 TEX. GOV'T CODE § 2170.051.
235 TEX. GOV'T CODE § 2157.006(a)(2); 34 TEX. ADMIN. CODE § 20.391.
236 *See* 34 TEX. ADMIN. CODE § 20.391(a).

SPD for the specified procurement method.[237]

The RFO method is available for use by agencies to procure AIS items in the following circumstances:

- The agency has obtained an exemption from DIR;
- The agency has obtained express prior approval from LBB for the expenditure necessary for the purchase;
- DIR has certified in writing that the IT commodity item is not available for purchase under an existing DIR contract; or
- The agency is otherwise exempt from the requirements of Section 2157.068 of the Texas Government Code.

The RFO method is a direct purchase or lease method used after the procuring entity's evaluation of written offers received in response to an open and competitive solicitation in accordance with the solicitation to result in best value. Under the RFO method, agencies must solicit, evaluate, select, negotiate as appropriate, and contract directly with one or more qualified vendors in accordance with the open and competitive solicitation.

To initiate an RFO, the agency must issue a written, open and competitive request for offers. In procuring under the RFO method, the procuring entity must also comply with the RFO guidelines published by SPD. If the agency believes that the procurement is proprietary, then the agency must follow the Proprietary Purchases procedures. The procuring entity's use of an RFO does not require or involve delegation of authority or prior approval by SPD. Procurements using the RFO method are subject to ESBD posting requirements as well as requirements applicable to CAT and QAT reviews. Additional requirements may apply to certain types of consulting services contracts.[238]

Best Value Standard. The term "best value" means the lowest overall cost of an automated information system.[239] In determining the lowest overall cost for a purchase or lease of an AIS, the agency shall consider factors including:

1. the purchase price;
2. the compatibility to facilitate the exchange of existing data;
3. the capacity for expanding and upgrading to more advanced levels of technology;
4. quantitative reliability factors;
5. the level of training required to bring persons using the system to a stated level of proficiency;
6. the technical support requirements for the maintenance of data across a network platform and the management of the network's hardware and software;
7. the compliance with applicable department statewide standards validated by criteria adopted by DIR rule; and
8. applicable factors listed in Sections 2155.074 and 2155.075 of the Texas Government Code.[240]

Procurement Method – Professional Services

Agencies are authorized to procure professional services under Chapter 2254, Subchapter A, of the Texas Government Code.[241] Acquisition of professional services is delegated to agencies by statute and does not require a delegation of authority from SPD. The procurement of professional services is subject to ESBD posting requirements as well as requirements applicable to CAT reviews.

Professional services refer to services that are

1. within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing;
2. provided in connection with the professional employment or practice of a person who is licensed or registered as one of the following: a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse; or
3. provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Chapter 1053 of the Occupations Code.[242]

Professional services procurements are usually advertised as either an RFQ or RFP. The award of a professional services contract is based on (1) demonstrated competence and qualifications to perform the services, and (2) a fair and reasonable price.[243] The professional fees under the contract may not exceed any maximum provided by law.[244]

[237] 34 TEX. ADMIN. CODE § 20.391.
[238] *See e.g.,* TEX. GOV'T CODE § 751.016 (specifying the reporting requirements applicable to contracts with a federal-level government relations consultant).
[239] TEX. GOV'T CODE § 2157.003.
[240] TEX. GOV'T CODE § 2157.003.
[241] TEX. GOV'T CODE § 2254.003.
[242] TEX. GOV'T CODE § 2254.002(2).
[243] TEX. GOV'T CODE § 2254.003(a).
[244] TEX. GOV'T CODE § 2254.003(b).

To procure architectural, engineering, or land surveying services, the governmental entity[245] must first select the most highly qualified provider based on demonstrated competence and qualifications, and then attempt to negotiate a fair and reasonable price for the services.[246] If a satisfactory contract cannot be negotiated with the most highly qualified respondent, the agency must formally end negotiations with the respondent and then must attempt to negotiate a fair and reasonable price with the next most highly qualified respondent. This process may continue until a contract is executed for the service solicited by the governmental entity.[247] Although the described process applies to the services of an architect, engineer or land surveyor, this selection process can be used for all professional services.

An agency shall provide written notice, on a prescribed form, to the LBB within 30 days of the date the agency enters into a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds $50,000.[248] A contract entered into or an arrangement made in violation of Chapter 2254, Subchapter A, of the Texas Government Code is void as against public policy.[249]

SAO Delegation of Authority for Audit Services. Section 321.020 of the Texas Government Code specifies that a state agency or corporation that is dedicated to the benefit of a state agency may enter into a contract for audit services only if

1. the agency or corporation is authorized to contract with a private auditor through a delegation of authority from SAO;
2. the scope of the proposed audit has been submitted to SAO for review and comment; and
3. the services of the private auditor are procured through a competitive selection process in a manner allowed by law.

In addition, Article IX, Section 6.20 of the General Appropriations Act (87th Legislature), provides requirements for state agencies and institutions of higher education that use appropriated funds to contract for audit services.

Procurement Method – Consulting Services

Agencies are authorized to procure consulting services pursuant to Chapter 2254, Subchapter B, of the Texas Government Code.[250] Acquisition of consulting services is delegated to agencies by statute and does not require a delegation of authority from SPD. The procurement of consulting services is subject to ESBD posting requirements as well as requirements applicable to CAT reviews. Additional requirements may apply to certain types of consulting services contracts.[251]

Consulting service refers to the service of studying or advising an agency under a contract that does not involve the traditional relationship of employer and employee.[252] An agency[253] may contract with a consultant only if there is a substantial need for the consulting services and the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.[254] Consulting services procurements are usually advertised as an RFP.

If a contract involves both consulting and other services, the services will be procured as consulting services if the primary objective of the contract is the acquisition of consulting services.[255] Consider for instance a solicitation for an analysis of an agency's information systems needs and the development and implementation of a computer system. The primary objective of this contract is the delivery of a system and not the analysis provided. This contract is not a consulting services contract; therefore, the requirements for consulting services contracts would not apply. The agency, however, must comply with the applicable procurement method for acquiring AIS.

A "major consulting services contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed $15,000 for a state agency or $25,000 for an

245 TEX. GOV'T CODE § 2254.002(1) (defining "governmental entity" to be (a) a state agency or department, (b) a district, authority, county, municipality, or other political subdivision of the State, (c) a local government corporation or another entity created by or acting on behalf of a political subdivision in the planning and design of a construction project, or (d) a publicly owned utility).

246 TEX. GOV'T CODE § 2254.004(a).

247 TEX. GOV'T CODE § 2254.004(b)-(c).

248 TEX. GOV'T CODE § 2254.006.

249 TEX. GOV'T CODE § 2254.005.

250 TEX. GOV'T CODE § 2254.023. For CPA rules adopted under Section 2254.039 of the Texas Government Code see 34 TEX. ADMIN. CODE § 5.54.

251 *See e.g.*, TEX. GOV'T CODE § 751.016 (specifying the reporting requirements applicable to contracts with a federal-level government relations consultant).

252 TEX. GOV'T CODE § 2254.021(1).

253 TEX. GOV'T CODE § 2254.021(5) (defining "state agency" to be (1) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute, (2) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council, or (3) a university system or an institution of higher education as defined by Section 61.003 of the Texas Education Code, except a public junior college).

254 TEX. GOV'T CODE § 2254.026; TEX. GOV'T CODE § 2254.021(6) (defining "state governmental entity" to be a state department, commission, board, office, institution, facility, or other agency the jurisdiction of which is not limited to a geographical portion of the state. The term includes a university system and an institution of higher education, other than a public junior college, as defined by Section 61.003 of the Texas Education Code. The term does not include a political subdivision.).

255 TEX. GOV'T CODE § 2254.038.

institution of higher education other than a public junior college.[256] A consulting services contract cannot be divided into more than one contract to avoid the procurement requirements pertaining to major consulting services contracts.[257] In selecting a consultant, the agency must base its choice on demonstrated competence, knowledge, qualifications, and on the reasonableness of the proposed fee for the services.[258] If other considerations are equal, the agency must give preference to a consultant whose principal place of business is located in the State or who will manage the consulting services contract wholly from an office in the State.[259]

A consulting services contract with an agency must include provisions that allow the agency and any other agency and the Legislature, at the contracting agency's discretion, to distribute any consultant reports and post the report on the agency's website or the website of a standing committee of the Legislature.[260] The distribution of the report will not affect the application of Chapter 552 of the Texas Government Code.[261]

Particular care must be taken to closely follow all statutory requirements for procuring consulting services. A consulting services contract, or renewal, amendment, or extension, is void under the following circumstances:

1. the contract is entered into without complying with the ESBD posting requirements and notification requirements to the LBB and Governor's Budget and Planning Office. (Refer to the "Pre-Award Notification and Publication Requirements for Major Consulting Services Contracts," "Post-Award Notification and Publication Requirements for Consulting Services Contracts," and "Notification and Publication Requirements for Renewals, Amendments, and Extensions to Consulting Services Contracts" described in this Section of the Guide); and
2. the contract is entered into with a private consultant who has been employed by that agency or by another agency at any time during the two years preceding the making of the offer and failed to disclose in the offer:
    a. the nature of the previous employment with the agency or the other agency;
    b. the date the employment was terminated; and
    c. the annual rate of compensation for the employment at the time of its termination.[262]

If the contract is void, CPA may not draw a warrant or transmit money to satisfy an obligation under the contract and an agency may not make any payment under the contract with state or federal money or money held in or outside the state treasury.[263]

Pre-Award Notification and Publication Requirements for Major Consulting Services Contracts. Before entering into a major consulting services contract, an agency must

1. notify the LBB and the Governor's Budget and Planning Office that the agency intends to contract with a consultant;
2. give information to the LBB and the Governor's Budget and Planning Office to demonstrate that the agency has complied or will comply with Sections 2254.026 and 2254.027 of the Texas Government Code; and
3. obtain a finding of fact from the Governor's Budget and Planning Office that the consulting services are necessary.[264]

The Consultant Contract Finding of Fact Request is located on the Governor's Budget and Planning Office website.[265] Notification to the LBB should be sent to contract manager@lbb.texas.gov. A major consulting services contract that an agency enters into without first obtaining a finding of fact from the Governor's Budget and Planning Office is void. [266]

Not later than the 30th day before the date it enters into a major consulting services contract, an agency must post to the ESBD the following:

- an invitation for consultants to provide offers of consulting services;
- the name of the individual who should be contacted by a consultant that intends to respond to the solicitation;
- the closing date for the receipt of proposals;
- the procedure by which the agency will award the contract;
- information on whether the consulting services sought by the agency relate to services previously provided by a consultant; and
- information on any intention to award the contract for the consulting services to a consultant that previously provided the services, unless a better offer is received.[267]

256 TEX. GOV'T CODE § 2254.021(2).
257 TEX. GOV'T CODE § 2254.035(a). The value of the contract for purposes of determining division includes all renewals, amendments, and extensions of the contract. TEX. GOV'T CODE § 2254.035(b).
258 TEX. GOV'T CODE § 2254.027.
259 TEX. GOV'T CODE § 2254.027.
260 TEX. GOV'T CODE § 2254.041(a).
261 TEX. GOV'T CODE § 2254.041(b).
262 TEX. GOV'T CODE § 2254.034(a)-(b), (d).
263 TEX. GOV'T CODE § 2254.034(c).
264 TEX. GOV'T CODE § 2254.028(a). This requirement does not apply to a major consulting services contract to be entered into by an institution of higher education other than a public junior college if the institution includes in the invitation published under Section 2254.029 of the Texas Government Code a finding by the chief executive officer of the institution that the consulting services are necessary and an explanation of that finding. TEX. GOV'T CODE § 2254.028(c).
265 The Office of the Governor website is located at www.gov.texas.gov.
266 TEX. GOV'T CODE § 2254.028(b).
267 TEX. GOV'T CODE § 2254.029.

Post-Award Notification and Publication Requirements for Consulting Services Contracts. An agency must provide written notice in a prescribed format to the LBB within 30 days of the date the entity enters into a contract for consulting services if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds $50,000.[268]

After the contract is awarded, a notification of award must be posted to the ESBD if the contract is expected to exceed $25,000.[269] For a consulting services contract with a political subdivision, disclosure and itemization of certain expenditures related to lobbying activities are also required by Section 2254.030 of the Texas Government Code.[270]

Notification and Publication Requirements for Renewals, Amendments, and Extensions to Consulting Services Contracts. An agency that intends to renew, amend, or extend a major consulting services contract must comply with "Pre-Award Notification and Publication Requirements for Major Consulting Services Contracts" described in this Section of the Guide if the contract after the renewal, amendment, or extension is a major consulting services contract.[271]

An agency that intends to renew a contract that is not a major consulting services contract must comply with the "Pre-Award Notification and Publication Requirements for Major Consulting Services Contracts" described in this Section of the Guide if the original contract and the renewal contract have a reasonably foreseeable value totaling more than $15,000, or $25,000 for an institution of higher education other than a public junior college.[272]

An agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with the "Pre-Award Notification and Posting Requirements for Major Consulting Services Contracts" described in this Section of the Guide if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than $15,000, or $25,000 for an institution of higher education other than a public junior college.[273]

Emergency Waiver of Compliance for Consulting Services Contracts. The Governor, after receipt of a request from an agency, may grant a limited waiver of compliance with the statutory provisions governing consulting services for an agency that requires consulting services before compliance can be completed because of an unforeseen emergency.[274] The waiver request must include information required by the Governor, including:

- information about the nature of the emergency;
- the reason that the agency did not foresee the emergency;
- the name of the consultant with whom the agency intends to contract; and
- the amount of the intended contract.[275]

The agency must include a detailed description of the emergency, on which the request for waiver was predicated, with the information filed with the Secretary of State for publication in the *Texas Register*.[276] As soon as possible after the Governor grants a limited waiver, the agency must comply with the statutory provisions to the extent that the requirements of the provisions are not superfluous or ineffective because of the waiver.[277]

Procurement Method – Legal Services

The OAG provides legal services to state agencies.[278] Except as authorized by other law, a contract for legal services between an attorney, other than a full-time employee of the OAG, and a state agency in the executive department, other than an agency established by the Texas Constitution, must be approved by the OAG to be valid.[279]

The OAG may require agencies to obtain outside legal services through a competitive procurement process, under conditions prescribed by the OAG.[280] Unless an exemption is obtained from the OAG, an agency is required to publish a Request for Qualifications (RFQ) on the ESBD for a minimum of 30 calendar days before selecting outside counsel, regardless of the anticipated maximum liability of the anticipated Outside Counsel Contract (OCC).[281]

[268] TEX. GOV'T CODE § 2254.0301(a). Section 2254.301 of the Texas Government Code does not apply to a university system or institution of higher education as defined by Section 61.003 of the Education Code. TEX. GOV'T CODE § 2254.0301(b).
[269] TEX. GOV'T CODE § 2155.083(k).
[270] TEX. GOV'T CODE § 2254.030.
[271] TEX. GOV'T CODE § 2254.031(a).
[272] TEX. GOV'T CODE § 2254.031(b).
[273] TEX. GOV'T CODE § 2254.031(d).
[274] TEX. GOV'T CODE § 2254.025(a). "Unforeseen emergency" means a situation that suddenly and unexpectedly causes a state agency to need the services of a consultant. The term includes the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency is not unforeseen if a state agency was negligent in foreseeing the occurrence of the emergency. TEX. GOV'T CODE § 2254.025(e).
[275] TEX. GOV'T CODE § 2254.025(b).
[276] TEX. GOV'T CODE § 2254.025(c).
[277] TEX. GOV'T CODE § 2254.025(c).
[278] TEX. GOV'T CODE §§ 402.021, 402.0212(a).
[279] TEX. GOV'T CODE § 402.0212(a). Invoice processing standards also apply to these contracts. TEX. GOV'T CODE § 402.0212(b)-(b-3).
[280] TEX. GOV'T CODE § 2254.154. *Cf.* TEX. GOV'T CODE § 2151.005 (The State Purchasing and General Services Act, Subtitle D of Title 10 of the Texas Government Code does not apply to (1) obtaining outside legal counsel services, (2) obtaining expert witnesses, or (3) procuring litigation-related goods and services for which competitive procurement is not feasible under the circumstances.).
[281] 1 TEX. ADMIN. CODE § 57.4.

To obtain OAG approval for the use of services provided by outside counsel, the agency must electronically submit a Request to Retain Outside Counsel (RtR) and the proposed OCC to the OAG.[282] Deviations from the prescribed OCC template are not permitted without the OAG's prior approval. An amendment to an OCC also must be approved by the OAG.[283] Questions regarding the electronic submission process may be sent to general.counsel@oag.texas.gov.

If the legal services contract is also a contingent fee contract, the agency must comply with the requirements set forth in Subchapter C, Chapter 2254 of the Texas Government Code. The term "contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.[284]

A state governmental entity that has authority to enter into a contract for legal services in its own name may enter into a contingent fee contract for legal services only if:

1. the governing body of the state governmental entity approves the contract and the approved contract is signed by the presiding officer of the governing body, or
2. for an entity that is not governed by a multimember governing body, the elected or appointed officer who governs the entity approves and signs the contract.[285]

Before approving the contract, the governing body, elected or appointed officer, or governor, as appropriate, must find that:

1. there is a substantial need for the legal services,
2. the legal services cannot be adequately performed by the attorneys and supporting personnel of the state governmental entity or by the attorneys and supporting personnel of another state governmental entity, and
3. the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.[286]

Certain contingent fee contracts also require that the agency obtain a finding from the LBB that the agency does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.[287] A contingent fee contract for legal services is void if the agency fails to obtain the required LBB finding.[288] Moreover, a contract entered into or an arrangement made in violation of Subchapter C, Chapter 2254 of the Texas Government Code is void as against public policy, and no fees may be paid to any person under the contract or under any theory of recovery for work performed in connection with a void contract.[289]

Procurement Method – Interagency Cooperation Contracts (IACs)

An interagency contract is a written understanding between two or more agencies[290] as authorized by Chapter 771 of the Texas Government Code. An agency may agree or contract with another agency for the provision of necessary and authorized services (including technical services) and materials and equipment. Competitive bidding requirements do not apply to Interagency Contracts.

Before an agency may provide or receive a service or resource under the Interagency Cooperation Act, the agency must have entered into a written agreement signed by authorized representatives of both agencies and the contract (IAC) must specify the kind and amount of services or resources to be provided, the basis for computing reimbursable costs, and the maximum cost during the contract term. To ensure that an IAC is statutorily compliant, the contracting agencies must also certify that:

1. the services specified are necessary and essential and are properly within the statutory functions and programs of the affected agencies of state government;
2. the proposed arrangements serve the interest of efficient and economical administration of those agencies;
3. the services, supplies or materials contracted for are not required to be supplied under contract to the lowest responsible bidder; and
4. the contract neither requires, nor permits, either party to exceed its duties and responsibilities or the limitations of its appropriated funds.[291]

A written IAC between two agencies is not required in the following circumstances:

1. an emergency for the defense or safety of the civil population or

[282] 1 TEX. ADMIN. CODE § 57.3.
[283] 1 TEX. ADMIN. CODE § 57.5(a).
[284] TEX. GOV'T CODE § 2254.101(2).
[285] TEX. GOV'T CODE § 2254.103(a).
[286] TEX. GOV'T CODE § 2254.103(d).
[287] TEX. GOV'T CODE § 2254.103(e).
[288] TEX. GOV'T CODE § 2254.103(f).
[289] TEX. GOV'T CODE § 2254.110.
[290] TEX. GOV'T CODE § 771.002(1) (defining "agency" to be a department, board, bureau, commission, court, office, authority, council, or institution of state government; an institution of higher education or service or part of an institution; a local workforce development board; and certain statewide job or employment training programs for disadvantaged youth).
[291] TEX. CONST. Art. XVI, § 21; TEX. GOV'T CODE §§ 771.003, 771.010.

in the planning and preparation for those emergencies;

2. cooperative efforts, proposed by the governor, for the economic development of the state; or
3. a situation in which the amount involved is less than $50,000.[292]

When an interagency exchange is exempt from the requirements of a written contract, the agencies involved must document the exchange through informal letters of agreement or memoranda. As with other contractual agreements, it is best practice for a fixed term to be included in the contract. The inclusion of a termination date obligates the agencies to review and assess whether the contract is needed and if any changes in contract scope or pricing will be required before entering into a subsequent agreement.

Procurement Method – Interlocal Cooperation Contracts

An interlocal contract is a written understanding authorized by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The purpose of the Interlocal Cooperation Act is to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the State.[293]

A local government may contract with another local government, an agency of the State, an agency of another state, and a federally recognized Indian tribe located within the boundaries of Texas.[294]

The term "local government" refers to a

1. county, municipality, special district, junior college district, or other political subdivision of this State or another state;
2. local government corporation created under Subchapter D, Chapter 431 of the Transportation Code;
3. political subdivision corporation created under Chapter 304 of the Local Government Code;
4. local workforce development board created under Section 2308.253 of the Texas Government Code; or
5. combination of two or more entities described by Paragraphs 1, 2, 3, or 4.[295]

An interlocal contract must

1. be authorized by the governing body of each party to the contract unless a party to the contract is a municipally owned electric utility, in which event the governing body may establish procedures for entering into interlocal contracts that do not exceed $100,000 without requiring the approval of the governing body;
2. state the purpose, terms, rights, and duties of the contracting parties; and
3. specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.[296]

An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.[297] In addition, a governmental entity of this State or another state that makes purchases or provides purchasing services under an interlocal contract for a state agency, as that term is defined by Section 771.002 of the Texas Government Code, must comply with Chapter 2161 of the Texas Government Code in making the purchases or providing the services.[298] Depending on the specific contracting authority and type of services provided, additional statutory requirements may apply to the interlocal contract.

Procurement Method – State and Federal Surplus Property Programs

The Federal and State Surplus Property programs are administered by the Texas Facilities Commission (TFC). The programs have different laws, rules, and procedures. Specific procedures for use of these two programs are located in Appendix 11.

Procurement Method – Request for Qualifications

A Request for Qualifications (RFQ) is generally used for professional services wherein the respondents are evaluated based solely on their qualifications and skills. This solicitation method is more like an application process, where it is very clear what is expected from the vendor. Price is negotiated after the agency selects its preferred respondent based on how well the respondents met the published qualifications.

Vendors must respond to an RFQ by submitting their qualifications to perform specified work. The submissions are reviewed to determine the qualified respondent(s) who are requested to prepare a proposal, including cost, to perform the specific work as may be embodied in an RFQ. Price is not a factor until after the vendor is selected.

292 TEX. GOV'T CODE § 771.004(c).
293 TEX. GOV'T CODE § 791.001.
294 TEX. GOV'T CODE § 791.011(a)-(b).
295 TEX. GOV'T CODE § 791.003(4).
296 TEX. GOV'T CODE § 791.011(d).
297 TEX. GOV'T CODE § 791.011(e).
298 TEX. GOV'T CODE § 791.011(g).

Procurement Method – Texas Disaster Act of 1975

Under Chapter 418 of the Texas Government Code, the Governor may by executive order or proclamation declare a state of disaster[299] if a disaster has occurred or if the occurrence or threat of disaster is imminent. The Governor may suspend the provisions of any regulatory statute[300] prescribing the procedures for conduct of state business or the orders or rules of an agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster. For example, the Governor may suspend enforcement of statutes and administrative rules regarding contracting or procurement that would impede any agency's emergency response that is necessary to protect life or property threatened by a declared disaster.

A purchase made under a disaster must clearly relate to the disaster, conform to the directives of the disaster declaration, and occur within the timeframe specified in the disaster declaration. The procurement file, at a minimum, must contain a copy of the disaster declaration, documentation to support the purchase, receipt of goods or services, and approval of the payment. An example of a disaster declaration is located in Appendix 12.

Procurement-related guidance for Governor-declared disasters can be found in Appendix 13.

Emergency Procurement. If a purchase does not fall within the parameters of a Governor-declared disaster, agencies should check whether the purchase qualifies as an emergency purchase under the applicable procurement method.

Solicitation Process

Solicitation – IFB, RFP, RFO, RFQ

Overview

Depending on the procurement method selected, a solicitation may be required. If the selected procurement method does not require issuance of a solicitation (*e.g.*, Term Contracts), then the Contract Developer will proceed to the Vendor Selection step of the Procurement Cycle. For purchases made using informal bidding, refer to Competitive Bidding (IFBs, Informal Bidding) for the applicable solicitation process.

There are certain advantages and disadvantages to every procurement method and it is necessary to consider them in the context of what is being procured. An Invitation for Bids (IFB), for example, would not usually be an appropriate procurement method for procuring technical services, as the primary characteristics of an IFB are lowest price and meeting specifications with no opportunity for negotiation. Likewise, a Request for Qualifications (RFQ) would not be a suitable procurement method for procuring goods, as the essential feature of an RFQ is that price is not a factor until after vendor selection. When drafting the solicitation, the Contract Developer must be careful to ensure that the solicitation aligns with the applicable procurement method.

[299] The term "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, cybersecurity event, other public calamity requiring emergency action, or energy emergency. TEX. GOV'T CODE § 418.004(1).

[300] The Governor's Office maintains a list of regulatory statutes and rules that may require suspension during a disaster. TEX. GOV'T CODE § 418.0155.

Comparison of Competitive Procurement Methods

The table below provides a summary of the distinguishing characteristics for the most commonly used competitive procurement methods.

Comparison of Competitive Procurement Methods			
Procurement Method	**Use When**	**Advantages**	**Disadvantages**
Invitation for Bids (IFB)	Products and services are standardized or uniform.	Award process is simpler. In determining best value, price and whether the goods or services meet specifications are the principal considerations.[1]	Defined specifications may be difficult to develop. Does not encourage innovative solutions. Negotiations are not allowed if there is more than one responsive bidder.
Request for Proposals (RFP) **Request for Offers (RFO)**	When negotiations are desired. Vendor is expected to provide innovative ideas or solutions.	Allows for customized proposals suggesting different approaches to the same business need. Allows for negotiations. Considerations in addition to price are used to determine best value.	Lead time for procurement is much greater. Evaluations tend to be more complex.
Request for Qualifications (RFQ) *[This method is usually required by statute, e.g., Professional Services[2]]*	Selection is made solely on the skills and qualifications of the vendor. Price is not a factor until after a vendor is selected.	Emphasizes the competency and experience of the vendors.	Vendor is selected before price is negotiated. Two step process.

TABLE NOTES

1 TEX. GOV'T CODE § 2155.074(b).
2 TEX. GOV'T CODE § 2254, Subchapter A.

Request for Applications

In contrast to the procurement methods, a Request for Applications (RFA) is not a sanctioned method for procuring goods and services from a vendor. An agency issues an RFA when it, as the grantor, is responsible for awarding grant funds to other entities such as other state agencies, local governments, non-profit organizations or private entities.

An RFA is used to invite grant applications, in which the grants are tied to designated funds and for a specific purpose. An RFA must include the grant objective, guidelines, and any limitations on spending or eligibility. It is recommended that agencies include the Essential Provisions in grant agreements. An RFA must also specify evaluation criteria that will determine which applications are funded and any other information that is needed to submit an application.

When issuing an RFA, an agency should consider the grant management standards published by SPD *e.g.*, Texas Grant Management Standards (TxGMS) to the extent they are applicable. These standards were established to promote the efficient use of public funds by providing awarding (grantor) agencies and grantees a standardized set of financial management procedures and definitions by requiring consistency among grantor agencies in their dealings with grantees.

Solicitation – Preparation

Overview

Once the Contract Developer has conducted a needs assessment, obtained a cost estimate, developed an Acquisition Plan, chosen the proper procurement method, and determined that a solicitation is required, the next step is to begin drafting the solicitation. For some procurements, like spot purchases or purchases using a set aside program or Term Contract, the solicitation development activities by the Contract Developer may be comprised of an administrative due diligence review of the requirements listed on the requisition for compliance with applicable procurement law and agency best practice before initiating the purchase.

For other procurements, the solicitation drafting phase of the Procurement Cycle involves a collaborative multi-departmental approach. For these procurements, it is common for there to be a kick-off meeting with the key stakeholders (such as the Contract Developer, end-user, subject-matter experts, Contract Manager, legal personnel, and informational technology representatives, if applicable) to discuss the requirements for administering the contract from solicitation issuance to contract closeout. The number of key stakeholders involved in the solicitation drafting activities increases relative to the complexity of the procurement.

Each solicitation is unique, so for the solicitation to be successful, the Contract Developer must not only be familiar with the requirements of the agency's needs, in terms of what is being procured, but also the applicable industry standards as well as the statutory requirements and procurement practices associated with the selected procurement method. For example, if an agency is procuring medical staff, the Contract Developer must be knowledgeable that

- an IFB, which does not permit negotiation, would not be a suitable procurement method to acquire these services, and
- the solicitation and any resulting contract must include a requirement for the medical staff to hold and maintain proper professional licenses and certifications, a means for the Contract Manager to monitor the requirement during the contract term, and a remedy for vendor noncompliance.

Procurement Lead Time

One of the first steps in the solicitation process is to consider the procurement lead time. Procurement lead time is the interval between a decision to purchase a product or service to when the contract is awarded. The suggested lead time is 180 days from start to completion, but this time frame will vary depending on the specific requirements of the agency and the complexity of the procurement.

Examples of tasks that may impact the lead-time include, but are not limited to, the following:

- For solicitations exceeding $20 million, a Notice of Intent to Procure must be posted to the ESBD at least 2 months prior to advertising the solicitation.[301] The notice will include a description of the goods or services to be procured and applicable NIGP class and item codes.
- The actual preparation of the solicitation document can affect lead-time. Coordination and collaboration between members of the various agency teams, as well as structured planning and thorough research can shorten this period. On the other hand, inadequate planning and research along with lack of communication among team members, each with subject matter expertise, may cause the preparation of the solicitation document to be prolonged.
- The time required for the Contract Developer to finalize the solicitation document can vary depending on how well the scope of work or specifications are written by the end users. The Contract Developer is responsible for ensuring the solicitation documents are complete, allow for competition, and follow all applicable statutes, rules, and procedures.
- A 30-day solicitation period is recommended for RFPs, while RFOs may necessitate a longer posting time. Individual agencies are encouraged to consider the solicitation posting times on a case-by-case basis, keeping the statutorily mandated minimum time periods in consideration. A particularly complex or unusual scope of work may result in many vendor questions, in which case, an extended solicitation period would be recommended. Evaluation of the proposals may take more or less time, depending on the size of the evaluation committee and the complexity of the procurement. Likewise, the number of proposals to be evaluated impacts the evaluation time frame. The evaluation period could also be extended if there are presentations, discussions, or best and final offers.
- Contract negotiation and contract formation timeframes may vary depending on the complexity of the procurement and the skillset of the agency's negotiation team. Personnel unavailability may also be a factor as delays may occur due to inclement weather events, national and local holidays, illness, scheduled vacation, and the like.

[301] TEX. GOV'T CODE § 2262.051(j); 34 TEX. ADMIN. CODE § 20.214(c).

- The actual process of award may be quick in smaller agencies but lengthier in larger agencies with more detailed approval processes, or where board approval is required. This timeframe may also differ significantly between a PO and a formal executed contract. Depending on the signature requirements of the agency and the contractor, the contract execution lead-time may need to be adjusted.

As part of the solicitation planning process, it is best practice to use the table below or similar tool to document the procurement lead time. The chart below is a guideline for documenting procurement lead time in simple procurements with minimal vendor negotiation required.

Procurement Lead Time (Template)		
Task	**Number of Days to Complete**	**Due Date**
Decision Made to Procure	—	April 10th
Post Notice of Intent to Procure > $20M	—	May 9th
Drafting Solicitation	45 days	May 25th
CAT Review ≥ $5M QAT Review for MIRP contract ≥ $10M SPD Delegation Review: Services > $100K SPD Delegation Review: Goods > $50K	30 days	June 24th
Finalize Solicitation for Issuance	15 days	July 9th
Solicitation Advertised	—	July 9th
Submission of Questions	*4-5 days*	*July 13th*
Release of Official Response to Questions	*2-3 days*	*July 15th*
Response Deadline	14 days	July 23rd
HSP Evaluation	3 days	July 26th
Evaluation of Responses	14 days	August 9th
Contract Negotiation (if allowed) and Contract Formation	10 days	August 19th
Contract Execution (all signatures obtained)	12 days	August 31st
Performance Begins	Contract Effective Date	September 1st

Internal Calendar of Events

It is prudent for an agency to develop an internal calendar of events for the procurement. The internal calendar of events should include not only the dates detailed in the external calendar of events, but also the milestone dates of activities or events occurring pre- and post- solicitation identified by the agency to be critical to the success of the procurement.

Critical path events to be addressed in the internal calendar of events may include routine activities such as the agency's standard interdepartmental workflow timelines and fiscal year end deadlines and procurement-specific events such as statutorily mandated project commencement dates and the onboarding of a successor contractor prior to cessation of services by the incumbent contractor.

The internal calendar of events must be included in the Acquisition Plan or other procurement monitoring tool that is used as a gauge to keep the procurement on schedule. In developing the internal calendar of events, Contract Developers should be mindful of the amount of the time scheduled for document review. Contract Developers must allow sufficient time for oversight reviews, such as SPD Delegation, CAT review, and QAT review (if necessary), and meaningful evaluation and negotiations. A procurement value threshold chart is located in Appendix 8.

Below is an example of an internal calendar of events, beginning with pre-solicitation milestones, continuing to encompass the solicitation calendar of events, and ending with post-solicitation milestones.

Internal Calendar of Events		
TASK		DUE DATE
1	Budget (approval/questions)	
2	Kick Off Meeting (Contract Developer, Contract Manager, End User)	
3	Post Notice of Intent to Procure > $20M	
4	Draft Solicitation	
5	Agency Approvals for Issuance	
6	CAT Review ≥ $5M QAT Review for MIRP contract ≥ $10M SPD Delegation Review: Services > $100K SPD Delegation Review: Goods > $50K	
7	Solicitation Issued	
8	Pre-Bid/Offer/Proposal Conference	
9	Due Date for Written Questions	
10	Date of Issuance of Agency's Written Answers	
11	Due Date for Responses	
12	Vendor Selection Evaluation Committee (RFP, RFO, RFQ) or Bid Tabulation (IFB)	
13	Negotiation (if permitted) and Contract Formation	
14	Contract Award	
15	Transition Meeting Between Contract Developer and Contract Manager	
16	Post Award Meeting with Contractor	
17	Project Start Date	
18	Project Completion	
19	Contract End Date	

Drafting Tips

A solicitation is effective when the agency's requirements are clearly articulated to the vendor community. In contrast, a solicitation is ineffective if it is awkwardly worded, disorganized, or contains errors or visual distractions. A poorly drafted solicitation may prompt responses that are not aligned with the agency's actual requirements or include unnecessary costs due to vendor confusion. It is imperative that the solicitation be written in a manner that attracts responses that meet the agency's business need.

The following are techniques which are commonly used in effective solicitation drafting.

1. **Organize Content for Readability.** Present the information in a logical manner. Include relevant documents (e.g., organizational charts, site plans, work flow diagrams) as attachments to the solicitation to facilitate readability and ease of reference.
2. **Use Short, Precise Sentences.** The information contained in the solicitation should be presented in a direct manner. For example, the text should plainly state who is to do what:

   In its Response, Respondent must include….

   The Awarded Vendor shall provide….

   The Solution delivered by the Awarded Vendor shall include the following….

   Within five (5) business days of receipt of the Project Plan, the Agency shall….

3. **Use Active Voice.** Active verbs assign responsibility to a particular entity more clearly than passive verbs.

   Example of Active Voice: Contractor shall develop the Solution to be scalable to X standard.

   Example of Passive Voice: The Solution shall be scalable to X standard.

   In the passive voice example, it is not apparent whether the contractor, the agency, or both parties are responsible for the referenced standard. The preferred writing style for solicitations is to use active rather than passive verbs.

4. **Use "Shall," "Must," "May," and "Should" Appropriately.**

   Shall and Must. The words "must" and "shall" are used to describe a command or mandatory condition. Care should be taken when stating mandatory conditions as inappropriate use could result in a restrictive specification or disqualification of a response.

   May and Should. The words "may" and "should" are used to describe an advisory or permissible action. These words do not represent a mandatory condition for which the vendor must comply.

5. **Use Terms Consistently.** The use of consistent terminology throughout the solicitation helps the reader understand the scope of work as well as the terms and conditions of the procurement. In contrast, using multiple terms to describe a particular person, function, activity, item, or entity is likely to cause confusion. For example, it is not advisable to use the following terms interchangeably within the solicitation to indicate the same entity: successful respondent, selected vendor, awarded vendor, vendor, selected contractor, awarded contractor, and contractor.
6. **Avoid Ambiguity.** Do not use terms that have the potential for more than one interpretation. Define terms, even industry terms, to ensure there is no misunderstanding as to the meaning of the term.
7. **Avoid Repetition.** State the requirement one time. Stating a requirement more than once does not emphasize its importance, but it does increase the likelihood of confusion especially if there are slightly different variations of the requirement stated in different parts of the solicitation.
8. **Proofread.** The solicitation should be proofread to ensure that the requirements are clearly and accurately described, extraneous statements that have no practical value are removed, and there are no spelling errors. The final version of the document should have a professional look and feel.

Use of Hyperlinks in Solicitations. Agencies may use hyperlinks within solicitations as a convenient means to deliver electronic content to potential respondents. However, the incorporation of information through the use of hyperlinks should be carefully considered. While hyperlinks may provide an efficient means by which to transmit information, they also give rise to issues which include, but are not limited to, the following:

- **Inaccurate or Extraneous Information.** Templates are often used as a starting point when solicitations are drafted and, while hard copy content may be reviewed by the drafter, hyperlinks are sometimes overlooked and not verified for accuracy. Consequently, the issued solicitation may contain errors or otherwise convey information that is not consistent with the drafter's intent.
- **Inadvertent Amendment to Solicitation or Contract.** Information on web pages may change over time. The terms of a solicitation or resulting contract may be inadvertently

amended depending upon the nature of the information provided by way of hyperlink in the solicitation.

- **No Record of Hyperlink Content.** Hyperlinks may become inactive because web pages are moved or no longer exist. This is of particular concern after contract award as uncertainty of contract terms may lead to service delays, disputes, and possibly litigation.

The best practice for most solicitations may well be to avoid the use of hyperlinks altogether. If hyperlinks are used, the electronically linked information should be downloaded, included in the procurement file, and properly retained in accordance with the applicable records retention schedule. Guidance regarding the use of hyperlinks within solicitations should be sought from agency legal counsel.

Content

OVERVIEW

The solicitation must contain all information required for vendors to respond to the agency's procurement opportunity. The content of a solicitation will vary depending on what is being procured, the complexity of the transaction, and the identified risks associated with the procurement. Care must be taken to identify all of the agency's requirements in the solicitation, because the agency will not be able to hold a vendor accountable for performance of a requirement that is not specified in the solicitation or resulting contract.

Contract Developers must not only ensure that the solicitation contains all of the agency's requirements but also that those requirements are presented in an organized manner. Because there is not a statewide solicitation template that is mandated for agency use, agencies have developed their own agency-specific solicitation templates. For reference, examples of CPA solicitation templates are available in the Procurement Forms Library located on the CPA website.[302]

Solicitations, regardless of organizational structure, usually include the following components which are described in further detail in this section:

- Introduction;
- Minimum Vendor Qualifications;
- Scope of Work;
- Payment and Pricing Terms;
- Contract Term;
- Terms and Conditions;
- Response Submission Requirements; and
- Evaluation Criteria for Award.

[302] The CPA website is located at Comptroller.Texas.Gov.

INTRODUCTION

The introduction section of the solicitation provides the vendor community with a high-level summary of the procurement. This portion of the solicitation may contain a brief narrative description of the historical events relevant to the agency's business need and, if appropriate, the agency's future intentions that may have bearing on the products or services to be procured. Care must be taken that contractual requirements are not included in the informational text.

Solicitation Calendar of Events. It is best practice to incorporate a calendar of events in the solicitation. Ideally, the calendar of events should be located near the front of the document so vendors can quickly determine how long they have to submit questions, prepare responses, and plan for the anticipated date of award.

The Contract Developer must ensure that the timeframes provided in the solicitation calendar of events are appropriate to the complexity and value of the transaction. The solicitation period should allow a reasonable time for interested eligible vendors to respond. The Contract Developer should be mindful that shorter response deadlines may limit the number of vendor responses or even discourage participation by vendors.

The following example lists the events that are typically included in the solicitation calendar of events.

Solicitation Calendar of Events	
1	Date of Solicitation Issuance
2	Pre-Bid/Offer/Proposal Conference
3	Due Date for Written Questions
4	Date of Issuance of Agency's Written Answers
5	Due Date for Responses
6	Anticipated Date for Commencement of Services

MINIMUM VENDOR QUALIFICATIONS

Vendor qualifications relate to the characteristics of the vendor. Care must be taken to ensure that the minimum vendor qualifications are tailored to the business need. Examples of minimum vendor qualifications include the following:

- specified technical skill, certification, or licensing requirement;
- minimum number of years' experience (business and/or personnel);
- production facility requirements;

- projects of similar size and scope;
- not presently debarred from participation in state contracts, and
- demonstration of adequate financial capability based on standards that are defined within the solicitation.

Prequalification Criteria. If the agency determines that certain vendor qualifications must be met for the response to be eligible for consideration, these qualifications must be clearly stated in the solicitation. These criteria are reviewed by the agency on a "pass/fail" basis. The solicitation must provide notice to interested vendors of the threshold condition(s) which, if not satisfied, will result in the agency's rejection of the response. If these criteria are not clearly evident from the context of the solicitation, it is recommended that prequalification criteria be identified by a statement similar to the following: "Failure to meet this mandatory qualification shall result in disqualification of the response and the response shall receive no further consideration."

SCOPE OF WORK

Overview

The scope of work is a section of a solicitation that provides a description of the products and services to be provided by the vendor. The Contract Developer should use the business requirements identified in the Needs Assessment as the starting point for drafting the scope of work. The success or failure of a contract can usually be linked to the adequacy of the planning, analysis, and thoroughness of the scope of work. Time spent planning, analyzing, and drafting the scope of work will result in savings of time, resources and money, and will improve the quality of products and service provided.

The scope of work should be written in a manner which provides a clear and thorough description of the products and services to be provided while at the same time fostering competition. A scope of work should be logically organized and tailored to the agency's business need. Matters customarily addressed in a scope of work include the following:

- Vendor responsibilities
  - » Provide compliant deliverables by the due date
  - » Furnish services using qualified personnel
  - » Perform tasks at a specified location
- Constraints on the vendor
  - » Limited availability of agency resources (*e.g.*, Mon.-Fri. 8 a.m. to 1 p.m. CT access only)
  - » Agency security policies (*e.g.*, state building admittance procedures, email encryption protocols)
- Agency responsibilities
  - » Permit reasonable access to agency personnel
  - » Grant suitable access to agency facilities (including storage space for vendor materials and supplies), equipment, and computer systems
- Evaluation of vendor performance (*e.g.*, standards of performance, inspection, testing, and deliverable acceptance and rejection process)
- Communication protocol (*e.g.*, designated points of contact, routine communications, and escalation plan for problem resolution)

When drafting the scope of work, the Contract Developer should select the appropriate specification type, consider utilizing deliverables and milestones, and include applicable professional license and certification requirements and established standards. The Contract Developer should also incorporate into the scope of work the strategy for monitoring vendor performance and all applicable transaction-specific requirements. As appropriate, the Contract Developer should seek the assistance of agency information security personnel and legal counsel regarding the suitability of internal, possibly confidential, agency information being included as part of the solicitation.

Specifications

Specifications are the "line item" descriptors within a solicitation that define the good or service that the vendor must offer to be considered for award. The most common types of specifications used in government procurements are

- performance-based,
- design-based, or
- mixed (*i.e.*, a comingling of both performance- and design-based specifications).

Performance-Based Specifications. Performance-based specifications focus on outcomes or results rather than the process by which the products and services are produced. Respondents bear the burden of choosing the approach that will be utilized to accomplish the agency requirement. Performance-based specifications allow respondents to bring their own expertise, creativity, and resources to satisfy the agency requirement. Agencies must ensure that performance-based specifications are reasonable and measurable.

Design-Based Specifications. Design-based specifications focus on how the vendor must perform the service or how the product is made rather than what the product or service does. Respondents have very little discretion as to the methods or detailed processes to be used. Agencies must ensure that processes are in place to properly inspect and test for compliance with the specifications.

Examples of Performance-Based, Design-Based, and Mixed Specifications	
Performance-based specification	Contractor shall provide media services for Texas Tourism which shall increase the tourist dollars by a minimum of 3 percent in the next fiscal year. Visits by out-of-state tourists shall increase by a minimum of 10 percent. These figures will be measured as reported by the Texas Chamber of Commerce.
	Contractor shall provide a pen that precisely writes with no skipping or smearing. Ink shall not penetrate through paper. Minimum writing distance of ink shall be 500 miles.
Design-based specification	Contractor shall conduct at least seven media campaigns for Texas Tourism during the fiscal year. Three of these campaigns must be directed to out-of-state tourists.
	Contractor shall provide a pen that has a white round plastic barrel of ¼-inch-diameter. Length of pen, including cap, shall not exceed 5-¾ inches. Ink cartridge shall have a tungsten carbide ball in stainless steel tip. Point shall not exceed 0.3 mm fine point. Ink shall be black.
Mixed specification	Contractor shall provide media services for Texas Tourism which shall include a minimum of seven media campaigns during the fiscal year. Media services shall provide for a minimum increase in tourist dollars of 3 percent in the next fiscal year as measured and reported by the Texas Chamber of Commerce.
	Contractor shall provide a 0.3 mm fine point, black ink pen. The pen shall precisely write with no skipping or smearing.

Descriptive Specifications – Referenced Brand or Equal. Descriptive specifications for products must provide those principal physical, functional or other characteristics that are essential to the minimum business needs while providing open and competitive bidding. The specifications should not include minimum or maximum restrictive dimensions, weights, materials or other characteristics that are unique to one brand name or would eliminate competition of other products. As a best practice, a minimum of two known acceptable manufacturer/brand names and model numbers that are currently being manufactured should be referenced as "or equal." Restrictive descriptive characteristics which are essential to the intended use may be included only if all the manufacturer/brands referenced in the solicitation can qualify.

An example of a referenced brand or equal is as follows: Referenced Manufacturer/Brand, Product/Model Number or Equal: ABC Mfg No. 1234 or XYZ Mfg. Co. No. 556677. The solicitation should include a clause citing the purpose for the references as "or equal" and the submittal requirements for evaluation. For example, a solicitation clause for a referenced brand is as follows:

> Catalogs, brand names, or manufacturer's references are descriptive only and indicate type and quality desired. Bids on brands of like nature and quality will be considered. If proposing other than the referenced brands/model number, Bidder must provide the manufacturer, brand, or trade name, product number and provide complete descriptive information of product offered and include it with the bid.

The evaluation of "or equal" offers shall be given full consideration and offers meeting the specification shall not be rejected for minor differences in design, construction or features from the reference models that do not affect the suitability of the product for its intended use.

Restrictive Specifications. Restrictive specifications have the potential to limit competition. Agencies must be careful not to inadvertently customize a product or service when drafting specifications. As an example, consider an agency purchase of 4-inch resealable bags when the agency's business need could be satisfied with the industry standard of a 5-inch resealable bag. In this scenario, the agency requirement of a non-standard bag size will reduce the eligible vendor pool to only those vendors capable of providing the customization as well as result in increased cost to the State due to the customization. Regardless of whether the specification is performance-based, design-based, or mixed, restrictive specifications which result in proprietary procurements are not permitted unless the procedures for Proprietary Purchases are followed.

Deliverables and Milestones

Deliverables and milestones are often used in projects to assess whether required tasks are being provided in accordance with an agreed timeline. Depending on the procurement, the Contract Developer may decide to utilize deliverables and milestones for certain contractor activities described in the scope of work. One of the benefits to specifying key deliverables and milestones in the solicitation is that it establishes the agency's expectations regarding timeline and payment (*e.g.*, major deliverables should be tied to a milestone payment schedule) and ensures that all respondents will submit responses using the same agency-designated service parameters.

Deliverable. A deliverable is a measurable task or outcome (*e.g.*, product, service). A report is one of the most common contractor-provided deliverables. There are various types of agency-requested reports. For example, a status report is used by the agency to assess whether products and services are being provided by the contractor on schedule; a time sheet, however, is used by the agency to track time spent by contractor personnel in performance of the contract.

Milestone. A milestone is a scheduled event associated with a deliverable. Milestones are a means to gauge progress. For instance, a milestone may be the date when a specified percentage (*e.g.*, 10 percent) of work is complete or mark the occurrence of the installation of a critical piece of equipment.

Professional Licenses and Certifications

If the type of service to be procured requires a professional license or certification, the solicitation must describe the applicable licensing and certification standard. Failure to include the appropriate license and certification in the solicitation places the agency at risk of receiving a deliverable that does not conform to generally accepted standards. The solicitation must require the contractor to maintain the license and certification during the term of the contract, notify the agency if there is a change in status, and specify the remedies available to the agency for contractor non-compliance.

Established Standards

Depending on the procurement, using an established standard (*e.g.*, international, national, state, local, industry) is an effective means of defining performance requirements. Examples of national and international standards include American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), Occupational Safety and Health Organization (OSHA), and National Institute of Standards and Technology (NIST).

Agencies may also reference published standards maintained by entities representing particular industries such as Generally Accepted Accounting Principles (GAAP), Institute of Electrical and Electronic Engineers (IEEE), National Electrical Manufacturers Association (NEMA), and Payment Card Industry (PCI). If a standard is incorporated by reference, the scope of work must identify any industry, state or agency standards of performance that relate to each activity, task, work product or deliverable. Merely referring to "industry standards" is usually inadequate. If an industry standard is used, the scope of work should specifically identify the industry standard by name and number.

Monitoring Activities

When developing the scope of work, the agency should consider the strategy it will utilize to monitor the quality of the contractor's performance. The methods used to monitor contractor performance should be clearly stated in the solicitation. Requiring a contractor, without prior notice, to produce time-consuming reports or maintain stringent testing standards outside normal industry parameters is grounds for legal challenge.

The monitoring activities chosen by the agency should be balanced in type, scope, and frequency to achieve the desired result for the particular procurement. Overly restrictive oversight may interfere with the contractor's ability to accomplish the work and may unnecessarily and inadvertently increase costs. Examples of monitoring activities which may be included in the scope of work include an established timeline for completion of major tasks, scheduled meetings, and submission of status reports. To the extent that particular vendor performance monitoring activities are mandated by an applicable funding source, such as federal funds, these must be specified in the scope of work.

Additional Considerations

Agencies should be mindful of any requirements that may have aspects which are unique to public sector transactions. If applicable to the procurement, issues such as the following must be addressed in the scope of work as they may affect pricing:

- Use of agency equipment;
- Storage space for contractor materials and supplies;
- Required permits;
- Subcontractor responsibilities;
- Texas Public Information Act obligations;
- Conflict of interest disclosures and/or organizational restrictions;
- Criminal background investigation requirements;
- Agency security policies (*e.g.,* state building admittance procedures, email encryption protocols);
- Intellectual property/copyright issues;
- Accessibility standards;
- Lease (operating/finance) conditions;
- Trade-in equipment option;
- Records retention period;
- Disposal of property requirements; and
- Special conditions imposed by funding source (*e.g.,* federal funds).

PAYMENT AND PRICING TERMS

Overview

Payment and pricing terms are included in the solicitation to provide all competing respondents with the same information detailing how payment will be remitted or costs reimbursed under the contract. In order to develop the appropriate payment and pricing terms, the Contract Developer must have a thorough understanding of the business requirements as well as the applicable industry standards.

For an effective solicitation, the scope of work and pricing terms must be aligned and the agency's pricing terms must be consistent with industry standards. It is common practice for solicitations to include a price sheet or other agency-created form which describes the products and services to be procured and the unit of measure that will be the basis for payment (*e.g.*, job, lot, month). The pricing terms selected by the agency will vary depending on what is being procured. For example, in an equipment purchase, the agency will determine whether its pricing terms are (1) a lump sum price that includes the cost for the equipment, shipping, and installation, or (2) a separate line item price for each individual component.

An essential component to the payment terms is the timing of the payment. When and how the agency will make payments must be clear in the solicitation. For example, will the entire amount be paid at the end of the project or will the contractor be permitted to bill for work performed monthly or quarterly in arrears?

Best practice suggests that each payment should reflect the value of the work performed. For projects with a long-term implementation schedule, an agency may control the payment process by dividing the overall contract payments into smaller amounts that each reflects an increment of work or deliverable. This is an effective technique for managing financial risk. The scope of any dispute between agency and contractor can be contained to a discrete deliverable rather than the entire contract.

Disclosure of Budget. The State does not typically disclose its budget in the solicitation because it may either (1) result in all vendors bidding to the agency's identified budget rather than offering competitive pricing or (2) discourage vendor participation if the established (initial) budget is not commercially reasonable. However, there are certain procurements, such as marketing services, in which it is customary for the budget to be disclosed.

Reimbursement Methodologies

Payments should be structured to fairly compensate the contractor and encourage timely and complete performance of work. The following table provides a summary of the three most common reimbursement methodologies.

REIMBURSEMENT METHODOLOGIES			
	Fixed Price	**Time & Materials**	**Cost Reimbursement**
Payment Terms	Payment to vendor is total price for well-defined product or service	Payment to vendor of a pre-determined amount per unit (*e.g.*, service or item)	Payment to vendor of direct and indirect costs actually incurred
When to Use	Requirements are precisely defined	Project scope cannot be precisely defined Off-the-shelf products or standard services are required but quantity is uncertain	Project Scope cannot be precisely defined and costs cannot be accurately determined
Benefits	Vendor assumes most of the risk because vendor will be paid the same regardless of actual cost	Payment based on quantity of work actually completed Large quantities may lead to volume price discounts	Allows forward movement when the scope of work details are uncertain Customer obtains full cost information from vendor
Drawbacks	Vendor is motivated to look for "out of scope" items	Requires significant monitoring effort by customer Payment not linked to vendor's achievement of a goal	Customer bears burden of cost overruns (*e.g.*, market fluctuations) Vendor does not have an incentive to control costs Administrative burden of validating all costs

Advance Payment

An agency may not pay for goods or services before their delivery to the agency unless the advance payment is necessary and serves a public purpose. A list of exceptions to the advance payment prohibition is located on eXpendit State Purchase Policies on the CPA website.[303] Exceptions include, but are not limited to, lease costs, subscriptions, and maintenance contracts. An agency that makes an advance payment to a contractor is responsible for pursuing appropriate legal remedies to recover the payment if the contractor fails to provide the good or service.

Early Payment

When it is possible, an agency must negotiate a prompt payment discount with a vendor.[304] The State's policy on payment scheduling prohibits agencies from making payments earlier than the payment due date unless it is required by law, contract, or other obligation to the contractor to process the payment before the payment due date. A contractor's request on an invoice that the invoice is to be paid immediately upon receipt is not an obligation to make an early payment to the contractor. Accordingly, the contract must specify any early payment discounts available to the agency.[305]

It is best practice to request the respondent to indicate in the response whether any early payment discount (also referred to as a cash discount) is offered to the agency for early payment. For example, if a respondent offers 2/10 Net 30, an agency can take the 2 percent discount if it pays before or by the 10th day.

Note that an early payment discount and the terms of the offer presented in a solicitation response must not be considered in the evaluation.

Retainage

If permitted by the contract, an agency may withhold an amount or percentage of each payment due as retainage. The entire retainage amount will be payable upon successful completion of the project. Upon completion of the project, the contractor will invoice the agency for any outstanding work and for the retainage.

Invoice Requirements

The solicitation must specify any invoice procedures that apply to the procurement. The Contract Manager will monitor these procedures to ensure that payment for authorized products and services is remitted only in accordance with the contract terms. Although recommended for all procurements, for certain procurements, agencies must design and implement procedures to detect and

[303] The CPA website is located at Comptroller.Texas.Gov.
[304] TEX. GOV'T CODE § 2251.030(a).
[305] TEX. GOV'T CODE § 2251.030(a).

report double-billing by vendors[306] and review their payment and reimbursement methods and rates biennially.[307]

State and Federal Taxes

Purchases made for the State are exempt from the imposition of certain taxes. The following clause is recommended for solicitations:

> "Purchases made for state use are exempt from the Texas state sales tax, and certain purchases are exempt from federal excise tax."

In addition, it is recommended that a tax exemption statement appear on the front of each PO. State and Federal Tax Exemption Certificate forms are available in the Procurement Forms Library located on the CPA website.[308]

In situations where solicitations require both labor and materials, the State is exempt from the tax paid by contractors on behalf of the State for the incorporated materials they supply. The contractor must always pay the tax unless the materials will be used entirely for the State's project. When fulfilling a state contract, contractors must pay any applicable tax on the purchase and rental of equipment, accessories, and repair or replacement parts for equipment.[309]

State and Local Sales Tax. The State is exempt from paying state sales tax and local sales tax (city, transit authority, etc.).[310] Taxes of other states are not applicable to the purchase if a free on board (FOB) destination in Texas is specified.

Federal Excise Taxes. The State is exempt from paying federal excise taxes for specified commodities.

State Motor Fuels Tax. Agencies are required to pay the state motor fuels tax on gasoline and diesel fuel. However, agencies holding either a Dyed Diesel Fuel Bonded User permit or Dyed Diesel Fuel Signed Statement registration are not required to pay the state motor fuel tax on dyed diesel fuel bought to use in off-highway equipment. Agencies may request a refund of state motor fuels taxes paid on gasoline and diesel fuel used in off-highway equipment. Agencies should contact SPD for information on obtaining a diesel fuel permit or requesting a refund.

CONTRACT TERM AND TERMINATION

The term of a contract is a definite period of time that the contract will remain in effect. All contracts must have a commencement date and a specific expiration date. A reasonable contract term compliant with applicable law must be included in the solicitation. Indefinite contracts are generally prohibited.

As a general policy, it is recommended that the maximum duration for a contract without reissuing a competitive solicitation is four to five years.[311] This includes any renewal or extension periods. Individual business needs may dictate a different period and agencies should consult their legal counsel for advice on this matter early in the planning process.

The solicitation must include a termination for non-appropriations clause if the term of the contract will cross a fiscal year. A termination for non-appropriations clause is an Essential Provision for agency contracts. Refer to the Termination section of this Guide for a discussion of the following termination provisions: (1) termination by mutual agreement, (2) termination for convenience, (3) termination for cause, and (4) termination for non-appropriations.

TERMS AND CONDITIONS

Overview

Clearly stated terms and conditions are the most effective means of protecting the agency from unintended risk. It is a common practice for contracts to include standard terms and conditions that are often referred to as "boilerplate." Refer to the Contract Terms section of this Guide for information about the Essential and Recommended

306 TEX. GOV'T CODE § 2261.201.
307 TEX. GOV'T CODE § 2261.151.
308 The CPA website is located at Comptroller.Texas.Gov.
309 TEX. TAX CODE § 151.311.
310 TEX. TAX CODE § 151.309.

311 *See* General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 17.09(c) (providing that an agency or institution of higher education may not use funds appropriated elsewhere in the GAA to pay for a contract for goods or services unless it:

(1) Seeks competitive bids before renewing or extending a contract that has been in effect more than five fiscal years as of August 31, 2019 and is valued at the lesser of $10,000,000 or 10 percent of the agency's All Funds budget for the 2020-21 biennium. The following contracts are exempt from the requirements of Subsection (c)(1) of this § 17.10:

(A) Texas SmartBuy, Term Contracts, and cooperative contracts administered by the CPA or DIR;

(B) grants;

(C) interagency contracts;

(D) contracts that relate to a construction project as defined by Section 2166.001 of the Texas Government Code;

(E) contracts that relate to highway construction or highway engineering;

(F) contracts that relate to developing information resource applications or information resource technologies;

(G) contracts not required by law to be competitively bid; and

(H) managed care contracts in the Medicaid and CHIP program.

(2) Conducts a cost-benefit analysis to compare canceling or continuing any major information resource project and related contracts subject to QAT monitoring that is more than 50 percent over budget or over schedule. QAT must approve the cost-benefit analysis for the project to continue. If this requirement is not met, corrective actions in Article IX, Section 9.02, of the GAA apply).

Provisions of a State contract. It is recommended that public procurement professionals work closely with agency legal counsel when developing boilerplate for the agency's solicitation and contract templates. In addition to the agency's boilerplate terms, the solicitation should include terms tailored to the specific procurement which address change control, risk mitigation measures, and remedies.

Change Control

It is best practice for an agency to designate a process in the solicitation that will be used to manage any anticipated and unanticipated changes to scope, schedule and pricing that may occur during the contract term. This change control process should describe the communication protocol and documentation required to make agreed changes (*e.g.*, amendment, change order).

Change during the contract term may be managed several ways. For a non-complex procurement, the change control process may be to simply designate the agency's purchasing division as the point of contact for proposed changes and those changes may be exclusively handled by issuing a Purchase Order Change Notice (POCN) or executing a signed contract amendment.

For more complex procurements, the change control process may involve a formal routing procedure with prescribed forms, minimum review periods, and named individuals with approval authority. Other change control processes may be documented as plans (*e.g.*, transition plans) to be implemented if a specific event occurs.

The benefit of a well-defined change control process is that of uninterrupted performance while the parties investigate proposed changes to the contract. Regardless of the change control process selected, the process should expressly state the circumstances under which the change is approved. For instance, many service contracts provide that a change will not be implemented until both parties agree to the change in writing. In contrast, contracts with pricing formulas may authorize changes to take effect immediately upon the occurrence of a particular external event, or within a designated time period following a price index change.

Transition Plans. It is best practice for transition plans to be included in a solicitation when there is a business requirement of uninterrupted service during the transfer between the outgoing and incoming service providers. The transition-in and transition-out plans describe the coordination activities for both service providers and the agency.

The transition plans identify the tasks to be completed, the roles and responsibilities of each entity, resource requirements, dependencies, and the timelines for key activities. As applicable, provisions for the safeguarding of confidential information should be included in the transition plans. Service providers should also perform the transition activities in good faith and in a cooperative and expeditious manner.

Because ambiguity may lead to service delays, the solicitation must identify which entity will bear the burden of the transition costs. The payment and pricing terms selected by the agency should facilitate the efficient and effective transition of services with minimal or no disruption to agency operations. Depending on the service and whether the vendor is performing outgoing or incoming activities, the transition activities may be provided to the agency at no additional cost, for a fixed fee, or on a cost-recovery basis.

Price Adjustment Based on an Index. For certain contracts, pricing adjustments (upward or downward) may be correlated to a published price index such as the Consumer Price Index (CPI) or Producer Price Index (PPI). The CPI and PPI, both published by the Bureau of Labor Statistics, measure price change over time for different sets of goods and services. They may be used to account for inflation in long term contracts without the necessity of frequent re-solicitation.

The price adjustment section of the solicitation must identify the applicable index such as the following:

- Producer Price Index: number/description – Pertains to commodities
- Consumer Price Index: number/description – Pertains to labor and services
- Other Price Index or Market: number/description

In addition, the solicitation must designate the formula to be used. The Bureau of Labor Statistics recommends this formula when using the most recent monthly information from the index, where:

A = Index from the month of the due date for the response; OR the effective date/month of the most recent approved price increase

B = Current or latest baseline index

The allowable percent change must be calculated as follows:

(B-A) ÷ A x 100% = Percent of allowable price increase

The solicitation must specify how frequently price adjustments may occur during the term of a contract — quarterly, annually or other time period that best fits the commodity or service.

If a price adjustment is allowed only at the time of contract renewal, then the agency will conduct a review of the current index pricing to

determine whether there will be a price increase or decrease since the last baseline. This review will be conducted within the 30-day period prior to the renewal date because the most recent index pricing must be used for the calculation. It is best practice for the solicitation to require the respondent to specify the maximum amount of the price increase. The respondent may offer price decreases in excess of the allowable percent change at any time during the term of the contract.

Risk Mitigation Measures

Financial Capability

For high-risk or high dollar procurements, it is best practice to require each respondent to provide evidence of financial capability to perform all the services required by the solicitation as well as all services offered in the response. For capital-intensive projects, the solicitation should also require disclosure of the source of any outside financial resources the respondent will utilize to enable it to perform under the awarded contact.

For high-risk procurements, it is recommended that agencies reserve the right to determine the financial integrity and responsibility of a respondent and to reject a response on the grounds of respondent's lack of financial soundness. The agency may require submission of the following information in the response to assess the financial viability of a respondent:

- A copy of the most recent audited financial statements, including financial statements with all sub-schedules and footnotes, to include balance sheets, profit and loss statements, change in financial position and management letters, with findings and responses to findings; or
- If audited financial statements are unavailable, unaudited financial statements compiled, reviewed and attested by an independent certified public accountant or certified public accounting firm.

Depending on the procurement, the agency may determine that the financial statements certified as accurate by the firm's chief financial officer are acceptable.

Insurance

Insurance is a common risk mitigation measure. Insurance coverage should be sufficient to cover all claims against the contractor as well as any costs the agency might incur. The insurance coverage must be effective from the commencement of the contract and remain in place with no lapse at any time during the life of the contract. It is recommended that the solicitation specify that all insurance policies must be obtained from insurance companies licensed in Texas with at least an "A-" rating from A.M. Best Company to reduce the likelihood of a vendor being represented by a financially unsound insurance carrier.

There are many types of insurance policies. Contract Developers must be knowledgeable about which insurance policies are suitable for the purchase and ensure that dollar values are consistent with the risk of non-performance by the contractor.[312] Care must be taken not to inadvertently require unnecessary coverage as it may add cost to the contract.

A list of common insurance policies is below:

- **Commercial General Liability** – A policy that protects business organizations against liability claims for bodily injury and property damage arising out of premises, operations, products, and completed operations; and advertising and personal injury liability.

  The standard general liability policy excludes coverage for damage to the work performed by the insured or to personal property in the care, custody, and control of the insured. It is intended to address damage incurred by a third-party. An agency can be sued for vicarious liability for these damages.
- **Professional Liability** – A policy designed to protect professionals against liability in performing their professional services. Most professional liability policies only cover economic or financial losses suffered by third parties and exclude bodily injury and property damage, which is intended to be covered by the general liability policy.
- **Workers' Compensation** – An insurance program that helps people with work-related injuries and illnesses. Employees covered by workers' compensation obtain medical care necessary to treat their injuries and illnesses. It may also provide payments to replace some of an injured employee's lost income, up to time and dollar limits set by law, compensation for burial expenses for employees killed on the job, and death benefits for dependents of employees killed on the job. As a best practice, agencies should always ask contractors to carry workers' compensation. This coverage does not apply to sole proprietors.
- **Commercial Umbrella Excess Liability Coverage** – A policy designed to provide protection against catastrophic losses. It generally is written over various primary liability policies, such as the business auto policy, general liability policy, watercraft and aircraft liability policies, and employer's liability coverage. The umbrella policy serves three purposes:

[312] *See* General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 17.09(b)(9) (directing agencies to ensure dollar values of insurance are consistent with risk of nonperformance).

1. it provides excess limits when the limits of underlying liability policies are exhausted by the payment of claims,
2. it drops down and picks up where the underlying policy leaves off when the aggregate limit of the underlying policy in question is exhausted by the payment of claims, and
3. it provides protection against some claims not covered by the underlying policies, subject to the assumption by the named insured of a self-insured retention.

- **Automobile** – A policy that protects the insured against financial loss because of legal liability for automobile-related injuries to others or damage to their property by an automobile. Automobile coverage may include liability coverage of bodily injury, property damage, medical payments, and physical damage.

Depending on the procurement, the agency may require that the contractor provide specialized insurance policies such as the following:

- Cyber liability
- Medical malpractice
- Builder's risk
- Business interruption

If guidance is needed on selecting the appropriate level of insurance, consult with agency legal counsel or the State Office of Risk Management (SORM).[313]

Surety Bonds

The three most common forms of surety bonds used in the procurement process are bid bonds (deposits), performance bonds, and payment bonds. The solicitation must provide notice if a bond is required and what forms are acceptable (*e.g.*, irrevocable letter of credit or cashier's check). SPD discourages the use of performance bonds unless there is a compelling need or statutory requirement.[314] The use of a bond should be carefully considered as a bond requirement may restrict competition, delay the award and raise the cost of the contract as the cost of the bond is typically passed to the agency by the vendor.[315] Questions regarding bonding requirements should be directed to agency legal counsel.

Warranties

A warranty is an assurance that specific facts or conditions are true or will happen. A warranty may be either *express* or *implied* and is legally binding.[316] Warranties, among other things, may protect a buyer against poor workmanship, intellectual property violations of third parties, malfunctioning products and debts. Warranties become effective once the buyer has accepted the product or service and generally require the vendor to either repair or replace a product, or re-perform a service, for no cost during the warranty period.

Unless excluded or modified by the language in the contract, warranties or standards may be implied or imposed into a contract by a statute or case law. For example, in the sale or lease of some types of personal property or goods there may be statutory warranties implied into a contract, such as: a warranty of title,[317] a warranty that the goods shall be merchantable,[318] or a warranty that goods are fit for a particular purpose.[319] Agency legal counsel should be consulted before drafting or negotiating warranty provisions.

Extended Warranty; Maintenance Agreement

An extended warranty, sometimes referred to as maintenance agreement or service contract, is a repair and replacement service offering that is available to the buyer by a manufacturer or dealer for an additional cost. It is typically available for products such as machinery, appliances, and electronics. Care should be taken in reviewing an extended warranty as the terms may differ from the warranty provided by the manufacturer for the new item. For example, the coverage may not extend to specified parts or damage caused by certain events.

313 The SORM website is located at www.sorm.state.tx.us.

314 TEX. GOV'T CODE §§ 2156.004, 2156.011.

315 *See* General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 17.09(b)(9) (directing agencies to ensure dollar values of performance bonds are consistent with risk of nonperformance).

316 Generally, a warranty describes then "character, quality or title" of that which is being sold and "by which seller promises or undertakes to ensure that certain facts are or shall be as he then represents them." Black's Law Dictionary 1586 (6th ed. 1990). An express warranty is a definitive affirmation of fact or promise which becomes part of the basis for the bargain and upon which the parties rely. *See Morris v. Adolph Coors Co.,* 735 S.W.2d 578, 587 (Tex. App.-Fort Worth 1987, writ ref'd n.r.e.). Implied warranties are based in tort law and are judicially interjected into agreements whenever necessitated by public policy to ensure that parties receive that for which they bargained. *See Melody Home Mfg. Co. v. Barnes*, 741 S.W.2d 349, 353 (Tex. 1987); *see also Parkway Co. v. Woodruff*, 901 S.W.2d 434, 438 (Tex. 1995). A contract term identifies what is being sold; warranties described the attributes, suitability for a particular purpose and ownership of what is sold. *Cf. Donnelley Mktg. v. Lionel Sosa, Inc.* 716 S.W.2d 598, 604 (Tex. App. – Corpus Christi 1986, no writ) (court held supplier's provision of wrong mailing list to advertiser was tantamount to no delivery at all and amounted to breach of contract). *See* Chilton Insurance Company v. Pate & Pate Enterprises, Inc. 930 S.W.2d 877 (Tex. App.-San Antonio 1996, rehearing overruled).

317 TEX. BUS & COM. CODE § 2.312.

318 TEX. BUS. & COM. CODE §§ 2.314, 2A.212.

319 TEX. BUS. & COM. CODE §§ 2.315, 2A.213.

Limitations of Liability Clauses

Limitations of liability (LOL) clauses are used to limit potential breach-of-contract damages. Under common law, parties are only liable for damages that are reasonably foreseeable at the time of contracting.[320] Often, an LOL clause is a simple restatement of the common law principle that neither party would be liable for unforeseeable losses suffered by the other. More robust LOL clauses can go further, to limit even foreseeable losses, either losses arising out of certain kinds of claims, such as infringement or disclosure of confidential information, or putting a dollar cap on the total losses for which the party can be liable.[321]

LOL clauses are used to alter the extent of liability otherwise recoverable at common law. Such clauses generally establish the maximum liability or exposure of one party for damages that may be recovered against a contracting party if there is a valid claim. In the absence of controlling public policy, Texas courts, which have a long history of supporting freedom of contract, consistently recognize that parties to a contract should be permitted to draft legally enforceable agreements with minimal judicial intervention[322] and that LOL clauses are generally not considered to violate public policy.[323] LOL provisions are generally enforceable in Texas if they meet a conspicuousness requirement[324] and there is nothing otherwise unconscionable about the contract.[325] The Texas Business and Commerce Code expressly provides that an agreement for the sale of goods may limit or alter the measure of damages recoverable, provide exclusive remedies for breaches, and, absent unconscionability, limit or exclude the recovery of consequential damages .[326]

[320] *Hadley v. Baxendale*, 156 Eng. Rep. 145 (Exch. Ct. 1854).

[321] TEX. GOV'T CODE § 2261.204(b).

[322] Barbara J. Slotnick, 10-A Tex. Jur. 204, CONTRACTS, § 103 (Texas law permits the utmost freedom of contract between parties of full age and competent understanding and requires that their contracts, when freely and voluntarily entered into, shall be held sacred and enforced by the courts). *See also* TEX. BUS. & COM. CODE § 2.303.

[323] *See e.g.*, *Martin v. Lou Poliquin Ents., Inc.*, 696 S.W.2d 180, 186 (Tex. App.—Houston [14th Dist.] 1985, writ ref'd n.r.e.) (a LOL "may waive a party's right to recover under the common law theory of breach of contract"). When determining whether a limitations of liability provision violates public policy, courts will generally consider whether there was a disparity in bargaining power between the parties. *Fox Elec. Co. v. Tone Guard Security*, 861 S.W.2d 79, 82-83 (Tex. App. – Ft. Worth 1993, no writ) (upholding the LOL clause stating "liability shall be limited to a sum of [$250]; and … the provisions of this section shall apply if loss or damage … results from … negligence, active or otherwise…"). Some courts have also applied an unconscionability analysis. *Head v. U.S. Inspect DFW, Inc.*, 159 S.W.3d 731, 748-749 (Tex. App.—Fort Worth 2005, no pet.). However, a party cannot insulate itself from tort or contractual liability for its own deliberate wrongful conduct because that is against public policy. *Zachry Constr. Corp. v. Port of Houston Auth. of Harris Cty.*, 449 S.W.3d 98, 116 (Tex. 2014).

[324] TEX. BUS. & COM. CODE § 1.201(b)(10).

[325] *See Mickens v. Longhorn DFW Moving, Inc.*, 264 S.W.3d 875 (Tex. App. 2008). Note that certain professionals such as physicians and attorneys cannot completely limit liability.

[326] TEX. BUS. & COM. CODE § 2.719.

Remedies

Remedies provide protection to an agency if there is a contract breach. The agency will invest a significant amount of time and resources to develop and award a contract, so each key deliverable within the contract should have a corresponding remedy for contractor non-performance. Although contract termination is an effective remedy, it may not be an appropriate remedy for every contract breach. For example, an agency may determine that the most suitable remedy for late delivery is to impose liquidated damages that require the contractor to compensate the agency for the contract breach by paying a pre-determined amount for each hour/day/week beyond the scheduled due date.

Examples of remedies are as follows:

- **Liquidated Damages** entitle the agency to demand a set monetary amount determined to be a fair and equitable repayment to the agency for loss of service due to contractor's failure to meet contract requirements. Liquidated damages are useful when compensatory (or "actual") damages are difficult to calculate. The terms of the liquidated damages must be clearly specified, identifying a deliverable, monetary amount, duration and any other necessary information.

  Including liquidated damages in the solicitation will focus the vendor's attention on the deliverables that have been identified as most important to the agency. Care should be taken to ensure that liquidated damages are associated with the correct deliverable. For example, consider a contract for a 24/7 call center where it is imperative that calls are answered in a timely manner. The solicitation only includes a liquidated damages provision tied to the due dates for the contractor's submission of quarterly reports detailing average time calls are in queue and average call abandonment rate, but not metrics for the timeliness of the call center responses, which is the agency's primary concern. A more appropriate remedy would be for liquidated damages to accrue for a specified percentage of calls not answered within a set time frame.

  Public procurement professionals are advised to seek assistance from their agency legal counsel when developing liquidated damages provisions. Courts will enforce a liquidated damage provision only if it is not a penalty, meaning the clause attempts to estimate actual damages rather than penalize a breaching party by awarding damages far greater than those actually suffered.[327]

[327] TEX. BUS. & COM. CODE § 2.718 (providing that liquidated damages clause will be enforced only at an amount which is reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty).

- **Compensatory Damages** are the monetary amount necessary to compensate the injured party for the loss. Examples of compensatory damages include the following:
  - » **Expectation damages** are intended to cover what the injured party expected to receive from the contract, also called the "benefit of the bargain." This is the typical measure of damages in contract. Expectation damages are equal to the value of the defendant's promised performance, generally the contract price, minus any benefit received from not having to complete the defendant's own performance. In the case of defective performance by vendor, the buyer can recover the cost of remedying or completing the performance. However, diminution of value will be awarded where the cost of completion is clearly disproportionate to the value of the performance to avoid economic waste.
  - » **Reliance damages** cover the loss that the non-breaching party incurred in reliance on performance of the contract and are designed to put the injured party back where they were before they entered into the contract. Reliance damages are usually used when expectation damages cannot be accurately calculated, including without limitation when profits are too speculative or where no contract exists, but some relief is justifiable.
  - » **Consequential damages**, also called "special damages," are intended to cover any loss incurred by a breach that is not directly related to the contract, but arose naturally, was reasonably foreseeable or had been specially communicated and should have been included in the scope of what would be reasonably be expected to arise.[328]

  A contractor can monetarily compensate the agency while continuing to fulfill the contract; examples of such compensatory damages include:

  - » **Discounts** on products and services within the scope of the contract can be provided to the agency when certain performance measures are not met.
  - » **Credits** can be provided to the agency when performance measures are not met. Credits can be applied as a dollar amount deducted from the contractor's subsequent invoice, or additional products or services within the scope of the contract.
  - » **Refunds** or reimbursement of previous payments by the agency.
  - » **Waiver of fees** the agency was due to pay for products and services that are either within scope of the contract or for substitute products and services.
- **Restitution Damages** are the value to the defendant of the plaintiff's performance and are utilized to prevent unjust enrichment. Restitution damages may be awarded if the innocent party incurred a loss that benefited the other party. The recovery is based on the market value rendered to the defendant and are not limited by the contract price
- **Equitable Remedies** such as injunctions, declaratory relief and specific performance can be exercised even when they are not specified in the contract. Types of Equitable Remedies include:
  - » **Injunctions** are utilized when the agency needs the contractor to stop doing something or continue working. The court may issue injunctive relief to require the contractor to continue working, or to stop until the case is resolved. For example, in the case of a contractor burning tires in violation of EPA regulations rather than recycling them in accordance with the contract, the court would issue an injunction requiring the contractor to stop burning the tires until the issue with the EPA was resolved.
  - » **Specific performance** is a remedy in which the promisor is ordered to render the promised performance. There is a general hostility and reluctance to award specific performance due to a number of factors, including without limitation the concern that specific performance may overcompensate the injured party.

  Limits on Equitable Remedies include:

  - » **Inadequate Damages.** Damages must be inadequate to protect the injured party for an equitable remedy to be awarded. This usually occurs if the damages cannot be calculated with sufficient certainty or if money cannot substitute for the performance.
  - » **Definiteness.** The contract terms must be definite enough to allow a court order to be framed.
  - » **Difficulty of Enforcement.** Courts must be able to enforce and supervise the court order.
- **Punitive Damages** are a rare type of damage and used in breach of contract cases when the sole point is to punish the wrongdoer. These damages are typically discouraged in breach of contract cases.
- **Nominal Damages** are utilized when the injured party has not suffered a financial loss but the injured party wants to show they were in the right.

If an agency is not able to resolve the contractual dispute with the contractor, the agency's legal counsel must contact the Office of the Attorney General (OAG) for assistance if the agency wants to pursue legal action for breach of contract. The most common recovery in a breach of contract case is compensatory damages that are the "actual damages" designed to cover the loss of the agency as a result of the breach. The amount awarded is intended to "make the

[328] *Hadley v. Baxendale*, 156 Eng. Rep. 145 (Exch. Ct. 1854).

injured party — the agency — whole again," and it is not meant to give the injured party a windfall.

RESPONSE SUBMISSION REQUIREMENTS

Response Content, Format, and Delivery Instructions

The solicitation must clearly indicate the submission requirements such as the response content, format, and delivery instructions that include the following:

- the due date and time,
- delivery address,
- acceptable delivery method (*e.g.,* email, fax, USPS),
- container labeling (*e.g.*, name and address of respondent, solicitation number),
- required number copies of the response, and
- format of response (*e.g.*, electronic file type, bound, tabbed, paginated, size of paper, page number limitations).

If the solicitation requires the vendors to utilize agency-specific templates in their responses, the templates must be appropriately referenced and, as applicable, attached as exhibits or appendices to the solicitation. All costs associated with the preparation of the response must be borne by the respondent.

Electronic Submission and Signatures

If electronic submission of responses is permitted, the solicitation should contain instructions that state how the agency will treat an email or fax submission that is not timely received. For example, the agency may state that if all or any portion of a response submitted by email or fax is received late, is illegible, or is otherwise nonresponsive due to equipment failure or operator error, the response or the applicable portion of the response will not be considered. In addition, the agency must not be liable for equipment failure or operator error. If email submission of responses is permitted, it is best practice for the agency to establish a generic email box to receive responses; this provides consistency for respondents and minimizes the impacts from employee turnover.

Agencies may choose to accept electronic signatures in lieu of handwritten signatures. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.[329]

Execution of Bid/Offer/Proposal

An execution of bid/offer/proposal document must be included in the solicitation as it holds the respondent accountable for performing any duties submitted in the response. Although it is not required to be part of the execution of bid/offer/proposal, it is common for agencies to include the list of statutory preferences.

HUB Subcontracting Plan Requirements

Agencies are required to make a good faith effort to assist Historically Underutilized Businesses (HUBs) to receive a portion of the total contract value that the agency expects to award in a fiscal year in accordance with the following statewide goals:

- 11.2 percent for heavy construction other than building contracts;
- 21.1 percent for all building construction, including general contractors and operative builders' contracts;
- 32.9 percent for all special trade construction contracts;
- 23.7 percent for professional services contracts;
- 26.0 percent for all other services contracts; and
- 21.1 percent for commodities contracts.[330]

These goals can be achieved through contracting directly with HUBs or indirectly through subcontracting.

For any procurement with an estimated contract value of $100,000 or more, including all renewals and amendments, the agency must determine whether subcontracting opportunities are probable under the contract.[331] Subcontracting opportunities can be realized through expenditures on materials, supplies, equipment and services. If subcontracting opportunities are probable, the agency must state this determination in the solicitation and require a HUB Subcontracting Plan (HSP) to be submitted with the response. If an HSP is required by the solicitation, the completed HSP must be submitted by the response due date and time in order for the response to be considered responsive.[332] A response containing an incomplete or missing HSP must be disqualified. Once accepted by the agency, the HSP will become a part of the contract. Vendors must amend their HSPs if there is any change in their planned subcontracting during the performance of the contract.

Agencies are not permitted to make HUB subcontracting or HUB certification status of a vendor a scoring criteria that is assigned weight in the agency solicitation.

[329] TEX BUS. & COM. CODE §§ 322.002, 322.007.

[330] 34 TEX. ADMIN. CODE § 20.284(b).

[331] TEX. GOV'T CODE § 2161.252.

[332] 34 TEX. ADMIN. CODE § 20.285(b). For construction contracts involving alternative delivery methods, the HSP may be submitted up to 24 hours following the date/time that responses are due provided that responses are not opened until the HSP is received. 34 TEX. ADMIN. CODE § 20.285(b)(2).

EVALUATION CRITERIA FOR AWARD

The primary objective for every acquisition is to obtain best value for the State. To ensure fairness in the agency's evaluation of the responses, the solicitation must notify the potential respondents of the basis for contract award. The solicitation must identify the evaluation criteria and the relative weight assigned to each criterion. If the evaluation criteria and associated weights are not thoughtfully designed, then the procurement will fail because the basis of the award will not correctly identify the response that offers best value to the State.

The evaluation criteria must reflect the essential qualities or performance requirements necessary to achieve the objectives of the contract. The weight assigned to each evaluation criterion must correlate to its importance. The Contract Developer must ensure not only that the evaluation criteria and the associated weights are clearly stated, but also that information submitted in the response directly relates to the criteria. The Contract Developer should be careful to ensure that the respondents and the evaluation committee have no opportunity to be confused about which portion of the response applies to each criterion.

Evaluation Criteria	Solicitation Requirement	Submission Requirement
Respondent Qualifications	Specified professional license or certification.	Copy of current license or certificate applicable to specified profession or trade.
Respondent Experience	Specified number of projects of similar size and scope.	Detailed information regarding project size, dollar amount and scope of project for each individual project and any additional information necessary to evaluate vendor experience.
Financial Capability	Financially capable of handling a project of this size and scope.	Copy of latest financial statements, including balance sheets, Dunn and Bradstreet report, etc.

Purchase price and evidence that the goods or services meet specifications are the principal considerations when goods and services are procured through competitive bidding.[333] As a matter of practice, SPD encourages the use of other evaluation factors in addition to price and meeting specifications. It is common for there to be at least three evaluation criteria which broadly address the following:

1. the respondent's proposed scope of work;
2. the respondent's past performance and experience; and
3. the respondent's proposed price.

Examples of additional and more detailed evaluation criteria may be found in the best value standards found in statute.[334]

It is best practice for agencies to include a general description of the evaluation process in the solicitation. The agency should also finalize, prior to solicitation issuance, the evaluation scoring matrix, including any objective criteria, and the composition of the evaluation committee.

The scoring method used to assess the price criterion should be carefully considered. Typically, the price criterion is evaluated based on either "reasonableness" or objective criteria. A reasonableness assessment of a proposed price considers various factors such as the appropriateness of the cost metric chosen by the respondent and the impact of any identified assumptions or constraints on the proposed price. In contrast, an assessment of proposed price based on objective criteria relies on a mathematical formula, rather than independent judgment, to calculate the score.

The scoring method used for the price criterion should be reviewed for each solicitation to ensure it is appropriate for the products and services to be procured. For instance, objective criteria are not suitable for consulting services procurements because state law requires that price is evaluated on the reasonableness of the proposed fee for the services.[335] Exclusive reliance on objective criteria for pricing may also not be suitable for highly complex procurements.

[333] TEX. GOV'T CODE § 2155.074(b).
[334] Best value standards include, but are not limited to, the following: Sections 2155.074, 2156.007, 2157.003, 2254.003, and 2254.027 of the Texas Government Code.
[335] TEX. GOV'T CODE § 2254.027.

There are several mathematical formulas that may be considered for the evaluation process and the Contract Developer must ensure that any formula used is appropriate for the procurement. A commonly used formula for simple purchases is as follows:

Price Score = (Lowest Price / Price of Response Being Evaluated) x Maximum No. of Available Points

There are several schools of thought about how much information is to be provided to the respondents regarding the evaluation criteria. At a minimum, the solicitation must identify the criteria and their corresponding weight. Some agencies prefer to provide more detailed information in the solicitation such as how each base criterion is broken down into smaller units or subcriteria or the inclusion of a copy of the evaluation scoring sheets as an attachment to the solicitation. Sample evaluation criteria and scoring strategies are located in Appendix 14.

Failure to adhere to the published evaluation criteria during the evaluation process may result in a protest. Evaluation criteria that were not included in the solicitation may not be used to rank or select responses. For example, if respondents are to receive additional points for possessing a national accreditation, this criterion must be stated in the solicitation so that all the respondents are notified there is an opportunity to achieve a higher score by submitting the appropriate documentation in its response. Likewise, if the national accreditation information was not requested in the solicitation, respondents who fail to demonstrate this accreditation cannot be penalized.

Solicitation – Reviews and Approvals

CAT – Review of Solicitations With a Value of $5 Million or More

Prior to posting to the ESBD or publishing in the *Texas Register*, an agency[336] must submit solicitation documents for contracts that have a value of $5 million or greater to the Contract Advisory Team (CAT) for review regardless of procurement method.[337] For CAT submissions, the contract value means the estimated dollar amount that an agency may be obligated to pay over the life of the contract including all executed and proposed amendments, extensions and renewals.[338] Agencies should not artificially split the procurement to avoid the $5 million threshold for CAT review.

Solicitation documents include the solicitation (*e.g.*, IFB, RFP, RFO, RFA) as well as any other documents that supplement the solicitation (*e.g.*, Proprietary Purchase Justification) or are incorporated by reference. The solicitation documents and a completed form are submitted to CAT through the Procurement Oversight & Delegation (POD) portal maintained by SPD and located on the CPA website.[339] Requests for assistance relating to the Procurement Oversight & Delegation web application may be submitted to spd.oversight@cpa.texas.gov.

As a general guideline, grant agreements where the recipients eligible for award are governmental entities or non-profit business entities are not subject to a CAT review. CAT will review grants when the recipients eligible for award are for-profit business entities because these contracts provide public funds to entities that could profit from the award. RFAs based solely on federal funding are not subject to CAT review.

When Procurement Oversight & Delegation receives the solicitation documents, the agency will receive an acknowledgement e-mail. Requests for CAT reviews will be processed in the order received. CAT reviews may take up to 30 days to complete. Even if the review period exceeds 30 days, the agency does not have the authority to issue the solicitation until it receives a letter from CAT. Publishing a solicitation without receiving a letter from CAT may result in an audit finding.

Requests for expedited CAT reviews can be made in the POD portal during the CAT submission process. Agencies may designate a solicitation as low-risk and select one of three options for the request to expedite: 1.) Template Solicitation 2.) Risk Analysis or 3.) Reduced Monitoring (if an agency is reported by the SAO as requiring reduced monitoring).[340]

If requesting an expedited CAT review, the agency must attach supporting documents such as a previously reviewed template solicitation or the risk analysis and conclusions document.

Agencies identified by the SAO as requiring additional monitoring may not designate a solicitation as low-risk and request an expedited review even if the solicitation would otherwise qualify. Agencies requiring additional monitoring must also attach the needs

[336] The term "state agency" means a department, board, commission, or other entity of state government, other than a university system or an institution of higher education as defined by Section 61.003 of the Education Code, that (1) has authority that is not limited to a geographical portion of the state; (2) was created by the constitution or a state statute with an ongoing mission and responsibilities; (3) is not the office of the governor or lieutenant governor; (4) is not within the judicial or legislative branch of government; and (5) is not a committee created under state law whose primary function is to advise an agency. TEX. GOV'T CODE § 2056.001. Chapter 2262 of the Texas Government Code does not apply to (1) an institution of higher education as defined by Section 61.003 of the Education Code (except those where Section 55.165 of the Texas Education Code apply) or (2) contracts of the Texas Department of Transportation that either relate to highway construction or highway engineering or are subject to Section 201.112 of the Transportation Code. TEX. GOV'T CODE § 2262.002.

[337] TEX. GOV'T CODE § 2262.101(a)(1).

[338] 34 TEX. ADMIN. CODE § 20.25(b)(13). In the event of an anticipated multiple award, the contract value is the cumulative value of all the resulting contracts.

[339] The CPA website is located at Comptroller.Texas.Gov.

[340] 34 TEX. ADMIN. CODE § 20.163.

assessment, acquisition plan, and risk assessment in addition to the full solicitation package.[341]

Questions regarding requests to expedite can be directed to spd.oversight@cpa.texas.gov.

CAT's review period begins when it receives all information needed to conduct its review. It is recommended that agencies submit their solicitation documents after internal agency approvals have been obtained. In addition, CAT recommends that agencies incorporate a 30-day period for CAT review into the procurement schedule to avoid potential delays to the agency's solicitation, evaluation, and award process.

Prior to posting or publishing the solicitation following CAT review, an agency is required to either

- comply with CAT recommendation(s); or
- submit to CAT a written explanation regarding why the recommendation is not applicable to the procurement under review.

The agency's responses to the CAT recommendation must be kept within the procurement file.

Substantial Changes to CAT Submission. If the initial solicitation documents submitted for CAT review change substantially, the agency is required to resubmit the solicitation documents for additional CAT review. Changes to the solicitation documents for a major contract are considered substantial when

- the solicitation change caused the estimated value for the original term of the contract, not including renewal periods, to increase by 25 percent or more; or
- there are significant revisions, deletions and/or additions to the specifications, scope of work, set(s) of deliverables, performance measures, payment methodology, or other elements of the solicitation.

QAT – Review of Major Information Resources Projects

Procurements, regardless of the procurement method chosen by the agency, associated with a major information resources project are subject to QAT oversight. "Major information resources project" means:

- any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed $5 million and that:
  - » requires one year or longer to reach operations status;
  - » involves more than one state agency; or
  - » substantially alters work methods of state agency personnel or the delivery of services to clients;
- any information resources technology project designated by the legislature in the General Appropriations Act as a major information resources project; and
- any information resources technology project of a state agency designated for additional monitoring under Section 2261.258(a)(1) of the Texas Government Code if the development costs for the project exceed $5 million.[342]

An agency is required to notify QAT when it advertises any solicitation of a major information resources project regardless of the solicitation method (*e.g.*, RFP, IFB, RFO).[343] This notification is required to include the requisition number for each solicitation advertised.

Before issuing a solicitation for a major information resources project with a contract value of at least $10 million, the agency must develop, consistent with any Acquisition Plan provided in the Guide, a procurement plan with anticipated service levels and performance standards for each contractor and a method to monitor changes to the scope of each contract.[344] Samples of an Acquisition Plan and Quality Assessment Plan (QAP) Tools are located in Appendix 7 and Appendix 26, respectively. Information regarding the steps involved in initiating, monitoring, completing, and submitting reports and other deliverables to the QAT for a major information resources project is available on the Project Delivery Framework page located on the DIR website[345] and in the Quality Assurance Team Policies and Procedures Manual located on the QAT website.[346]

QAT and LBB – Review of Non-Cloud Computing Service Option

An agency must ensure when making purchases for an AIS or a major information resources project, that the system or project is capable of being deployed and run on cloud computing services.[347] When making a purchase for an AIS or a major information resources project, the agency may determine that, due to integration limitations with legacy systems, security risks, or costs, the agency is unable to purchase a system or project capable of being deployed and run on cloud computing services.[348] If an agency determines that it is

341 34 TEX. ADMIN. CODE § 20.164.

342 TEX. GOV'T CODE § 2054.003(10).

343 General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 17.09(c)(2).

344 TEX. GOV'T CODE § 2054.305.

345 The DIR website is located at www.dir.texas.gov. The Statewide Project Automated Reporting (SPAR) system is the official system of record for QAT projects.

346 The QAT website is located at www.qat.dir.texas.gov.

347 TEX. GOV'T CODE § 2157.007(b). The term "cloud computing service" has the meaning assigned by Special Publication 800-145 issued by the United States Department of Commerce National Institute of Standards and Technology, as the definition existed on January 1, 2015. TEX. GOV'T CODE § 2157.007(a).

348 TEX. GOV'T CODE § 2157.007(b-1).

unable to purchase a system or project capable of being deployed and run on cloud computing services, then at least 14 days prior to solicitation issuance, the agency must submit to the LBB for the purchase of an AIS or to the QAT for the purchase of a major information resources project a report that describes the purchase and the agency's reasoning for making the purchase.[349]

Solicitation – Advertisement

Electronic State Business Daily (ESBD)

The Electronic State Business Daily (ESBD), managed by SPD, is the State's online directory listing procurement opportunities. Agencies are required to post procurements with a contract value of more than $25,000 to the ESBD, regardless of the source of funds to be used for the contract, to include grant funds.[350]

The contract value for posting to the ESBD means "the estimated dollar amount that an agency may be obligated to pay during the life of the contract and all executed and proposed amendments, extensions and renewals."[351] Vendors may browse agency procurement opportunities and find recent awards by searching for solicitations using various criteria including agency name, NIGP Class/Item code, posting date, and solicitation closing date.

ESBD Posting Timelines[1]	
Contract value estimated to be greater than $25,000	**Minimum Posting Time for Advertisement**
Entire solicitation package (including all parts, exhibits and attachments) posted to the ESBD.	14 calendar days
If not posting the entire solicitation package to the ESBD, then notice must be posted that includes all information necessary to make a successful response for the procurement contract, including at a minimum the following information: (1) a brief description of the goods or services to be procured and any applicable state product or service codes for the goods and services; (2) the last date on which responses will be accepted; (3) the estimated quantity of goods or services to be procured; (4) if applicable, the previous price paid by the agency for the same or similar goods or services; (5) the estimated date on which the goods or services to be procured will be needed; and (6) the name, business mailing address, and business telephone number of the agency employee a person may contact to inquire about all necessary information related to making a response for the procurement contract.	21 calendar days

TABLE NOTES

[1] TEX GOV'T CODE § 2155.083(h)-(i); 34 TEX. ADMIN. CODE §§ 20.214, 20.215.

While a 14-day posting may satisfy the statutory minimum period for posting on the ESBD, it is best practice to advertise a solicitation for 30 days or longer. When determining the appropriate solicitation posting period, the Contract Developer should consider what timeframe affords interested eligible vendors the opportunity to submit quality responses. Publishing solicitations for time periods that are not commercially reasonable may have the effect of artificially limiting the vendor pool.

[349] TEX. GOV'T CODE § 2157.007(b-2).

[350] TEX. GOV'T CODE § 2155.083(a); 34 TEX. ADMIN. CODE §§ 20.109, 20.214. There are certain exceptions to this requirement for institutions of higher education, the University of Houston, and certain agreements between state agencies, local governments and other governmental entities. TEX. GOV'T CODE § 2155.083(n); 34 TEX. ADMIN. CODE § 20.109(d).

[351] 34 TEX. ADMIN. CODE § 20.25(b)(13).

It is best practice for Contract Developers to schedule the solicitation advertisement and other procurement timelines to take into account holidays, the complexity of the procurement, and the fulfillment of any statutory requirements. For example, Contract Developers should consider advertising a solicitation where subcontracting opportunities are probable for longer than the statutorily mandated minimum ESBD posting period to allow sufficient time for all interested eligible vendors to comply with the HUB Subcontracting Plan requirements. One of the Good Faith Effort requirements is for the respondent to allow at least seven working days for HUBs to respond. Weekends, holidays, agency closures, and the date the respondent routed the solicitation to the HUBs are excluded from the seven working day computation.

For solicitations requiring delegated authority, a letter of delegation must be obtained from SPD prior to posting to the ESBD. The Contract Developer must include proof of the ESBD posting and documentation from SPD authorizing the delegated purchasing authority in the procurement file. A contract award is void if an agency violates the applicable statutorily required minimum time for posting on the ESBD.[352]

Computation of Time. In computing the period of days, the first day is excluded and the last day is included. In addition, if the last day of any period is a Saturday, Sunday, or legal holiday, the period must be extended to include the next day that is not a Saturday, Sunday or legal holiday.[353]

Texas Register

The *Texas Register*, maintained by the Secretary of State (SOS), records agency rulemakings, governor's appointments, attorney general opinions, and requests for proposals. The *Texas Register* is published every Friday and is available to the public online on the SOS website.[354] Solicitations using certain procurement methods must be advertised in the *Texas Register*.[355] For procurement methods not addressed in this Guide, it is recommended that agencies refer to their enabling legislation to determine if publication in the *Texas Register* is required. A copy of the *Texas Register* notice must be placed in the procurement file. *Texas Register* posting requirements are in addition to ESBD posting requirements.

Centralized Master Bidders List

The Centralized Master Bidders List (CMBL), maintained by SPD, is an online directory of vendors registered to receive bidding opportunities from State of Texas purchasing entities. Agencies, colleges, universities and local governments use the CMBL to find vendors for products and services. The CMBL may also be used to gather information for noncompetitive procurement processes. SPD does not endorse, recommend, or attest to the capabilities of any business or individual listed on the CMBL.

Agencies must use the CMBL to select vendors for competitive bids or proposals and to the fullest extent possible for purchases exempt from SPD's purchasing authority.[356] For purchases between $10,000 and $25,000, the agency must solicit from a minimum of three active vendors on the CMBL including two current Texas-certified HUBs. For procurements exceeding $25,000, an agency must use the CMBL to solicit from each eligible vendor on the list that serves the agency's geographic region.[357] A copy of the bid list (with date list was generated) must be placed in the procurement file.

If agencies are required to use the CMBL, they must send a copy of the solicitation to all vendors on the CMBL bid list for the advertised NIGP commodity code(s). There may be several hundred vendors associated with a particular commodity code. Accordingly, announcements are an efficient way to reduce mailing costs when publishing large solicitations. A solicitation announcement is a one-page document sent, usually by email, to all vendors on the CMBL for the advertised commodity code(s) which provides notice of the upcoming procurement opportunity and ESBD posting information. The vendor is requested to return a completed form to the agency via email or fax if the vendor desires to receive a hard copy of the solicitation. A sample solicitation announcement is located in Appendix 15. When the solicitation is mailed by the agency, it is only mailed to the vendors who responded to the announcement with a request for a hard copy of the solicitation.

As part of the registration process, vendors provide their contact information and identify the goods and services they offer by NIGP Class/Item codes. The annual registration fee for the CMBL is currently $70. For more information regarding CMBL registration, visit the CMBL Program located on the CPA website.[358] A vendor is not

[352] TEX. GOV'T CODE § 2155.083(j).
[353] TEX. GOV'T CODE § 311.014(a)-(b).
[354] The SOS website is located at www.sos.state.tx.us.
[355] *See e.g.*, TEX. GOV'T CODE § 2166.253.
[356] An agency may not maintain its own bidders list. TEX. GOV'T CODE § 2155.268(a). This requirement does not apply to the Texas Department of Transportation or to an institution of higher education as defined by Section 61.003 of the Education Code, but an institution of higher education should use the CMBL when possible. 34 TEX. ADMIN. CODE § 20.107(g).
[357] TEX. GOV'T CODE § 2155.264.
[358] The CPA website is located at Comptroller.Texas.Gov.

required to be registered on the CMBL to conduct business with state agencies.

Supplementing the CMBL. An agency may supplement the CMBL with State of Texas certified HUBs at any time if the agency determines that it may enhance competition or increase the number of HUBs that submit bids. In addition, an agency may solicit from vendors that are not on the CMBL by obtaining approval from its agency head or designee to add non-CMBL vendors to the final bid list to increase competition.[359] The non-CMBL vendors may be added to the final bid list for specific solicitations to increase competition where the requirement to solicit only CMBL vendors is not adequate.[360] Documentation regarding the additions to the CMBL bid list, including the written approval from the agency head or designee of the supplemented CMBL bid list, must be maintained in the procurement file.

Removal from the CMBL. A vendor may be removed or temporarily suspended from the CMBL for one or more of the following reasons:

- failure to pay or unnecessarily delaying payment of damages assessed by SPD;
- failure to remit the annual CMBL registration fee; or
- any factor set forth in Sections 2155.070 or 2155.077 of the Texas Government Code.

Solicitation – Agency Communications With Potential Respondents

Pre-Bid/Offer/Proposal Conferences

An agency may choose to hold a pre-bid/offer/proposal conference. A pre-bid/offer/proposal conference occurs after solicitation issuance and before the solicitation closing deadline. A conference provides a forum for potential respondents to pose questions about the solicitation in a face-to-face setting or by conference call or web conference. It also provides an opportunity for vendors to develop subcontracting relationships and lets the agency gauge industry interest in the procurement.

Agencies may conduct pre-bid/offer/proposal conferences that are mandatory or non-mandatory for prospective respondents. Agencies should carefully consider the use of a mandatory conference and confer with legal counsel as this may limit competition. Depending on the location of vendor candidates, out-of-town or out-of-state vendors may be discouraged from participating in the procurement because of the travel time and expense associated with the conference. Alternatively, eligible vendors that wish to participate in the procurement may be administratively eliminated from the vendor pool simply because their companies' representatives arrived late or were otherwise unable to attend. In either event, the agency's goal of encouraging competition among all eligible candidates in the vendor pool is thwarted.

Conferences should be mandatory only if an on-site visit is required to have a full understanding of the procurement or if the solicitation is so complex that agency staff believes attendance is critical for potential respondents to fully understand the procurement. Accordingly, mandatory pre-bid/offer/proposal conferences are required when the agency determines that disqualification is appropriate for any response from a vendor that did not receive certain information pertaining to the solicitation at an agency-designated time and location.

If a pre-bid/offer/proposal conference is held, the solicitation must indicate the date, time, and location of the conference and whether respondents' attendance is mandatory or voluntary. If the conference is mandatory, the following statement must be included in the solicitation: "Failure to attend the pre-bid/offer/proposal conference will result in disqualification of the response."

A pre-bid/offer/proposal conference is usually held no earlier than 10 days after the solicitation issuance to allow sufficient time for respondents to receive and review the solicitation prior to the conference. If a mandatory conference is required, the Contract Developer should consider multiple conference dates if it is expected that there will be a high number of conference attendees. All conferences attendees must be documented on a sign-in sheet which is the official record used by the agency to verify respondent attendance. For mandatory conferences, the sign-in sheet will be collected at the beginning of the conference.

The Contract Developer should conduct the conference in coordination with the program staff. Pre-Bid/Offer/Proposal Conference Guidelines are located in Appendix 16. Conference attendees should be advised that the verbal responses provided by the agency during the conference are not binding until confirmed by the agency in writing. All changes to the solicitation must be in writing and published through an addendum to the solicitation. ESBD posting requirements apply.

Question and Answer Period

It is best practice for all solicitations to include a formal process for potential respondents to submit questions to the agency to clarify their understanding of the solicitation. If questions are permitted by the agency, the solicitation must specify the due date when questions

[359] TEX. GOV'T CODE § 2155.269; 34 TEX. ADMIN. CODE §20.107(h).
[360] TEX. GOV'T CODE § 2155.269; 34 TEX. ADMIN. CODE §20.107(h).

must be submitted to the agency as well as the anticipated release date of the agency's answers.

The benefit of a Question and Answer (Q&A) period is that it provides the first indication to an agency of possible ambiguities, errors, or lack of critical information in the solicitation. If there are major deficiencies to the solicitation discovered at this stage, it is advisable to cancel the solicitation and issue a revised solicitation at a future date.

Written questions submitted to the agency as directed in the solicitation must be compiled, verbatim (with any spelling and grammatical errors) into a Q&A document. Every question received, even similar questions submitted by different vendors, must be accounted for in the Q&A document. The name of the entity submitting the question and identifying information should be omitted from the agency's published answers. The Contract Developer has discretion for organization of the questions (*e.g.*, chronological by receipt, by topic). A sample Q&A document is located in Appendix 17.

The Q&A document is published with each question being listed with its corresponding response. The Contract Developer will compose answers to each question and consult with agency subject matter experts as needed. If two or more similar questions are submitted (*i.e.*, redundant questions), the Contract Developer should be mindful to not provide two inconsistent answers. In this situation, it is best practice to either provide the exact same answer to both questions or answer the first question and then include a cross reference to the first answer when responding to the second question.

Once the Q&A document is finalized, the agency will publish it with the solicitation documents on the ESBD and/or in the *Texas Register* as applicable. Any answer that would result in a material change to the solicitation must be identified in a solicitation addendum.

Solicitation Addenda

A written addendum identifying the addition or correction to a solicitation must be issued by the agency in the same manner as the solicitation (*e.g.*, ESBD, *Texas Register*) if a change to the solicitation occurs before the response due date. If an addendum is issued, the agency is responsible for notifying all original bidders who were listed on the CMBL at the time of the original solicitation posting.[361] A solicitation addendum is used to clarify an ambiguous provision, correct an error or oversight, extend the response due date, or alter a public opening date. Rather than using a Q&A document, a solicitation addendum may also be used to answer questions by respondents even though the answers do not result in a modification or change to the solicitation. For addenda other than just an extension to the response due date, it is best practice to require that the responses include an acknowledgement of each addendum to the solicitation.

Respondents must be given a reasonable time to respond to a solicitation addendum. The Contract Developer, therefore, must consider the period of time remaining until the solicitation closing date prior to issuing an addendum. Depending on the content of the addendum, the Contract Developer may determine that the response due date should be extended. If an addendum results in substantial changes to the original solicitation, it is recommended that the response due date be extended and the revised solicitation to be issued for at least 14 calendar days following the addendum date.

Each addendum is numbered. If more than one addendum is issued, each subsequent addendum is sequentially numbered. Each addendum to the original solicitation must be posted to the ESBD no later than the next business day following its release to the public.[362] A sample solicitation addendum is located in Appendix 18.

Communication with Agency Personnel

All communication with potential respondents should be made only through the agency's Purchasing Department or other designated staff. To maintain a level playing field among all potential respondents, program staff or other non-purchasing personnel should not have contact with potential respondents outside of pre-bid/offer/proposal conferences. Refer to the Vendor Communications section of this Guide. The solicitation should provide the agency's primary and secondary designated points of contact and identify the acceptable forms of communication with the agency such as telephone or email. Solicitations must provide vendors with instructions on when or how vendors can communicate with the secondary point of contact.[363]

Alternatively, an agency may choose to create a shared email account that is accessible to designated procurement staff who can assist vendors with additional concerns, while following the protocols established in the solicitation. Agency personnel who have access to the shared email account should be familiar with the Vendor Communications policy.

If a potential respondent contacts program staff or other non-purchasing personnel, staff should politely decline to discuss the procurement and forward the inquiry to the primary designated point of contact identified in the solicitation.

[361] 34 TEX. ADMIN. CODE § 20.214(b)(1)(E)(3), 34 TEX. ADMIN. CODE § 20.214(d).

[362] 34 TEX. ADMIN. CODE § 20.215(d).

[363] TEX. GOV'T CODE § 2262.051(i).

Solicitation – Receipt and Control of Responses

Receipt

Responses must be received on or before the due date and time designated in the solicitation. The terms "response opening date" and "solicitation closing date" both describe the deadline for receipt of responses. A response will be considered timely only if it is received on or before the published due date and time and in conformance with the delivery instructions specified in the solicitation.

To ensure fairness to all respondents, no submitted responses should be opened or reviewed before the due date and time has passed;[364] an agency may confirm that a sealed submission, faxed document or email(s) have been received.

Upon receipt by the agency, the sealed response must be marked with a date and time stamp directly on the envelope, when possible, or on the express delivery label, and the response must remain sealed and kept in a secure place to prevent misplacement, loss, or tampering, until after the published response due date and time.

Delivery by Email, Fax, or Other Electronic System. When allowed by the solicitation, responses received by email, fax, or any other electronic system must be treated as sealed response documents and kept secure until after the response due date and time. A copy of the email received with the response documents attached must reflect the date and time of receipt. If multiple emails are sent by the respondent, a copy of each email must be included in the procurement file. The faxed documents must be accompanied by a fax receipt notice. If the faxed document(s) do not have a date/time stamp, one must be affixed manually immediately upon receipt.

Responses Opened in Error or to Confirm Identification. Despite instructions contained in the solicitation, a respondent will occasionally submit a sealed response without properly identifying the solicitation on the packet. Agency staff may open a sealed response solely for the purpose of identification so that the response can be properly marked as received. If agency staff open a sealed packet for the purpose of identification or a response was inadvertently opened, the packet must be resealed, dated, and signed by the person who opened the packet. Packets inadvertently opened by agency staff should be marked with "Opened in Error" or "Opened to Determine Content" as appropriate.

Late Responses

The responses must be received by the due date and time established in the solicitation. If a response is received after this published date and time, it is considered a late response. Late responses will not be opened and the respondent will be notified that the response was rejected because it was not timely received. The agency will either return the unopened response to the respondent at the respondent's expense or dispose of the response according to the arrangements specified in the solicitation.

The only exception to the prohibition against accepting a late response is if an agency's written internal policy permits the acceptance of a late response due to extenuating circumstances. For example, if an agency has a practice of accepting responses received for up to two business days following the solicitation closing date whenever the agency's main office is closed due to inclement weather events, then this practice must be documented as a written policy.

Withdrawal of Response

A respondent may withdraw its response at any time prior to the closing date and time for the solicitation. The respondent's request to withdraw its response must be made in writing on company letterhead or by completing a form prescribed by the agency. The preferred practice is for the respondent to submit the withdrawal of response in person and provide appropriate identification (*e.g.*, corporate identification card, photo identification card to match the authorized contact person listed in the response) so that the agency can verify that the withdrawal request is legitimate. If the respondent's request to withdraw the response is submitted by mail, email, or fax, then a determination must be made by the agency as to whether additional documentation is necessary in order to comply with the request.

Cancellation of Solicitation

The agency may cancel a solicitation at any time prior to the closing date of the solicitation. If a solicitation is cancelled, the agency must provide notice of the cancellation in the same manner as the issuance of the solicitation. For example, the agency will post a notice of the cancellation to the ESBD if the original solicitation was posted to the ESBD.[365] Cancellation notices must contain, at a minimum, the following information:

- agency name, business address, and contact name,
- purchase requisition number or solicitation number, and
- reason for the cancellation.[366]

[364] 34 TEX. ADMIN. CODE § 20.208(c). Agencies shall also maintain a list of respondents that submitted a proposal in response to each request for proposal.

[365] 34 TEX. ADMIN. CODE § 20.214(b)(2).

[366] 34 TEX. ADMIN. CODE § 20.219(c).

Unless other delivery or disposition arrangements are specified in the solicitation, all responses should be returned unopened with a notification letter from the agency of the solicitation cancellation.

Public Opening Option

For procurements under SPD's purchasing authority, each agency has discretion whether to conduct a public opening on the closing date of the solicitation. Public openings do not usually occur for purchases of $25,000 or less. If an agency elects to open responses received in public, the solicitation must clearly state the time and place of the public opening. A change to the public opening date and time must be published through an addendum to the solicitation. ESBD posting requirements apply.

A public opening gives members of the public an opportunity to hear, at a minimum, the verbal recitation of the following:

- the solicitation number; and
- the name of each respondent.

If bids received in response to an IFB are to be evaluated solely on objective criteria, then the public opening will normally include the following additional information: price or amount for each item number and model number (if different from the specified model). Agency staff will not discuss whether a product or model meets the written specifications.

The sealed responses may be opened and read in any order such as alphabetical by respondent name, in order of receipt, or by lot. The procurement file must contain the attendance log with each attendee's name, signature, and if representing an organization or entity, the name of the entity and attendee's title.

Internal Procedures

The agency must have documented internal procedures outlining the responsibilities and steps for the receipt and control of responses. Such procedures include, but are not limited to, the following:

- identifying the official timepiece that will be used for determining timely receipt of responses, such as mail room clock, time stamp machine, or email server time stamp;
- specifying the marking process that will be used to document the date and time each response was received by mail, hand delivery service, fax, or email;
- maintaining a log of responses received which contains the following information: solicitation number, due date and time, respondent name, date and time response received, and delivery method and, if applicable, tracking number (*i.e.*, email, fax, hand delivery, USPS or other delivery service);
- securing responses until published response due date and time;
- outlining the processes to be followed after inadvertent opening of responses received hard copy, email, or fax; and
- designating agency staff responsible for each task.

VENDOR SELECTION

Overview

The third step of the procurement process is to select the vendor that provides best value to the State. Agencies must conduct evaluations in a fair and impartial manner consistent with Texas law and in accordance with either the evaluation procedure published in the solicitation or, for informal bidding situations, established by the agency's written procedure. Agency legal counsel should be consulted to ensure the use of the proper evaluation process for each procurement.

TCI Program, State Use Program, and Term Contract Purchases

Agency purchases using the following procurement methods have been determined to be best value to the State by statute or SPD rule: the TCI Program, the State Use Program and Term Contracts.[367] Accordingly, an agency does not conduct an evaluation process when selecting a vendor for these purchases.

Administrative Review of Responses

After the responses are opened and recorded, the Contract Developer must determine whether the submitted responses are responsive to the solicitation. Only responses that are responsive to the solicitation are evaluated.

At a minimum, this administrative review includes an examination of each response to verify that the minimum vendor qualifications are satisfied and all required forms and documents were submitted, such as the signed execution of bid/offer/proposal or similar document, price sheet, bid bond, signed HUB Subcontracting Plan, and signed non-disclosure agreement.

The administrative review is conducted on a "pass/fail" basis. Consultation with legal counsel may be necessary to determine whether a response is responsive to the solicitation requirements. It is recommended that the Contract Developer use a checklist to document the results of the administrative review. A sample Administrative Review Checklist is provided in Appendix 19.

Unsigned Response. A response without a signature is not responsive to the solicitation and will be disqualified. Unsigned responses will not be evaluated; these responses will be kept with the procurement file and not be returned to the respondent.

"Responsive" Response. A response is "responsive" if it conforms in all material respects to the solicitation requirements (*e.g.*, timely submitted, signed response, completed forms). The Contract Developer will make the initial determination as to whether a response is responsive to the solicitation. The initial determination of responsiveness is subject to change during the course of the evaluation process.

Technical Assistance in Specification Preparation. A respondent or contract participant may provide free technical assistance to an agency.[368] However, an agency may not accept a response or award a contract to a vendor that received compensation from the agency to participate in the preparation of the specifications or solicitation on which the proposal or contract is based.[369]

Single Response. Before evaluation begins, the Contract Developer may investigate why the agency received only one response to a competitive solicitation by:

- Reviewing the solicitation for any restrictive specifications, and
- Contacting several potential respondents to inquire why they chose not to submit a response.

If it is determined that there were unduly restrictive specifications in the solicitation such that the specified product or service is only available for purchase through a single vendor, the agency should either re-advertise the solicitation or prepare a Proprietary Purchase Justification for the proprietary sole source purchase. Otherwise, the agency should consider the reasons that potential eligible respondents did not participate in the agency's competitive solicitation (*e.g.*, insufficient time to comply with HSP requirements) in order to assess whether it is in the best interest of the State to proceed with the evaluation process or re-advertise with a revised solicitation. If the agency decides to proceed with the procurement, the Contract Developer will either tabulate the bid, only if objective criteria are used for informal bidding or an IFB, or direct the evaluation committee to evaluate the response.

[367] When multiple awards occur on term contracts, purchasers should refer to the General Contract Information (GCI) page on Texas SmartBuy prior to contract award.

[368] TEX. GOV'T CODE § 2155.004(e).

[369] TEX. GOV'T CODE § 2155.004(a).

Evaluation – Bid Tabulation Process

If the responses to an IFB are to be evaluated solely on objective criteria, the evaluation may be conducted by the Contract Developer. As a general rule, bids must be tabulated when opened, but there are times when this is not practical. It is recommended that the bid tabulation be prepared within a maximum of three business days from the bid due date.

The following, as applicable, must be included on the bid tabulation:

- NIGP Class/Item;
- Confidential or Proprietary declarations by respondent;
- Vendor (Payee) Identification Number;
- Respondent name;
- HUB Status;
- Price Sheet Line Item Descriptions;
- Manufacturer/Brand;
- Product Number;
- Package Quantity Information;
- Unit Price;
- Delivery Days After Receipt of Order;
- Warranty;
- Comments/Remarks – Include indicators for disqualification and non-responsiveness; and
- Award Column to indicate the bidder receiving the award for any given item.

It is best practice for the bid tabulation to be reviewed by a second Contract Developer prior to finalization to ensure that the evaluation was conducted in conformance with applicable purchasing procedures.[370] Particular care should be taken to ensure that the raw data is accurately transcribed into the mathematical formulas and that the mathematical formulas are properly loaded into electronic spreadsheets/workbooks when such electronic aids are used. After contract award, the bid tabulation is subject to public disclosure under the Texas Public Information Act.

The Contract Developer must conduct a due diligence inquiry as to actual and potential conflicts of interest related to the submitted bids. As an agency internal policy, the agency may utilize an agency specific conflict of interest statement for compliance with conflict of interest disclosure requirements specified by law or agency policy.[371] For procurements with an expected value of $1 million or more, the SAO Nepotism Disclosure Statement for Purchasing Personnel must also be utilized. Any actual or potential conflicts of interest must be reported promptly to agency legal counsel.

Evaluation – Evaluation Committee Process

Evaluation Committee

The evaluation committee is composed of subject matter experts and stakeholders. The committee should have a diverse relevant disciplinary expertise and knowledge of the product or service being procured. Because service on an evaluation committee involves a significant time commitment, care should be taken to ensure that each member selected as a scoring member is able to attend the committee meetings, oral presentations, and site visits to respondent premises.

Evaluation committee selection should occur prior to receipt of the responses. It is common for the evaluation committee members to have been involved in the procurement planning activities. The Contract Developer is usually designated as the committee chair, serving as a non-scoring member of the evaluation committee. Depending on the procurement, the Contract Manager may participate as either a scoring or non-scoring member. The scoring and non-scoring members of the committee must be noted in the procurement file.

The recommended size of an evaluation committee is three to five scoring members. To avoid potential individual bias, the committee should not have fewer than three scoring members. Depending on the procurement, the agency may determine that a larger committee is necessary. There is no restriction as to how many individuals the agency may include on an evaluation committee; however, good judgment dictates that the number of individuals on the committee be limited to the minimum required to accomplish its purpose.

Each evaluation committee member will independently assess the content of each response using only the evaluation criteria and weights published in the solicitation and, if applicable, unpublished subcriteria (*i.e.*, a smaller component of the published base criterion). Accordingly, the evaluation committee members must fully understand

[370] For procurements subject to Chapter 2261 of the Texas Government Code, refer to Sections 2261.0525 and 2261.054 of the Texas Government Code.

[371] TEX. GOV'T CODE § 2261.252(a) (Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency); TEX. GOV'T CODE § 2261.252(a-1) (A state agency employee or official is required to disclose any potential conflict of interest specified by state law or agency policy that is known by the employee or official at any time during: (1) the procurement process, from the initial request for bids for the purchase of goods or services from a private vendor until the completed final delivery of the goods or services; or (2) the term of a contract with a private vendor.).

the solicitation, be able to critically read and evaluate the responses, and document their decisions in a clear and concise manner.

Each committee member will be expected to score each response on how it meets, exceeds or fails to meet the standards established in the solicitation. If the agency plans to use individuals during the evaluation process (*e.g.*, evaluation committee members, technical advisors) who are not agency employees, it is recommended that agency legal counsel be consulted to ensure that appropriate procedures are implemented to protect the interests of the State.

For procurements exceeding $20 million, the Contract Developer must include the reasons an evaluation committee member was selected and their relevant qualifications, as determined by the agency, in the procurement file.[372]

Non-Disclosure Agreements and Conflict of Interest Disclosures

To safeguard the integrity of the evaluation process, individuals serving on an evaluation committee or as technical advisors must sign a non-disclosure agreement prior to receiving the responses or participating in evaluation committee activities. Committee members may not communicate with respondents or anyone else outside the committee regarding the responses received or the evaluation process without prior approval of the Contract Developer or the agency legal counsel, as appropriate. Examples of permitted communications may include the Contract Developer's coordination of the committee's consultation with authorized technical advisors and the committee's attendance at oral presentations.

The agency must also conduct a due diligence inquiry as to the evaluation committee members' and technical advisors' actual and potential conflicts of interest related to the submitted responses. It is best practice for the Contract Developer to provide the names of the respondents and proposed subcontractors to the committee members and any assigned technical advisors prior to providing access to the responses. As an agency internal policy, the agency may utilize an agency specific conflict of interest statement for compliance with conflict of interest disclosure requirements specified by law or agency policy.[373] For procurements with an expected value of $1 million or more, the SAO Nepotism Disclosure Statement for Purchasing Personnel must also be utilized. Any actual or potential conflicts of interest must be reported promptly to agency legal counsel.

[372] TEX. GOV'T CODE § 2262.2051(i)(3).

[373] TEX. GOV'T CODE § 2261.252(a) (Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency); TEX. GOV'T CODE § 2261.252(a-1) (A state agency employee or official is required to disclose any potential conflict of interest specified by state law or agency policy that is known by the employee or official at any time during: (1) the procurement process, from the initial request for bids for the purchase of goods or services from a private vendor until the completed final delivery of the goods or services; or (2) the term of a contract with a private vendor.).

Evaluation of Responses

Overview

Prior to evaluating the responses, the Contract Developer will schedule a meeting with the evaluation committee and any authorized technical advisors to provide initial procurement training and guidance on the evaluation process and the scoring matrix. A Sample Evaluation Committee Member Training Outline is located in Appendix 20 as part of the Evaluation Committee Briefing. If the agency utilizes a numbering system to identify evaluation committee members and/or track the responses, this system should also be explained. This meeting may be held as a separate meeting before the first committee meeting or at the beginning of the first committee meeting.

The committee members should be instructed as to their responsibilities including the critical nature of confidentiality and the integrity of the evaluation process. Care must be taken not to engage in technical leveling, technical transfusion, or other improper activities. The evaluation committee may not commence any discussions until each committee member has signed a non-disclosure statement and a preliminary assessment regarding actual and potential conflicts of interest has been conducted. Evaluation Committee Guidelines are located in Appendix 20.

The evaluation committee members must be provided with the following documents, as applicable to the specific procurement:

- the entire solicitation, including all issued addenda and Q&A documents;
- a list of responses submitted; and
- a copy of each response determined to be responsive by the Contract Developer following the Administrative Review (clearly marked with the assigned reviewer's number, if a numbering system is used by the agency).

Each response must be evaluated independently against the evaluation criteria published in the solicitation and not compared to any other submitted response. The evaluation committee members must not conduct independent research; each member's evaluation must be based solely on his or her personal review of the response and other information specifically authorized by the Contract Developer or assigned legal counsel that is consistent with the solicitation (*e.g.*, written clarifications received from the respondents, oral presentation material, and reference check information).

If assistance is requested from authorized technical advisors, the evaluation committee's inquiry should be limited to areas related to the evaluation criteria. Evaluators and technical advisors must never attempt to communicate with or reply to a communication from a respondent during the evaluation process. In the event one of the respondents is a current service provider, it is recommended that the evaluator consult with the Contract Developer on the appropriate practices to be utilized to ensure that there is no appearance of impropriety when conducting ongoing business operations. To protect the integrity of the evaluation process, only the Contract Developer or an assigned attorney may communicate with respondents (*e.g.*, request clarification of responses, schedule oral presentations).

Discussion of the responses must only occur at an evaluation committee meeting with all scoring members present. It is common for the evaluators to conduct their evaluations at the same time in the same room; this can facilitate questions by committee members with each other as well as to the Contract Developer and technical advisors. However, it is an acceptable practice for the evaluators to review the responses from their respective workspaces and to engage in group discussions only at scheduled meeting times.

Communication between two or more committee members related to the evaluation of responses or the content of responses is not permitted outside the presence of the entire committee. Committee members must attend all scheduled evaluation meetings and participate as required by completing all committee responsibilities in the time allotted. Absence from meetings or failing to meet deadlines to complete evaluations may result in the removal of a member from the evaluation committee or removal of the evaluator's scoring from consideration.

The evaluators will record their individual scores for each response on the scoring matrix provided by the Contract Developer. If permitted by the solicitation, the agency may waive minor technicalities of submitted responses. If an evaluator determines that a waiver of minor technicalities is appropriate during evaluation, this approach should be brought to the attention of the entire committee to ensure that all the evaluators are using the same evaluation standards.

Some procurements may involve multiple scoring rounds to narrow the competitive field (*e.g.*, second scoring round following oral presentations). Evaluators must record their scores on the scoring matrix following each scoring round. It is best practice to label each scoring matrix with the applicable scoring round number or date.

Under no circumstances must any committee member attempt to pressure other members to change evaluation scores. However, if it is apparent that one or more committee members' evaluations differ significantly from the majority, the committee chair should schedule a meeting with the entire committee to discuss the outliers to ensure the evaluation criteria were clear to all scoring members and that information was not overlooked or misunderstood. If after this discussion, a committee member determines that there was a misunderstanding of the criteria, the requirement, or information overlooked that was included in the response, the evaluator may provide a revised scoring matrix.

Scoring Matrix

The scoring matrix is a standardized form used by all of the evaluation committee members to record the scores for each the response based on the evaluation criteria and weights published in the solicitation and, if applicable, unpublished subcriteria. It is best practice for the scoring matrix to be finalized prior to publishing the solicitation. However, if time does not permit the scoring matrix to be finalized prior to publication of the solicitation, the scoring matrix must be completed prior to the receipt of responses. A sample Evaluation Committee Member Scoring Matrix is located in Appendix 21.

Technical Advisors

Depending on the procurement, the evaluation committee may seek assistance from technical experts within the agency to gain a better understanding of certain aspects of the responses. Technical advisors are generally used when a particular area of subject matter expertise is not within the skill set of the evaluation committee members. For instance, an employee from the agency's budget division may serve as a technical advisor during the evaluation committee's review of the financial capability documentation submitted by the respondents. Similarly, for an IT procurement, an employee from the agency's information security division may serve as a technical advisor during the evaluation committee's review of the various data safeguard standards proposed by the respondents.

Technical advisors to the evaluation committee comply with the same non-disclosure and conflict of interest restrictions applicable to the evaluation committee. Accordingly, the technical advisors should not discuss the solicitation with anyone, even evaluation committee members, outside the committee meetings. The Contract Developer must coordinate all communication between the evaluation committee and authorized technical advisors to ensure the integrity of the evaluation process.

Price Component

The price component of the response is usually assessed by using either a "reasonableness" standard or objective criteria. For a price criterion assessed using a reasonableness standard, the evaluation committee conducts the evaluation. If the price criterion is to be evaluated using only a mathematical formula, such as for an IFB, then it may be scored by the Contract Developer. Unless prohibited by statute or agency policy, it is recommended that the evaluation committee review and score the entire response, including the price component, to facilitate a more comprehensive evaluation of the response (*e.g.*, ensure that the proposed pricing aligns with the proposed products and services).

Reference Check

If required by the solicitation, respondents may submit customer references with their responses. The Contract Developer may conduct the reference checks or authorize a subcommittee of the evaluation committee to conduct reference check activities. All information obtained during the reference checks must be documented in writing.

The same script or format of questions must be used when conducting reference checks so that the results are consistent and fair to all respondents. The list of reference check questions must be prepared prior to the solicitation closing date. When developing the questionnaire, the Contract Developer should keep in mind the types of questions to which its agency would respond. For example, many entities will not participate in business reference activities that involve a lengthy questionnaire or questions that appear to ask for an endorsement. A Sample Reference Check Form is provided in Appendix 22.

An agency should not request submission of customer references that the agency does not intend to verify. However, events following solicitation issuance may shorten the procurement timeline such that reference check activities cannot be conducted by the agency in a timely manner. When the solicitation requires the submission of references or references are considered as part of the evaluation criteria, the agency must decide whether or not it will verify customer references before the solicitation closing date. If reference checks will not be conducted by the agency, this determination should be documented and placed in the procurement file.

Vendor Performance Tracking System Check

Contractor performance information regarding state contracts is located in the Vendor Performance Tracking System (VPTS) on the CPA website.[374] VPTS is maintained by SPD. Agencies are required to use the VPTS to determine whether to award a contract to a vendor reviewed in the tracking system.[375]

Clarification of Responses

As part of the initial evaluation, the evaluation committee may determine that clarification of a response is necessary prior to scoring. Accordingly, the evaluation committee may pose clarifying questions to a respondent in order to resolve conflicting information, apparent ambiguities, or minor clerical errors within the response. If a clarification to the response is necessary, the Contract Developer or agency legal counsel will contact the applicable respondent and distribute to the evaluation committee the written clarifications received by the respondent. A respondent's clarification must be in writing and signed by an authorized representative.

The evaluation committee should be mindful that a respondent's clarifications may not be used to "cure" deficiencies in the response or to revise the response. The clarifications may only be used to understand the information provided in the response. It is important to note that a request for a respondent to clarify its response is not the same as negotiations of the specifications or terms and conditions as long as the request to clarify does not provide one respondent an advantage over another. Therefore, care must be taken not to inadvertently engage in negotiations.

Competitive Range Determination

After the initial scoring, the Contract Developer will determine the competitive range. The competitive range refers to those responses determined to be reasonably considered for award selection and is an objective means of narrowing the field of respondents that will participate in subsequent evaluation activities such as oral presentations.

Agencies should look for a "natural break" in the scores that will determine the competitive range.

[374] The CPA website is located at Comptroller.Texas.Gov.
[375] TEX. GOV'T CODE § 2262.055(d).

An example of how to determine competitive range from maximum score of 100 is illustrated below.

Evaluation Scores Scenario 1	Evaluation Scores Scenario 2	Evaluation Scores Scenario 3
97	97	97
93	93	96
90	82	90
89	81	89
88	79	88
65	68	86

- In scenario 1, the top five respondents are in the competitive range.
- In scenario 2, the competitive range could include the top two respondents or the top five respondents.
- In scenario 3, there is a six-point difference between the 2nd and 3rd score, with the remaining scores close behind. Therefore, the best option is to include all six respondents.

The rationale for the competitive range determination should be documented in the procurement file.

Oral Presentations

If expressly permitted by the solicitation, an agency may elect, after reviewing the responses, to conduct oral presentations. Oral presentations, including reviews conducted during site visits, provide an opportunity for respondents to highlight the strengths and unique aspects of their responses and to provide answers to clarification questions the agency may have regarding the responses. Presentations which include demonstrations of product functionality are recommended when appropriate, such as information technology or solution-based purchases.

Oral presentations may be scheduled for all respondents or limited to the top ranked vendors in the competitive range. The agency must follow the process outlined in the solicitation to notify the respondents of the time and place for the oral presentations. Before the oral presentation, the evaluation committee should prepare its list of clarification questions for the presenting respondents.

Oral presentations and demonstrations must be fair to all parties. The time allowed and the agenda format should be the same for all presenters. Because some presenters may believe there is an advantage to the order in which they present, it is best practice to draw names for the presentation order to ensure impartiality of the process.

Following the oral presentation, it is best practice for the agency to submit written questions to the respondent to document in writing the verbal clarifications provided by the respondent during the presentation. The answers to these clarification questions should be signed by an authorized representative of the respondent. Following all oral presentations, the evaluation committee will complete a scoring matrix using the evaluation criteria and weights published in the solicitation. To protect the integrity of the evaluation process, the evaluation committee which evaluated the written responses should also evaluate the clarifying information obtained from the respondents during the oral presentations.

Best and Final Offers

After any oral presentations or demonstrations are completed, discussions may be held. If discussions are held, respondents must be given equal opportunity to discuss and submit revisions to proposals. Revisions of proposals are normally accomplished by formally requesting Best and Final Offers (BAFOs) at the conclusion of discussions with a deadline set for receipt of BAFOs and including instructions as to exactly what should be submitted in response to the BAFO. After consideration of all BAFO responses, agencies may choose to down select to a smaller number of respondents with which to commence negotiations.

Evaluation Committee Recommendation

Once the evaluation process is completed, the committee chair will prepare, sign and date the master scoring matrix, and proceed with a recommendation to either award the contract to the highest ranked respondent without discussion, tentatively award the contract to the highest ranked respondent subject to successful completion of negotiations or not award the solicitation. It is recommended that each committee member review the master score sheet to verify the accuracy of the scoring. Particular care should be taken to ensure that the raw data is accurately transcribed into the mathematical formulas and that the mathematical formulas are properly loaded into electronic spreadsheets/workbooks when such electronic aids are used. If the solicitation allows, the evaluation committee may recommend a contract award to more than one respondent; provided, however, that the awarded respondents are the highest ranked in the evaluation.[376]

[376] For procurements subject to Chapter 2261 of the Texas Government Code, refer to Sections 2261.0525 and 2261.054 of the Texas Government Code.

Preferences

Overview

Preferences are established by statute. With the exception of the reciprocal preference, a vendor must claim the applicable preference(s) in its response by marking the appropriate preference on the preference form included in the solicitation. If the appropriate box is not marked on the preference form, a preference will not be granted unless other documents included in the response sufficiently demonstrate that the vendor may receive the preference and is requesting the preference. Upon the agency's request, the vendor must provide adequate documentation to support a claimed preference.

Any price adjustment that results from application of a preference occurs only during the evaluation process. The application of a preference does not alter the price to be paid by the agency under an awarded contract. A non-exhaustive List of Preferences is located in Appendix 23.

Reciprocal Preference Law

Texas law requires that responses from nonresidents from a state that grants resident bidder preferences for that state's purchases must be reciprocated in the same manner when competing against a bidder residing in Texas. In other words, the State of Texas will respond in kind to resident bidder preferences made by other states.

Under the Texas reciprocal preference law, a governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the following:

1. the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located; or
2. the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed.[377]

For purposes of the reciprocal preference law, "resident bidder" refers to a person whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas.[378]

If another state grants a preference to its resident bidders, a corresponding percentage increase is added to the nonresident bidder's response when bidding in Texas. For example, State A grants its in-state bidders a 10 percent preference when bidding on agricultural products. By granting a 10 percent advantage to in-state bidders, State A is essentially penalizing Texas bidders 10 percent for not being residents. Texas reciprocates by adding a 10 percent non-residency penalty to the response from the bidder from State A, which essentially gives a 10 percent preference to bidders residing in Texas.

Reciprocity and resident bidder preferences do not apply when evaluating responses that involve the use of federal funds.[379] The reciprocity preference is only applied during the evaluation process and only in situations where the out-of-state bidder is from a state that has a residency preference. SPD maintains a Summary of Other State Bidder Preference Laws on the CPA website.[380]

Resolving Tie Bids

A tie occurs when two or more responses receive the same score after evaluation. Priority of the claimed preference is given in the sequence listed below:

- Texas Agricultural Product
- Texas Product
- Texas Bidder
- U.S. Product

Same Price – Same Preferences

The award for any tied item is determined by drawing lots, tossing a coin, or drawing names with two witnesses to oversee the tie-breaking activity.

Same Price – Different Preferences

If two bidders propose the same price, but the preferences checked are different, the award is based on the priority for goods and/or for services.

377 TEX. GOV'T CODE § 2252.002.

378 TEX. GOV'T CODE § 2252.001(3).

379 TEX. GOV'T CODE § 2252.004.

380 The CPA website is located at Comptroller.Texas.Gov.

Examples of Using Preferences to Break a Tie for Goods and Services.

EXAMPLE 1: The award is made to Bidder A. Priority is given to the Texas-produced product over the U.S.-produced product.

Product	Bidder A	Bidder B
Texas Agricultural Product		
Texas Product	X	
Texas Bidder		
U.S. Product		X

EXAMPLE 2: The award is made to Bidder B. Because both bidders show preference to Texas agricultural and Texas products, priority is given to the Texas bidder.

Product	Bidder A	Bidder B
Texas Agricultural Product	X	X
Texas Product	X	X
Texas Bidder		X
U.S. Product		

EXAMPLE 3: The award is made by drawing lots, tossing a coin, or drawing a name.

Product	Bidder A	Bidder B
Texas Agricultural Product		
Texas Product		
Texas Bidder	X	X
U.S. Product		

CONTRACT FORMATION AND AWARD

Overview

The fourth step of the procurement process is to enter into a legally enforceable contract that not only meets the agency's business need but is also compliant with Texas procurement law. The contract between the agency and the selected vendor may be in the form of either a PO or formal signed agreement. If a formal signed agreement is used, the PO documents the encumbrance of funds by the agency for the transaction.

For many procurements, the Contract Formation and Award phase is a relatively quick process. For example, a contract to acquire a good or service from SPD Term Contracts may be awarded by PO immediately following the selection of the vendor. In contrast, the Contract Formation and Award phase may take longer for procurements where the parties desire to enter into a formal written agreement following the negotiation of terms and conditions.

Negotiations

Overview

An agency may negotiate terms and conditions during the procurement process. Not all procurement methods, however, allow for negotiation.[381] Prior to commencing negotiations, the Contract Developer must verify that negotiations are permitted under the applicable procurement method.

Negotiations are permitted for the following:

- purchases using competitive sealed proposals,
- purchases using requests for offers,
- purchases under DIR cooperative contracts,
- purchases of consulting services,
- purchases of professional services,
- TXMAS purchases,
- State Use Program purchases (when procuring services not goods),
- sole source and competitive proprietary purchases, and
- emergency purchases when there is insufficient time to solicit bids.

Negotiation is not permitted under the IFB procurement method except when only one qualified bid is received. This exception is the only circumstance for an agency to negotiate contract terms, including price; provided, however, the negotiation may not result in a material change[382] to the advertised specifications.

Public procurement professionals should be mindful that negotiations involving public sector entities (*e.g.*, state government) are different than between private sector entities. For example, negotiations with an agency must not materially alter requirements of the published solicitation. Care must be taken by the agency to avoid inadvertently changing the advertised procurement objectives. If the procurement objectives are changed through the negotiation process, an unlevel playing field occurs when respondents could have bid differently had they been aware of the changed procurement objectives. An unlevel playing field also results when the composition of the eligible vendor pool would have been different (*e.g.*, the vendor pool may have been larger) if the changed objectives had been incorporated into the original solicitation. Whenever it appears that the procurement objectives may have been changed, agency legal counsel should be consulted before proceeding further.

Negotiation Team

The agency should strive to place employees with effective negotiation and communication skills on negotiation teams. For complex procurements involving high-dollar or high-risk projects, it is recommended that the negotiations also be conducted by an experienced team of agency employees.

A lead negotiator should be designated to establish an organized and controlled negotiating environment to support an efficient, coordinated, and unified team effort. Rarely will the lead negotiator also be the Contract Developer in a complex procurement. For example, it is not recommended that a Contract Developer singlehandedly negotiate the purchase of a major information technology system. Instead, this type of negotiation should be undertaken by a team that includes representatives from the end-user department with subject matter expertise, the agency's technology and information security departments, and legal counsel.

Team members should be chosen, or excluded, based on their leadership style, negotiation skills and subject matter expertise. Too often agencies are at a disadvantage during contract negotiations simply because the right people are not present during negotiations. It is important that the negotiation team includes agency personnel who have decision-making authority appropriate for the procurement.

[381] 34 TEX. ADMIN. CODE § 20.206(d).

[382] TEX. GOV'T CODE § 2155.088.

Preparation

The key to successful contract negotiations is preparedness by agency personnel. Preparedness represents the degree to which the Contract Developer, prior to the commencement of negotiations, has obtained negotiation-relevant information and has engaged in formal planning activities with the negotiation team. Depending on the particular transaction, negotiation-relevant information may include data on prevailing prices, supply conditions, and production costs.

To develop an effective negotiation strategy, the negotiation team must be familiar with the documentation submitted by the vendor and be well-versed in the respective division's business requirements, constraints, and any applicable overarching agency objectives. The negotiation strategy should be tailored to suit the particular facts and circumstances of each procurement. Formal planning activities include

- identifying contract terms which are crucial to the agreement (*i.e.*, terms upon which the agency is either unable or unwilling to compromise, as well as contract terms that the agency is willing to compromise or relinquish);
- understanding and prioritizing the acceptable trade-offs between the various negotiation goals;
- establishing the agency's settlement range on the items to be negotiated; and
- anticipating the positions that will be taken by the vendor during negotiations.

Technical Leveling, Technical Transfusion, and Other Improper Activities

Care must be taken not to engage in technical leveling and/or technical transfusion activities. Technical leveling is helping a respondent to bring its response up to the level of other responses through successive rounds of discussion, usually by pointing out weaknesses in the response. Technical transfusion, which is prohibited by statute,[383] is the disclosure of technical information or approaches by one respondent to other competitors in the course of discussion. Prohibited auctioneering techniques include

- disclosure of competing respondents' cost/prices (even if the disclosure is made without identifying the vendor by name); and
- advising a respondent of its price standing relative to other respondents.

[383] TEX. GOV'T CODE § 2156.123(a).

Performance Focused Negotiations

When negotiating a contract, it is recommended to focus on performance results as opposed to focusing exclusively on purchasing goods and services. If the agency is aiming to reduce the cost, examine the various methods of reducing cost and do not just focus on respondent's profit reduction. If the agency negotiator is willing to be creative during the negotiations process, within the bounds of the published solicitation, the successful respondent is much more likely to collaborate in finding ways to reduce costs to the agency. The end goal in a negotiation focused on performance results is a mutually beneficial agreement where the successful respondent makes a reasonable profit but also delivers the products/services on time with the highest possible quality.

Negotiation is based on the willingness of each party to compromise. From time to time, however, negotiations may be highly stressful, time sensitive, and take an unexpected turn. The agency's negotiation team should remain professional and cordial at all times. Effective listening, establishing goodwill, and the ability to leverage negotiations are important components to creating value and bargaining power.

Contract Formation

Overview

When negotiations are complete, a contract documenting the parties' negotiation and the terms and conditions of the performance must be finalized. Texas courts define a contract as a promise or a set of promises to which the law attaches legal obligation.[384] The law regards the performance of these promises as a duty and provides a remedy for the breach of this duty. Contracts that deviate substantially from requirements defined in the solicitation are open to challenge from unsuccessful respondents. Awarding a different project from the one solicited undercuts competition and the contract could be considered void due to a violation of ESBD posting requirements. For example, if a solicitation was for bicycles, but the award was given for scooters, that award would undermine the specifications of the solicitation and would be considered a substantial deviation from requirements.

Approach to Contract Formation

Fundamentally, the purpose of a written contract is to serve as a reference document that records the terms of an agreement to prevent misunderstanding or conflict, and creates a legal, binding and

[384] *C & H Transportation Company v. Wright*, 396 S.W.2d 443, 446 (Civ App.-Tyler 1965, ref. n.r.e.).

enforceable obligation. Most often, conflicts over contracts arise well into a contract period when memories may be unreliable and representatives of the agency or vendor may have changed. With this in mind, clarity of the terms and completeness of the issues addressed are of primary importance. The individual drafting the contract must know the subject matter and concerns of the parties thoroughly enough to anticipate potential areas of disagreement and specifically address them in the contract.

Thoroughness and precision are necessary to determine the scope of a contract because contract law does not allow parties to add terms not part of the original contract without the consent of both parties. This rigidity in contract law is mostly seen as an advantage to both parties. However, this advantage may become a liability if the agency does not include all necessary language in the contract when executed.

Creating contracts for the State is an exercise in balancing potential conflicting interests. These interests include the State's requirements, fiscal constraints, statutory requirements, and the contractor's requirements. The primary concern must always be the benefit of the contract to the State as a whole, or more specifically, the taxpayers of the State.

When negotiating in the best interest of the State, care should be taken not to include unnecessarily harsh provisions in the contract; while such provisions may be legal, they usually have negative future consequences that outweigh the initial gains. Contractors who feel they have been aggrieved by the State are less likely to provide good service and are more apt to engage in legal action. In addition, these contractors may decide to not pursue future State contracts, thus limiting future competition. Contractors that hear of bad experiences with State contracts from incumbent or previous contractors may demand more money on future contracts to do the same work to offset the perceived risk.

Legal Elements of a Contract

The essential elements necessary to form a binding contract are usually described as follows:

- Offer
- Acceptance
- Legal Purpose
- Consideration
- Certainty of Subject Matter
- Competent Parties

Offer – An offer is defined as the manifestation of the willingness to enter into a bargain so made as to justify another person in understanding that his assent to the bargain is invited and will conclude it.

Acceptance – Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer. An acceptance must not change the terms of an offer. If it does, there is no "meeting of the minds" and the offer is rejected. A material change in a proposed contract constitutes a counteroffer, which must be accepted by the other party for there to be a binding contract between the parties. Generally, agencies structure their contract process so that they have the last look at the document and the last opportunity to accept or reject.

Legal Purpose – The objective of the contract must be for a legal purpose. For example, a contract for illegal distribution of drugs is not a binding contract because the purpose for which it exists is not legal. A contract for which the agency does not have statutory authority may be considered void.

Consideration – Consideration is present when each party receives something under the contract. The same concept can be described as "mutuality of obligation." Mutuality of obligation refers to the idea that both parties make binding promises under the contract. If one person says to another, "For your birthday tomorrow, I will bring you a cupcake," that is a promise. However, because only one party has made a promise, it cannot be considered as a contract. There is no consideration. If the parties agree that one will sell the other a cupcake for $2, each party has made a promise. The promises depend on each other, and each party will receive something of value as consideration. This is a mutual obligation and could be a contract. Consideration can take many forms other than money. For example, the promise not to do something can be a valid and valuable consideration.[385]

Certainty of Subject Matter – To be enforceable, the parties must have agreed on the essential terms of the contract. A contract is legally binding only if the essential terms are sufficiently defined to enable a court to understand the parties' obligations. For example, in an agreement to lease office space, the location of the offices is an essential term. The lack of non-essential terms will not typically

[385] It should be noted that there are limited circumstances where consideration may not be required in order to have a binding contract. For example, promises to pay past debts are usually enforced without consideration, although most states required signed writing. Additional examples, among others, are promises to pay for benefits or services previously received (especially requested services or emergency) and promises which foreseeably induce reliance. Promises which foreseeably induce reliance will be enforceable without consideration under promissory estoppel doctrine if injustice can only be voiding by doing so.

void a contract.[386] For example, if an office lease fails to specify how rent will be paid, a court would likely say that the rent can be paid by cash or check or other generally accepted methods. Historically, Texas courts prefer to validate transactions rather than void them, but courts may not create a contract where none exists and they generally may not insert or eliminate essential terms.

A contract that includes an agreement to reach an agreement on an essential term will not be upheld. For example, the amount of monthly rent could be an essential term in a lease agreement. If the contract merely says that the parties will agree on that amount, the court cannot order them to agree. The court cannot supply an essential term. Because an essential term is missing, there is no contract. If the contract says, instead, that the rent will be calculated from a certain benchmark, or determined by a third-party expert, that is not merely an agreement to agree. The contract references an objective method for determining the rent, and thus it could be enforced.

Competent Parties – Parties to a contract must be competent and authorized to enter into a contract.

Contract Terms

As directed by Section 2262.051(d)(1) of the Texas Government Code, this Guide must provide model contract provisions which distinguish between essential provisions that an agency must include in a contract to protect the interests of the State and recommended provisions that an agency may include in a contract. This Guide must also recognize the unique contracting needs of the individual agencies and provide sufficient flexibility to accommodate those needs, consistent with protecting the interests of the State.[387]

The Essential Provisions that must be included in every contract are as follows:

1. Terms Necessary for the Formation of a Legally Binding Contract. The necessary elements of a contract are offer, acceptance, legal purpose, consideration, certainty of subject matter, and competent parties. Accordingly, each contract must include terms which address the following:
    - Scope of work,
    - Financial provisions (*e.g.*, price and payment terms),
    - Contract term and termination provisions, and
    - Identification of the contracting parties.

    By their nature, these terms are transaction-specific; therefore, the text will vary for each contract.
2. Texas Required Contract Clauses. The most common statutorily required contract clauses are compiled on the list of Texas Required Contract Clauses located in Appendix 24. For each required contract clause, the compendium provides both standard and alternate text that serves as a safe harbor for compliance with the applicable statute. It is recommended that public procurement professionals seek assistance from agency legal counsel prior to modifying the standard or alternate text specified for the Texas Required Contract Clauses as slight variations may result in the agency's non-compliance with applicable statutes and rules.

Provisions that are recommended for inclusion in agency contracts are located in Appendix 25. While the Recommended Clauses are not mandated by statute to be included in every contract, they should not be treated as "optional." Rather, the Recommended Clauses are provisions that are typically included in most contracts. Recommended Clauses include, but are not limited to, the following:

- Administrative provisions,
- Provisions that allocate risk and specify remedies,
- Provisions that relate to the identification and safeguarding of confidential information, and
- Provisions that relate to rights and ownership of work product and intellectual property.

Agencies, therefore, are strongly encouraged to include the appropriate Recommended Clauses in each contract. The determination as to the appropriateness of a particular contract term is dependent on the characteristics of the transaction. By way of example, agencies must include provisions in the contract that address risk mitigation and remedies that are appropriate for the risks identified for the procurement. Refer to the Terms and Conditions and the Planning and Risk Assessment Tools sections of this Guide for general information regarding risk mitigation strategies and sample tools for documenting potential risk.[388]

[386] TEX. BUS. & COM. Code § 2.204 (providing (a) contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract, (b) an agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined, and (c) even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy).

[387] TEX. GOV'T CODE § 2262.051(d)(2).

[388] Agencies should document in the procurement file the basis for the risk mitigation and remedies included in the contract and any amendments, renewals, or extensions. For procurements subject to Chapter 2261 of the Texas Government Code, an agency must include in the procurement file for each of its contracts a written explanation of the agency's decision to include or not include in the contract a provision for liquidated damages or another form of liability for damages caused by the contractor. The procurement file must also include, if applicable, a written justification for any provision in the contract that limits the liability of a contractor for damages. If an extension of an agency's contract modifies a provision for liquidated damages or another provision relating to a contractor's liability for damages, the agency must amend the written explanation or justification required by this section to include a justification for the modification. TEX. GOV'T CODE § 2261.204.

The list of Recommended Contract Clauses located in Appendix 25 includes "sample" text for terms commonly found in agency contracts. The list of Recommended Contract clauses does not include "sample" text for terms that by their nature are highly negotiable, unique to a particular type of transaction, or descriptive of an individual agency's business practice because it is expected that the wording of those clauses in each contract will vary due to the specific contracting needs of the individual agencies.

It is common practice for each contracting entity to want to utilize its respective standard terms and conditions, often referred to as "boilerplate," in order to provide uniformity across the entity's transactions. When drafting a contract, care should be taken not to automatically adopt terms and conditions, even boilerplate, from another contract without a thorough and independent review of how those terms and conditions relate to the current purchase.

Each agency must ensure that the contract terms suit the particular purchase and are enforceable.[389] Purchases made with federal funds, for instance, may have specific contract requirements. Agencies are encouraged to ask federal agencies administering the particular grant programs to designate the contract terms required to be included in the State's subrecipient agreements. Except for contract terms that are contrary to public policy or that may be void, voidable or severable from a contract, the types of contract terms that may be included in a contract are only limited by the creativity of the drafter.

Authority to Contract

A threshold issue in government contracting is whether an agency has statutory authority to contract. One should not presume or rely on the implied authority of an officer or agency of the state to contract. Only persons having actual authority to act on behalf of the State can bind the State in a contract. The powers of all state officers are set by law. All persons dealing with state officers must know the limits of their authority and determine if the contemplated contract is within their statutory authority.

Form of the Contract

Evidence of an agreement or contract can be documented in different formats including, but not limited to, a "four-corner contract" and a PO. Each of these forms of contract has advantages and disadvantages. Determining the most appropriate format should follow an assessment of the risks involving contract construction or interpretation. The contract delivers an offer in a form requested by the agency and the agency indicates acceptance of the offer. The documents that comprise the offer and acceptance are the evidence of the agreement.

In a "four-corner" contract, all the provisions are contained within the four-corners of a single document. This type of contract must be signed by an authorized representative of the parties. Contract management is sometimes easier when all of the provisions regarding the duties, obligations and responsibilities of each party is logically organized within one document. On the other hand, "four-corner" contracts require more time to plan and prepare.

An alternative to the "four-corner" contract is a layered approach in which the solicitation, response, and other documents are incorporated by reference into or attached to a top level document such as a formally signed agreement or PO. The top level document should be carefully drafted to incorporate all documents that are part of the agreement and address any conflicts between them. All final terms and conditions that vary from either the solicitation or the vendor's offer should be specifically identified.

Depending on the transaction, the PO will be either the contract or an associated contract document issued to encumber funds for a "four-corner" contract. The PO will generally refer to or incorporate either an existing contract or an offer made by a vendor. For example, an agency may issue a PO against an existing DIR schedule contract to purchase laptop computers. A PO can also be used to accept or counter a vendor's quote for a purchase made under delegated authority. The agency should carefully review the terms and conditions of the incorporated contract or offer to make sure they meet the agency's needs. The agency may include its own terms and conditions on a PO to supplement the existing contract or to address unacceptable terms proposed by the vendor.

A PO should contain at a minimum the following:

- Agency name and address
- Agency contract or Purchase Order number
- Date of the order
- Term of contract (delivery period after receipt of order or beginning and ending dates of service)
- Contractor's name, payee/vendor identification number, and address, including zip code
- NIGP Class/Item code for each item
- Purchase Category Code
- List of contract documents and their order of precedence:
    - » The "four-corner" contract or PO with listing of awarded items

[389] *See e.g.,* TEX. GOV'T CODE § 552.104(c) (providing that a contract provision is void if it prohibits or otherwise prevents the disclosure of information relating to the receipt or expenditure of public or other funds by a governmental body for a parade, concert, or other entertainment event paid for in whole or part with public funds).

  - » The original solicitation documents, as modified by addenda
  - » The proposal submitted by the contractor as modified by any best and final offer
  - » The assumptions and exceptions as agreed upon by the agency and the contractor
- Listing of awarded items with quantity, unit of measure, and unit price with extended totals
- Signature of authorized/certified purchasing representative

Contract Award & Amendment

Overview

Once the contract or contract amendment has been finalized, the agency must determine whether review by an oversight agency is required and, if applicable, obtain the requisite approval(s) prior to execution of the contract or amendment. To ensure compliance with applicable procurement law, pre-award due diligence checks should also be conducted. Pre-award contract and amendment compliance checks include confirmation that certain internal reviews and approvals have been performed, required disclosure statements have been completed, and verification that the award to the selected vendor or an amendment to an existing contract is not prohibited by law.

Pre-Award Contract and Contract Amendment Notifications, Reviews & Approvals by Oversight Agencies

Major Information Resources Projects

An agency may not spend appropriated funds for major information resources project unless the project has been approved by the LBB in the agency's biennial operating plan and the QAT.[390] A project plan must be developed for each major information resources project.[391] An agency is required to file a Project Plan with the QAT before the agency spends more than 10 percent of allocated funds for a major information resources project.[392]

For each contract for the development or implementation of a major information resources project with a value of at least $10 million, the agency will

1. submit the proposed terms of the contract to the QAT before the start of negotiations; and
2. submit the final negotiated unsigned contract to the QAT for review.[393]

If the QAT makes a recommendation pertaining to the proposed terms of the contract, the agency must either

1. comply with the recommendation; or
2. submit to the QAT a written explanation regarding why the recommendation is not applicable to the contract under review.[394]

An agency may not amend a contract for a major information resources project with a value of at least $10 million if the contract is at least 10 percent over budget or the associated major information resources project is at least 10 percent behind schedule unless the agency (1) conducts a cost-benefit analysis with respect to canceling or continuing the project and (2) submits the cost-benefit analysis to QAT.[395]

Prior to amending a contract related to a major information resources project, an agency must notify the governor, lieutenant governor, speaker of the house of representatives, presiding officer of the standing committee of each house of the legislature with primary jurisdiction over appropriations, and the QAT if:

1. the total value of the amended contract exceeds or will exceed the initial contract value by 10 percent or more; or
2. the amendment requires the contractor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables.[396]

An agency will also provide to the QAT a justification for an amendment to a contract related to a major information resources project if:

1. the total value of the amended contract exceeds or will exceed the initial contract value by 10 percent or more; or
2. the amendment requires the contractor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables.[397]

Information regarding the steps involved in initiating, monitoring, completing, and submitting deliverables and contract documents to the QAT for a major information resources project is available on the Project Delivery Framework page located on the DIR website[398] and in the Quality Assurance Team Policies and Procedures Manual located on the QAT website.[399]

390 TEX. GOV'T CODE § 2054.118(a).
391 TEX. GOV'T CODE § 2054.304(a).
392 TEX. GOV'T CODE § 2054.304(b).
393 TEX. GOV'T CODE § 2054.160(a).
394 TEX. GOV'T CODE § 2054.160(b).
395 TEX. GOV'T CODE § 2054.1181(j).
396 TEX. GOV'T CODE § 2054.160(c). *See also* General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 9.02(f)-(g).
397 TEX. GOV'T CODE § 2054.160(d). *See also* General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 9.02(h) (providing that if a state agency cancels a contract for development of a major information resources project, which if amended would be subject to the requirements of Subsection (f), and issues a solicitation for identical or similar goods and/or services for development of the same project, then the contract must be submitted to QAT prior to execution).
398 The DIR website is located at www.dir.texas.gov.
399 The QAT website is located at www.qat.dir.texas.gov.

DIR – Statements of Work

Agencies are required to prepare and submit to DIR certain Statement of Work (SOW) for contracts that exceed $50,000. DIR must sign the SOW before it becomes valid, and any money is paid to the vendor.[400]

Notification of Proposed Assignment of Services Contract

At least 14 days before an agency rejects or approves a contractor's proposed assignment of rights under a services contract, the agency must notify the LBB of the proposed assignment if the contract subject to the assignment

1. is for a major information resources project; or
2. involves storing, receiving, processing, transmitting, disposing of, or accessing sensitive personal information[401] in a foreign country.[402]

Notification of Contract Extension

At least 30 days prior to the execution of an extension to a contract beyond the base term and any optional extensions provided in the contract, the agency must notify the LBB by uploading required information to the LBB contracts database on a form prescribed by the LBB.[403]

Pre-Award Contract and Contract Amendment Compliance Checks

Agency Reviews and Approvals

AGENCY VERIFICATION OF USE OF BEST VALUE STANDARDS

The Contract Manager or Procurement Director of the agency must

1. approve each agency contract for which the agency is required to purchase goods or services using the best value standard;
2. ensure that, for each contract, the agency documents the best value standard used for the contract;
3. acknowledge in writing that the agency complied with the agency's contract management guide and this Guide in the purchase; and
4. ensure that the agency shall evaluate the contractor's performance based on:
    - information prepared by the agency in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;
    - compliance with the material terms of the contract;
    - ability to correct instances of contractual non-compliance; and
    - other evaluation criteria presented in the VPTS.[404]

AGENCY VERIFICATION OF COMPLETE PROCUREMENT FILE

Prior to contract award, the agency's contract manager or procurement director[405] must:

1. review the contents of the contract file for the contract, including the checklist, to ensure that all documents required by state law or applicable agency rules are complete and present in the file; and
2. certify in a written document to be included in the contract file that the review required under paragraph (1) was completed.[406]

[400] TEX. GOV'T CODE § 2157.0685; 1 TEX. ADMIN. CODE § 212.41.

[401] The term "sensitive personal information" has the meaning assigned by Section 521.002 of the Business & Commerce Code. TEX. GOV'T CODE § 2262.056(a).

[402] TEX. GOV'T CODE § 2262.056(c).

[403] General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 17.09(e). Required information for the contract extension includes, but is not limited to, the following: the cost of the contract; the duration of the contract; the reason for the extension of the contract; and a plan to ensure that the contract can be completed within the extension period, signed by the executive director or other similar agency or institution administrator, or designee of the agency or institution. Additional reporting requirements may also apply.

[404] 34 TEX. ADMIN. CODE § 20.217(a).

[405] For the required certification, an agency's contract manager or procurement director may delegate to a person in the agency's procurement office. TEX. GOV'T CODE § 2262.053(g).

[406] TEX. GOV'T CODE § 2262.053(f).

AGENCY VERIFICATION OF VENDOR ASSESSMENT PROCESS

For procurements subject to Chapter 2261 of the Texas Government Code, the agency's procurement director, prior to contract award, must review the process and all documents used by the agency to assess each vendor who responded to the solicitation. The procurement director must certify in writing that:

1. the agency assessed each vendor's response to the solicitation using the evaluation criteria published in the solicitation or, if applicable, the written evaluation criteria established by the agency; and
2. the final calculation of scoring of responses was accurate.[407]

In addition, an agency must justify in writing any change in the scoring of a vendor that occurs following the initial assessment and scoring of responses. The written justification must be reviewed by the agency's procurement director. The procurement director must certify in writing that the change in scoring was appropriate.[408] The required written certification or justification must be placed in the procurement file.[409]

If an agency awards a contract to a vendor who did not receive the highest score in the assessment process certified by the procurement director, the agency must state in writing in the contract file the reasons for making the award.[410]

AGENCY VERIFICATION OF VPTS REPORTING COMPLIANCE

If the value of the contract exceeds $5 million, an agency may not extend the contract until the agency reports to the VPTS the results of each review of the vendor's performance conducted at least once each year during the term of the contract and at each key milestone identified for the contract, as applicable.[411]

AGENCY VERIFICATION OF CONTRACT EXTENSION COMPLIANCE

Agencies must minimize the use of extensions that extend a contract beyond the base term and any optional extensions provided in a contract. An agency may not use funds appropriated elsewhere in the General Appropriations Act to pay for an extension to an existing agency contract beyond the base term and optional extensions provided for in that contract unless all of the following conditions are met:

1. The extension is limited in duration and cost to not more than one additional option period, as defined in the contract, to address the immediate operational or service delivery needs. If a contract does not contain a defined option period, the extension is limited to one year.
2. The agency provides notice of the extension, at least 30 days prior to execution of the extension, by uploading required information to the LBB contracts database on a form prescribed by the LBB.[412]

AGENCY SIGNATURE - CONTRACTS WITH A VALUE EXCEEDING $1 MILLION

An agency may enter into a contract for the purchase of goods or services that has a value exceeding $1 million only if the governing body of the agency approves the contract and the approved contract is signed by the presiding officer of the governing body.[413] If the agency is not governed by a multi-member governing body, the officer who governs the agency is required to approve and sign the contract.[414] The approval and signature authority for contracts with a value exceeding $1 million may be delegated by the governing body or governing official of the agency to the executive director or a deputy executive director of the agency.[415]

AGENCY VERIFICATION - CONTRACTS WITH A VALUE EXCEEDING $5 MILLION

An agency that develops a contract for the purchase of goods or services that has a value exceeding $5 million is required to have its contract management office or procurement director verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy.[416] Furthermore, information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process must be submitted to the governing body of the agency or the governing official of the agency if the agency is not governed by a multimember governing body.[417]

[407] TEX. GOV'T CODE § 2261.0525(a). A state agency's procurement director may delegate to a person whose position in the agency's procurement office is at least equal to the position of contract manager the certification authority under this section if the agency has met the conditions prescribed by the comptroller under Section 2262.053(h) of the Texas Government Code. TEX. GOV'T CODE § 2261.0525(c).
[408] TEX. GOV'T CODE § 2261.0525(b).
[409] TEX. GOV'T CODE § 2261.0525(d).
[410] TEX. GOV'T CODE § 2261.054.
[411] TEX. GOV'T CODE § 2155.089(b-1).
[412] General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 17.09(e).
[413] TEX. GOV'T CODE § 2261.254(c).
[414] TEX. GOV'T CODE § 2261.254(c).
[415] TEX. GOV'T CODE § 2261.254(d).
[416] TEX. GOV'T CODE § 2261.255.
[417] TEX. GOV'T CODE § 2261.255.

Agency Review of Required Disclosures

SAO NEPOTISM DISCLOSURE STATEMENT FOR PURCHASING PERSONNEL

For contracts that are valued at $1 million or more, all purchasing personnel working on the contract must disclose the relationship (if any) with the selected vendor (or any employee, partner, major stockholder, paid consultant with a contract with the business entity the value of which exceeds $25,000, or owner of the business) to the administrative head of the agency on a form prescribed by SAO.[418] The SAO Disclosure Statement for Purchasing Personnel is located on the SAO website.[419]

TEC DISCLOSURE OF INTERESTED PARTIES (FORM 1295)

Vendors are required to complete the Form 1295 Certificate of Interested Parties which is located on the TEC website for certain contracts with a value of $1 million or more, that require an action or vote by a governing body, or are for services that would require a person to register as a lobbyist under Chapter 305 of the Texas Government Code.[420] Before contract award, the vendor must submit to the agency a completed and signed form with the certificate of filing number and date.[421] The Contract Developer then acknowledges the Form 1295 at the TEC website. It is best practice to include a reference to Form 1295 in the solicitation in order to allow the vendor to gather the pertinent information early in the process.

PROCUREMENT AND CONTRACT MANAGEMENT CONFLICT OF INTEREST DISCLOSURE

Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.[422] A state agency employee or official is required to disclose any potential conflict of interest specified by state law or agency policy that is known by the employee or official at any time during (1) the procurement process, from the initial request for bids for the purchase of goods or services from a private vendor until the completed final delivery of the goods or services, or (2) the term of a contract with a private vendor.[423]

418 TEX. GOV'T CODE § 2262.004.

419 The SAO website is located at www.sao.texas.gov.

420 The Texas Ethics Commission website is located at www.ethics.state.tx.us. *See* Appendix 4 for additional information.

421 TEX. GOV'T CODE § 2252.908.

422 TEX. GOV'T CODE § 2261.252(a).

423 TEX. GOV'T CODE § 2261.252(a-1).

Vendor Compliance Verifications

DEBARMENT CHECK

The Contract Developer (purchaser) must check the debarred vendor list posted on the CPA website[424] to establish that the vendor has not been debarred by SPD. An agency may not award a contract to a debarred vendor.[425]

FEDERAL DATABASE CHECKS

The Contract Developer (purchaser) must check the SAM (System for Award Management) database to verify that the vendor is not excluded from contract participation at the federal level. In addition, a contract cannot be awarded to a vendor named on the U S Treasury Department, Office of Foreign Assets Control's (OFAC) master list of Specially Designated Nationals & Blocked Persons (with limited exceptions set forth in the Order). The SAM database is not the same as the OFAC Master List. However, the data from the OFAC master list can be found within SAM database. The SAM database is operated by the U.S. General Services Administration, while the OFAC master list is administered by the U.S. Department of Treasury.[426]

IRAN, SUDAN, & FOREIGN TERRORIST ORGANIZATION CHECK

Governmental entities[427] may not contract with a company doing business with Iran, Sudan, or a foreign terrorist organization.[428] Prior to award, the Contract Developer (purchaser) must check the divestment lists[429] to determine if the potential awardee is in violation of this requirement. The divestment lists are maintained by the Texas Safekeeping Trust Company and posted to the CPA website.[430] If the business is in violation, the contract may not be awarded to that vendor.

424 The CPA website is located at Comptroller.Texas.Gov.

425 TEX. GOV'T CODE § 2155.077.

426 Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism prohibits U.S. individuals or entities from making any contribution of funds to, or for the benefit of, entities or persons named on the U.S. Treasury Department, Office of Foreign Assets Control's master list of Specially Designated Nationals & Blocked Persons (with limited exceptions set forth in the Order).

427 TEX. GOV'T CODE § 2252.001(2) (defining the term "governmental entity" to include the state; a municipality, county, public school district, or special-purpose district or authority; a district, county, or justice of the peace court; a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education; the Legislature or a legislative agency; and the Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction.).

428 TEX. GOV'T CODE § 2252.152.

429 These lists are maintained by the Texas Safekeeping and Trust Company in accordance with TEX. GOV'T CODE § 2252.153.

430 The CPA website is located at Comptroller.Texas.Gov.

BOYCOTT ISRAEL CHECK

If the contract is (1) between a governmental entity[431] and a company[432] with 10 or more full-time employees and (2) has a value of $100,000 or more that is to be paid wholly or partly from public funds of the governmental entity, then the governmental entity may not contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract.[433] Prior to award, the Contract Developer (purchaser) must check the divestment lists[434] to determine if the potential awardee is in violation of this requirement. The divestment lists are maintained by the Texas Safekeeping Trust Company and posted to the CPA website.[435]

ENERGY COMPANY BOYCOTT CHECK

If the contract is (1) between a governmental entity[436] and a company[437] with 10 or more full-time employees and (2) has a value of $100,000 or more that is to be paid wholly or partly from public funds of the governmental entity, then the governmental entity may not contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott energy companies and will not boycott energy companies during the term of the contract.[438] Prior to award, the Contract Developer (purchaser) must check the divestment lists[439] to determine if the potential awardee is in violation of this requirement. The divestment lists are maintained by the Texas Safekeeping Trust Company and posted to the CPA website.[440] This requirement does not apply to a governmental entity that determines the requirements are inconsistent with its duties related to debt obligations or funds.

WARRANT/PAYMENT HOLD CHECK

The Contract Developer (purchaser) must check warrant hold status of the vendor in the following circumstances: (1) transaction involves a written contract, (2) payment is made with local funds, or (3) payment card purchase is over $500.[441] The agency cannot proceed with a purchase made with local funds or a payment card purchase over $500 until the warrant hold has been released.

For transactions involving a written contract,[442] the warrant hold check must be performed not earlier than the seventh day before and not later than the date of contract execution. If the vendor is on warrant hold, the agency may not enter into a written contract with the person unless:

1. the contract requires the agency's payments under the contract to be applied directly toward eliminating the person's debt or delinquency, and
2. the requirement described in paragraph (1) specifically applies to any debt or delinquency, regardless of when it arises.[443]

Payments made through the Uniform Statewide Accounting System (USAS) are automatically checked for holds and the system identifies payments issued to persons with outstanding state debt.

FRANCHISE TAX CHECK

It is recommended that the Contract Developer (purchaser) search the vendor's franchise tax account status using the online Certificates of Account Status Directory located on the CPA website.[444] Not all vendors are required to pay franchise tax. The Texas franchise tax is a privilege tax imposed on each taxable entity formed or organized in Texas or doing business in Texas. CPA is required by law to forfeit a company's right to transact business in Texas if the company has not filed a franchise tax report or paid a franchise tax required under Chapter 171 of the Tax Code.[445] If the corporate privileges are forfeited, the entity will be denied the right to sue or defend itself in a Texas court and each director or officer will be liable for the debt of the entity.[446] It is recommended that the Contract Developer (purchaser) seek assistance from agency counsel prior to proceeding with an award to a vendor that does not have the right to transact business in Texas.

431 TEX. GOV'T CODE § 2271.001(3) (refers to TEX. GOV'T CODE § 2251.001 which defines "governmental entity" to mean a state agency or political subdivision of this State).

432 The term "company" has the meaning assigned by Section 808.001 of the Texas Government Code, except that the term does not include a sole proprietorship. TEX. GOV'T CODE § 2271.001(2).

433 TEX. GOV'T CODE § 2271.002.

434 TEX. GOV'T CODE § 808.051.

435 The CPA website is located at Comptroller.Texas.Gov.

436 TEX. GOV'T CODE § 2271.001(3) (refers to TEX. GOV'T CODE § 2251.001 which defines "governmental entity" to mean a state agency or political subdivision of this State). (added by Senate Bill 13, 87th R.S).

437 The term "company" has the meaning assigned by Section 809.001 of the Texas Government Code, except that the term does not include a sole proprietorship. TEX. GOV'T CODE § 2274.001(2) (added by Senate Bill 13, 87th R.S).

438 TEX. GOV'T CODE § 2274.002(c).

439 TEX. GOV'T CODE § 809.051.

440 The CPA website is located at Comptroller.Texas.Gov.

441 Restricted Expenditures – Persons Indebted to State policy located in eXpendit State Purchase Policies posted on the CPA website.

442 A "written contract" does not include a contract the payments for which must be made through CPA's issuance of warrants or initiation of electronic funds transfers under Sections 404.046, 404.069, or 2103.003 of the Texas Government Code. TEX. GOV'T CODE § 2252.903(e).

443 TEX. GOV'T CODE § 2252.903.

444 The CPA website is located at Comptroller.Texas.Gov.

445 TEX. TAX CODE § 171.251.

446 TEX. TAX CODE § 171.255. Information regarding entities registered to transact business in Texas may be found at www.sos.state.tx.us.

Preparation of Access to Agency Premises

Prior to contract award, the Contract Manager may initiate certain activities to facilitate both parties' timely performance under the contract. For instance, the Contract Manager may notify internal personnel of the pending contract award so that end user personnel and, if assigned, the project manager may prepare for the commencement of the contract. In addition, the Contract Manager may coordinate communications between the contractor and the agency that are necessary for the contractor's performance under the contract. For instance, before gaining access to the agency's premises, the contract may require that contractor personnel sign non-disclosure agreements and provide certain information that will be used by the agency to issue building identification badges, assign agency equipment and onsite workspace, or conduct criminal background investigations.

Contract & Amendment Notifications

Overview

Depending on the transaction, the agency may be required to provide one or more notifications of the contract award. These notifications may be in the form of a notice of award published to the ESBD or *Texas Register*, a report to an oversight agency, or a website posting. Agencies must timely comply with all required notifications.

ESBD Notice of Award

After the contract is awarded, a notification of award must be posted to the ESBD within two business days if the contract is expected to exceed $25,000.00.[447] The ESBD notice of award includes the following information:

- Requisition Number (as it was listed on the ESBD solicitation posting)
- Class/Item Code
- Agency Name
- Response Title (as it was listed on the ESBD solicitation posting)
- Dollar Amount Awarded
- Response Status (*e.g.*, full award, partial award, multiple award, canceled)
- HUB Certification Status
- Vendor Name
- Vendor Address

In the event the action resulting from the ESBD posting is not a contract award, the agency must post notice of the non-award to the ESBD within two business days.[448] Depending on the procurement, an agency may also choose to notify each respondent in writing of the non-selection. The Contract Developer must maintain proof of the ESBD posting in the procurement file.

Texas Register Notice of Award

Solicitations using certain procurement methods must be advertised in the *Texas Register*.[449] For procurement methods not addressed in this Guide, it is recommended that agencies refer to their enabling legislation to determine if publication of a notice of award in the *Texas Register* is required. A copy of the *Texas Register* notice must be placed in the procurement file. *Texas Register* posting requirements are in addition to ESBD posting requirements.

Major Information Resources Project Notification

An agency must notify QAT within 10 business days when the agency awards a contract for a major information resources project that is equal to or greater than $10 million.[450]

LBB Reporting

Contracts that have a value that exceeds certain thresholds must be reported to the LBB. The submission must include any required documentation such as the solicitation documents, contract documents, and attestation letters.[451] These reporting requirements are fulfilled through the LBB Contracts Database located on the LBB website.[452] The database is the single point of data entry for all contract information that state entities are required to report to the LBB either by statute or the General Appropriations Act. The LBB Contract Reporting Guide[453] provides details on the types of contracts that must be reported to the LBB via the contracts database.

[447] TEX. GOV'T CODE § 2155.083(k)(2); 34 TEX. ADMIN. CODE § 20.214, 20.215(c); *See also* 34 TEX. ADMIN. CODE § 20.109.

[448] 34 TEX. ADMIN. CODE § 20.214(b)(2), 20.215(c). After the solicitation closing date, the ESBD accepts "No Award" not "Cancelled" as the status change from "Closed."

[449] *See e.g.,* TEX. GOV'T CODE § 2166.253.

[450] General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 9.02(c)(3).

[451] TEX. GOV'T CODE § 322.020 (The requirement to provide contract and solicitation attachments does not apply to a university system, an institution of higher education, the Texas Department of Transportation, or the Health and Human Services agencies.).

[452] The LBB website is located at www.lbb.state.tx.us.

[453] https://www.lbb.state.tx.us/Documents/Instructions/Contracts/Agency_User_Guide_2022-2023.pdf.

The chart below shows the reporting requirements for contracts that exceed certain dollar thresholds.

LBB Reporting Requirements			
Dollar Threshold	>$50,000	>$1M	>$10M
Type	• All Contract Types[1]	• Non-Competitive/ Sole Source[2] • Emergency[3]	All Contract Types[4]
Deadline	Within 30 days of award or modification	• Due within 15 days of contract award • Due within 5 days of contract award (Emergency)	Within 15 days of contract award

TABLE NOTES

1 General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 7.04. *See also* TEX. GOV'T CODE § 2166.2551, TEX. GOV'T CODE § 2254.006, TEX. GOV'T CODE § 2254.0301, TEX. GOV'T CODE § 2054.008.

2 General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 7.11(b)(2)(B).

3 General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 7. 11(b)(2)(A).

4 General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 7. 11(b)(1).

Additional information on exemptions, reporting requirements, and attestation letters required under the General Appropriations Act is posted on the LBB website.[454]

Agency Website Postings

Certain Agency Contracts

For contracts not posted to the LBB contracts database, an agency must post the following information about each private vendor contract to the agency's website:

1. the contract until the contract expires or is completed;
2. the statutory or other authority under which a contract that is not competitively bid is entered into without compliance with competitive bidding procedures; and
3. the request for proposals related to a competitively bid contract until the contract expires or is completed.[455]

The agency must redact the following from the posted contract:

1. information that is confidential under law,
2. information that the OAG has determined can be excepted from public disclosure under exceptions to Chapter 552 of the Texas Government Code, commonly known as the Texas Public Information Act, and
3. the social security number of any individual.[456]

For agency contracts for the purchase of goods or services from a private vendor that are valued at less than $15,000, the agency may post the required information monthly instead of upon award of contract.[457] Expressly excepted from the agency website posting requirement are contracts posted to the LBB contracts database, memoranda of understanding, interagency contracts, interlocal agreements, contracts for which there is not a cost, and institution of higher education contracts valued at less than $15,000 and paid with money other than funds appropriated to the institution.[458]

454 The LBB website is located at www.lbb.state.tx.us.

455 TEX. GOV'T CODE § 2261.253.

456 TEX. GOV'T CODE § 2261.253 (e) and (f).

457 TEX. GOV'T CODE § 2261.253(b).

458 TEX. GOV'T CODE § 2261.253(d) and (g).

DIR Statements of Work

Upon execution of the SOW by DIR, the agency must post the SOW on the agency's internet website as follows:

1. post the DIR SOW in its entirety, subject to the exceptions in the Texas Public Information Act and opinions of the Office of Attorney General;
2. maintain the posting, at a minimum, throughout the term of the SOW, including any renewals or extensions;
3. maintain a listing of the SOWs in alphabetical order by vendor name or numerical order by contract number in a central location; and
4. maintain a current agency contact person with related email address and phone number to contact for information regarding the SOW.[459]

Contracts Exceeding $100,000

Each agency, other than an institution of higher education, that receives an aggregate of $175 million or more in the General Appropriations Act for a state fiscal biennium shall post on a generally accessible website maintained by or for the agency a listing and description of all contracts with vendors that have a value exceeding $100,000 that the agency has entered into and that are currently being performed or for which performance has not yet begun.[460]

Debriefings

The Contract Developer, in accordance with agency procedures, may conduct a "debriefing" meeting at the request of an unsuccessful vendor. In preparation for the meeting, the Contract Developer must be prepared to discuss the strengths and weaknesses of the vendor's response relative to the advertised evaluation criteria as well as how the agency's decision complied with applicable procurement law and the published solicitation.

It is not uncommon for several vendor representatives to attend the meeting, which may be conducted by phone conference. A list of the vendor attendees should be requested in advance of the scheduled meeting. If the vendor's legal representative will attend the meeting, the Contract Developer should promptly notify agency legal counsel.

Debriefing meetings are limited to a discussion of the vendor's response — the Contract Developer must not engage in discussions about how the vendor's response compared to other responses. Care must be taken not to divulge confidential information regarding a competitor's response.

Debriefing meetings are beneficial to both the vendor and the agency. During the debriefing meeting, the vendor may obtain information as to why its response was unsuccessful so that it may apply "lessons learned" in future procurement initiatives with the State. Similarly, a debriefing meeting provides an opportunity for the agency to obtain valuable insight, from the vendor's perspective, of the procurement process.

Protest of Award

Each agency must adopt rules that provide an unsuccessful vendor with the opportunity to protest procurement actions.[461] When a protest is received, the agency must follow its rules to assess the merits of the vendor's protest and correct any unlawful procurement actions. Agencies should never assume that protests are frivolous; it is expected that most vendors would be reluctant to file a protest against an agency with which it wants to conduct business unless they believe that egregious errors occurred during the solicitation process. Even if the protest is not sustainable under the agency's protest rules, an agency should proactively make appropriate improvements to its procurement practices if any shortcomings are uncovered during the protest.

459 1 TEX. ADMIN. CODE § 212.41(c).
460 TEX. GOV'T CODE § 2054.126(d)(4).
461 TEX. GOV'T CODE § 2155.076.

CONTRACT MANAGEMENT

Overview

The final step in the procurement process is contract management. The objective of contract management is to ensure the contract is performed satisfactorily and the responsibilities of both parties — the agency and the contractor — are properly discharged. Effective contract management prevents, minimizes and resolves problems and potential claims and disputes. For contract management to be successful, the Contract Manager must be involved throughout the Procurement Cycle.

Transition from Contract Developer to Contract Manager

One of the first post-contract award activities is for the Contract Developer to transition the procurement to the Contract Manager. For relatively simple and routine procurements, like purchases using the set aside programs, Texas SmartBuy, or informal bidding, the transition activities may be documented as an agency procedure.

For high-risk and/or high-dollar procurements, it is best practice for internal staff to hold a post-contract award meeting. At a minimum, the meeting attendees should include the Contract Developer, the Contract Manager, end-users, and, if assigned, the project manager. During this meeting, the Contract Developer must ensure that the Contract Manager, as well as other stakeholders, have an understanding of the key procurement activities that have occurred prior to contract execution.

To the extent that the Contract Manager did not participate in pre-contract award procurement activities, the Contract Developer should facilitate the transition of documents and foundational knowledge of the solicitation and contract. Specifically, the Contract Developer must provide a thorough review of the scope of work and relay the contract terms and conditions, agreed-upon inspections and acceptance criteria, extension and renewal potential, and articulated remedies. After the agency team has been briefed on the events preceding the contract award, it is incumbent on the Contract Manager to begin the administration of the contract.

Contract Manager Responsibilities

The Contract Manager is responsible for ensuring that the contract requirements are satisfied, that the products and services are delivered in a timely manner, and that the financial interests of the agency are protected. The Contract Manager must have a thorough understanding of all components of the solicitation and contract. The Contract Manager should also be experienced with the type and size of the purchase. The extent of contract administration will not be the same for all contracts. The level of contract administration should be consistent with the complexity and level of risk of the contract, the contract term, and dollar value.

All guidance provided to a contractor must be within the scope of the contract. Agencies must be careful to not impose additional requirements upon the contractor or manage the contractor's operations to the extent that the contractor is relieved of its responsibility to perform.

The primary responsibilities of the Contract Manager include the following:

- Participating with the procurement team in solicitation development and the review of contract documents;
- Serving as the primary point of contact for agency communication with the contractor regarding all matters pertaining to the contract;
- Managing any state property used in contract performance, (*e.g.*, computers, telephones, identification badges);
- Implementing a quality control and contract monitoring process;
- Monitoring the contractor's progress and performance to ensure products and services procured conform to the contract requirements and keeping timely records of findings;
- Consulting with agency legal counsel in a timely manner to address any legal concerns and/or issues;
- Managing, approving, and documenting any changes to the contract through the amendment process authorized by the terms of the contract;
- Inspecting and approving the products and/or services by submitting a written document accepting the deliverables or obtaining documentation from the end users responsible for receipt that inspection and approval have been completed;
- Verifying accuracy of invoices and authorizing payments consistent with the contract terms;
- Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract;
- Identifying and resolving disputes with the contractor in a timely manner;
- Exercising state remedies, as appropriate, when a contractor's performance is deficient;

- Maintaining appropriate records in accordance with the records retention schedule;
- Confirming all products and/or services have been delivered and delivery is completed prior to the expiration date of the contract; and
- Performing contract closeout processes by ensuring the contract file contains all necessary contract documentation, reporting vendor performance to VPTS, and documenting lessons learned.

Contract Managers are not authorized to

- Allow the contractor to commence work before the contract is fully executed;
- Change the scope or extend the term of the contract without complying with the formal amendment process prescribed by the contract;
- Authorize the contractor to perform work that is not specifically described in and funded by the express terms of the contract; or
- Allow the contractor to recover costs incurred prior to the effective date of the contract or recover costs above the budget limit set by the contract.

The number of participants in the contract administration process will vary from one to many depending on the size, level of risk and complexity of the contract. Early in the procurement process, the agency should identify staff, in addition to the assigned Contract Manager, who will participate in contract management. The assignment of roles and responsibilities should be documented in the contract file.

An agency must include in the procurement file for each of its contracts a checklist to ensure the agency's compliance with state laws and rules relating to the acquisition of goods and services by the agency.[462] The Contract Manager is responsible for maintaining a master contract file of records produced throughout the life of the contract. In the event the contract documents are not maintained in a central repository, the Contract Manager will maintain a list identifying the location of the contract documents. A sample Master Contract File Checklist is located in Appendix 28.

Planning and Risk Assessment Tools

Risk is the possibility that an event will occur and adversely affect the achievement of objectives.[463] Risks are inherent in all the stages of the procurement process. Appropriate planning and effective risk assessment are components of successful contract management. To aid agencies in the development of a procurement planning tool and risk assessment model, SPD has implemented two National Association of State Procurement Officials (NASPO) concepts: the Contract Administration Plan,[464] also known as an Acquisition Plan, and the Quality Assessment Plan (QAP).[465]

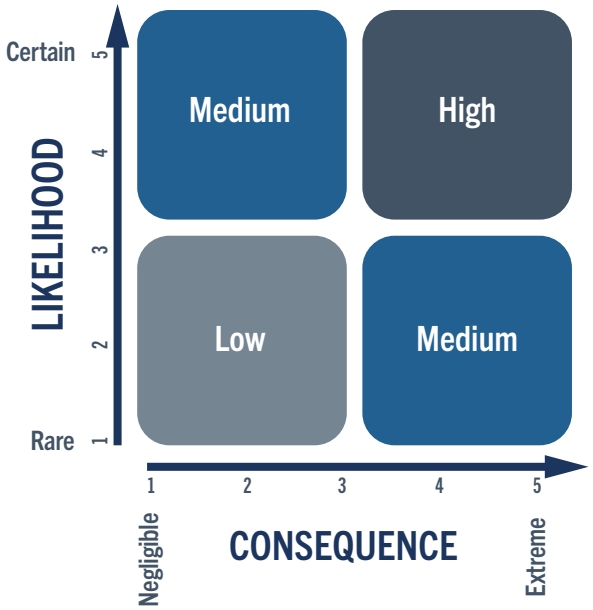
The Acquisition Plan is essentially a roadmap for achievement of the agency's business needs. The Acquisition Plan must be utilized early in the procurement process and will be provided by the Contract Developer to the Contract Manager during the post-award meeting to ensure a smooth transition from contract development to contract management. A sample Acquisition Plan is located in Appendix 7.

The QAP, on the other hand, is a tool that assists the Contract Manager in the assessment of risk and the monitoring of deliverables following contract execution. QAP tools include contract monitoring schedules and findings reports. Sample QAP tools are located in Appendix 26.

The analysis in risk assessment requires the following two estimates:

1. The likelihood of the event is estimated (*e.g.,* rare to almost certain).
2. The consequence of the event is estimated (*e.g.*, negligible impact to extreme).[466]

Various methodologies may be used by agencies to assess risk.



[462] TEX. GOV'T CODE § 2262.053(a). An agency may develop its own contract file checklist based on the procurement and contracting needs of that agency, provided that the checklist developed by the agency is consistent with CPA's model contract file checklist and meets any requirements established by CPA rule. TEX. GOV'T CODE § 2262.053(e).

[463] National Association of State Procurement Officials, *State and Local Government: A Practical Guide* 71 (Lexington 2nd ed. 2015).

[464] National Association of State Procurement Officials, *State and Local Government: A Practical Guide* 222 (Lexington 2nd ed. 2015).

[465] National Association of State Procurement Officials, *State and Local Government: A Practical Guide* 222 (Lexington 2nd ed. 2015).

[466] National Association of State Procurement Officials, *State and Local Government: A Practical Guide* 72 (Lexington 2nd ed. 2015).

Risk models may assess risk associated with each contract that is a part of the Contract Manager's workload (contract level risk assessment) as well as risk associated with each deliverable that is to be received from the contractor (deliverables, terms and conditions, level risk assessment). An effective risk assessment model will focus monitoring resources on contracts with the highest risk of noncompliance.

The first step in risk assessment is to identify the risk factors. Risk factors are indicators that the contract or project objectives will not be achieved.

General risk factors include, but are not limited to, the following:

- The contractor's previous experience with the type of work to be performed;
- The contractor's past performance (and past performance of similar contractors);
- The dollar value of the contract;
- Reimbursement methodology (*e.g.*, fixed price, time and materials, cost reimbursement);
- Acquisition complexity (*e.g.*, office supplies, temporary staff, design/build/implementation project, outsourcing project);
- Acquisition involves (agency and/or contractor) confidential and/or propriety information;
- Acquisition involves products or services that are relatively new in the marketplace;
- Acquisition involves the use of technology or implementation of processes that are new to the agency;
- Acquisition has an interdependency with other contracts;
- Acquisition has statewide impact (*e.g.*, involves large number of constituents, a vulnerable client population);
- Findings from monitoring efforts, such as the variance between expected and actual performance;
- Turnover in key personnel of the agency and/or contractor;
- Significant problems with payment requests;
- Results of monitoring visits with the same contractor that are completed by other divisions within the same agency or other agencies;
- The length of time since the last monitoring activity;
- The agency personnel experience with the product provided or the type of work to be performed; and
- Available level of effort to support the monitoring activities (*e.g.*, Contract Manager workload).

After the risk factors are identified, the Contract Manager will assign weights to each factor. Weights describe how significant each factor is in identifying the contracts that should be monitored. However, weights may also be designed to ensure statutory or policy requirements. For example, if the statute requires a site visit every three years, the assigned weight would be indicative of the period since the last site visit.

Next, the Contract Manager will rate each contractor on the risk elements. Consider using either a five point scale, where 5 is the highest risk and 1 is the lowest risk, or a three point scale, where 3 is high risk, 2 is medium risk and 1 is low risk.

It is important to note that the risk assessment is a dynamic process that should be updated regularly to reflect the results of monitoring visits, reviews of payment vouchers, desk reviews, etc. For example, if a contractor has fallen significantly behind schedule in delivering services to the targeted population, the risk assessment should be updated to indicate the elevated risk and this impacts how the contract is monitored in the future. Likewise, if a contractor is well ahead of schedule in delivering services to the targeted population, the risk assessment should be updated to indicate the lower level of risk.

Sample Risk Assessment. The agency has contracts with many contractors providing the same service. Only three contractors are rated in this example. Typically, there will be many different risk elements. For this example, only the following three risk elements are used: dollars, past performance, and experience.

1. Dollars:
    - 40 percent of the contractors receive less than $100,000 from the agency per year.
    - 50 percent receive between $100,000 and $250,000.
    - 10 percent receive more than $250,000.
2. Experience:
    - High Risk – the contractor has never done this type of work before.
    - Medium Risk – the contractor has contracted with the State before but not for this type of work.
    - Low Risk – the contractor has previously contracted with the State for the same type of work.
3. Past Performance: For this particular assessment, the agency has determined that the contractor is considered high risk if the contractor has at least one significant finding from a prior monitoring or three less significant findings.

Example Risk Assessment Analysis										
Contractor	Dollars			Experience			Past Performance			Total Risk
	Amount	Risk	Risk x Weight (0.2)	Results	Risk	Risk x Weight (0.5)	Results	Risk	Risk x Weight (0.3)	
#1	$300K	3	.6	Held previous contract with state	1	.5	3 minor findings	2	.6	.6 + .5 + .6 = 1.7
#2	$75K	1	.2	New to type of work	3	1.5	New – no findings	1	.3	.2 + 1.5 + .3 = 2.0
#3	$125K	2	.4	Used before – but not for this type of work	2	1.0	Previous year finding regarding safety	3	.9	.4 + 1.0 + .9 = 2.3

The contractors with the highest risk level must be monitored more closely. In this example, Contractor #3 has the highest risk, followed by Contractor #2 and #1, respectively. Contractor #3 has been used before and there was only one finding in regard to safety. This is the key area that requires close monitoring during the contract. The example can also be used for single contractors to focus on specific areas of risk within a contract and to assist agencies in determining which areas to monitor.

Post Award Contractor Conference

A post award conference is a meeting scheduled by the Contract Manager which includes the contractor and agency stakeholders. Conducted soon after the contract is awarded, the conference is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties. Although the contractor and the agency personnel should already be fully aware of the contract requirements, the post award conference ensures that anyone involved directly in the contract administration process understands all contract performance requirements.

Not every contract requires a formal post award conference, but there should be some form of discussion between the contracting parties after award to ensure that all parties are aware of the performance requirements and administrative procedures agreed in the contract. Care should be taken to ensure that discussions that occur during the post award conference do not result in performance expectations that do not align with the terms of the contract. A sample post award conference agenda is located in Appendix 27.

The Contract Manager should decide if a post award conference is necessary. For less complex, low risk, low-dollar value contracts, a telephone call with the contractor may be sufficient. During the telephone conversation, the agency should review the major points of the contract with the contractor, such as the value of the contract, major performance milestones, deliverables, reports, meetings) and time and place of delivery. Factors used to determine whether a post award conference is appropriate include:

- Type of contract;
- Level of risk associated with the contract;
- Value and complexity;
- Length of contract, period of performance and/or delivery requirements;
- Procurement history of the products or services required and expertise of the contractor;
- Urgency of delivery schedule;
- Agency's prior experience with the contractor;
- Any special or unusual contract requirements; and
- Any special or unusual payment requirements.

Monitoring Methods

Overview

Monitoring the contractor's performance is a key function of proper contract administration. The purpose is to ensure that the contractor is performing all contract obligations and for the agency to be aware of and address any developing problems or issues.

The Contract Manager will use QAP tools as an aid in determining which monitoring method is appropriate. Small dollar value or less complex contracts normally require little, if any, monitoring. However, that does not preclude more detailed monitoring if it is deemed necessary by the agency. Large dollar contracts may need little monitoring if the items or services purchased are not complex, and the agency is comfortable with the contractor's performance and the level of risk associated with the contract.

Agencies should implement a monitoring program that has well-defined follow-up actions. Follow-up is essential as a problem will not correct itself simply by identifying it in a monitoring report. The results for the monitoring efforts should be periodically reviewed by the Contract Manager to

- ensure corrective actions have been taken,
- identify common problem areas that might require training, and
- improve contract requirements for future contracts.

Agencies may select from different monitoring methods including desk reviews, site visits, and third-party monitoring, which are discussed in more detail in this section. Other monitoring methods include status telephone calls, expenditure document review, spot audits, and scheduled audits.

Telephone calls and meetings must be substantiated in writing and maintained as part of the procurement file. Such documentation must include the date and time that phone calls or meetings occurred as well as a summary of topics discussed (*e.g.*, meeting minutes) including pending action items and decisions that were made.

Desk Reviews

Typically, desk reviews are agency examinations of reports submitted by the contractor to the agency. Various types of reports may be required by the contract; however, to be an effective monitoring tool, the "type" of report should be tailored to the contract requirements. Examples of reports include progress reports, status reports, activity reports and financial reports. A Contract Manager should also review VPTS reports filed by other agencies for the contractor.

Progress Reports. Progress reports describe what has been accomplished over time. Progress reports assist the contractor in correcting or reevaluating the work being performed. These types of reports work best when they are tracking deliverables tied to specific milestones, so that progress can be documented as contract deliverables are completed.

Status Reports. Status reports describe achievement or current standing. A status report should be consistent with the organizational structure of the scope of work (*i.e.* phases, segments, deliverables and products). It should clearly identify what work is completed and what remains pending and how the status of those deliverables compares to the contract schedule. Only work that has been verified as completed or accepted should be categorized as complete.

If there are any unresolved issues that the agency is contractually obligated to resolve, those issues should be included in the status report and a resolution should be requested. If the scope of work has changed during the contract (by written contract amendment), care should be taken that status reports track the original contract schedule, not a revised contract schedule, unless the amendments provides for a revised contract schedule. If status is tracked against a revised schedule, there is a risk that the schedule will continually change and the status report will be rendered meaningless.

Activity Reports. Activity reports describe any activity on the project; project activity is not the same as a status report. A project may have a great deal of activity without making substantive progress. On the other hand, activity reporting can be a core feature of contract management. For example, a contractor payment in an outsourcing contract may be based on the number of completed transactions. In this example, activity reporting is critical to contract administration.

Financial Reports. Financial reports include financial statements, timesheets, and similar data, that substantiates the contractor's financial resources and ability to perform.

Vendor Performance Reports. Agencies are required to report vendor performance using the Vendor Performance Tracking System (VPTS) maintained by SPD. Accurately reporting contractor performance allows agencies to share vendor information and facilitates better oversight of state contracts (*e.g.*, aid in identifying vendors that have exceptional performance, protect the State from vendors with unethical business practices).

Considerations During Review. Agencies should review the vendor performance reports for the following factors:

- Compare the actual performance against the contract requirements. Is the contractor performing in accordance with the contract requirements?
- Compare actual expenditures to the approved budget. Is the contractor following its approved budget plan?
- Compare the current period to prior periods. Are there any unexplained trends? Is the contractor performing work significantly different from the last period or the last year?
- Compare what the current contractor is doing in comparison with other contractors performing similar work.
- Compare the relationships between key components of the report such as:
  - » the cost per unit of service or the percentage of the fees charged to the program;
  - » the change in variable costs compared to the units of service provided; and
  - » reported salaries with the submitted staffing plan.

Compare the report with what is known about the contractor's operating environment. Did a weather emergency in the area recently increase the cost of construction supplies or is the cause of a temporary reduction in services provided?

Site Visits

More complex contracts and any contracts that the agency perceives as having a higher degree of risk may require both desk reviews and visits to the contractor's facilities to ensure progress is in accordance with the contract schedule. Site visits may be used to verify actual performance against scheduled or reported performance. These visits can be an opportunity to verify that the contractor is dedicating sufficient resources and appropriate personnel to the contract. Although site visits are an efficient tool for monitoring, it is possible for a site visit to interfere with the contractor's ability to accomplish the work if monitoring is excessive or includes unnecessary checks; the Contract Manager should consider this when arranging visits.

Site Monitoring Checklist. To perform a site visit, the agency must develop a comprehensive site monitoring checklist that outlines the contract compliance requirements. The site monitoring checklist should be tailored for each contract. While there may be standard items that the agency will review for all contractors, each contract should be reviewed for specific site monitoring requirements that are unique to the contract and the Contract Manager should document findings from the site visit in a site monitoring report.

Site Monitoring Report. Upon completion of a site visit, the Contract Manager or designated site monitor must complete a standalone document that serves as a record of the site monitoring work. A copy of the site monitoring report should be sent to the contractor and any others who may benefit from the report.

Monitoring by Third Parties

In some instances, the obligation of monitoring the progress of a contract is assigned to another contractor. This is also known as independent oversight. For example, in the case of a construction contract, the task of ensuring progress in accordance with the contract may be performed by the architectural firm that provided the construction plans. For highly technical work, consultant subject matter experts may perform monitoring services independently or in conjunction with agency staff.

Enhanced Contract and Performance Monitoring

Agencies are required to utilize an enhanced monitoring method for high dollar and high-risk contracts. Enhanced monitoring is an increased level of monitoring, beyond the regular monitoring normally used. Such increased monitoring may include, but is not limited to, the following: frequency of site visits, contractor meetings, and documentation requirements deemed necessary by the agency to assess progress of the contractor toward meeting the identified goals and outcomes established in response to assessments of unsatisfactory performance.

Agencies are required to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring.[467] Information on these contracts must be submitted to the agency's governing body or, if the agency is not governed by a multimember governing body, the officer who governs the agency.[468] The agency's contract management office or procurement director must immediately notify the agency's governing body or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this process.[469]

For contracts that have a value exceeding $1 million, agencies must develop and implement contract reporting requirements that provide information on (1) compliance with financial provisions and delivery schedules under the contract, (2) corrective action plans required under the contract and the status of any active corrective action plan, and (3) any liquidated damages assessed or collected

[467] TEX. GOV'T CODE § 2261.253(c).
[468] TEX. GOV'T CODE § 2261.253(c).
[469] TEX. GOV'T CODE § 2261.253(c).

under the contract.[470] In addition, each agency must verify (1) the accuracy of any information reported that is based on information provided by a contractor, and (2) the delivery time of goods or services scheduled for delivery under the contract.[471]

Inspection, Testing, and Acceptance

Overview

Agencies are required to (1) inspect and evaluate at the time of receipt all goods or services that the agency receives to determine whether the goods or services comply with the contract under which they were purchased, and (2) certify, if true, that the goods or services comply with contract requirements and that the invoice for them is correct.[472] If the goods or services are not compliant with the contract, agency personnel must notify the Contract Manager. For statewide contracts administered by SPD, the agency must provide prompt written notice to SPD of the deficiencies.[473] On determining that contract specifications or conditions have not been met, SPD may act against the contractor and repeated performance failures may make the contractor subject to statewide debarment if SPD determines it is appropriate.

Testing

All goods are subject to inspection and testing by the State. Authorized agency personnel shall have access to a contractor's place of business for the purpose of inspecting contracted merchandise. Latent defects may result in revocation of acceptance of any product. Agency legal counsel should be consulted if latent defects are discovered.

Tests may be performed on samples obtained by request of the agency or taken from regular shipments. SPD may also arrange for testing and inspection of goods and services before they are purchased. Other agencies may test and inspect goods and services before purchase under standard industry testing methods, or they may contract for testing.[474] When products tested fail to meet or exceed all applicable specifications, the costs of the sample used and any testing performed shall be borne by the contractor.

Shipping and Receiving

At the State's option, goods that have been delivered and rejected in whole or in part may be returned to the contractor at contractor's risk and expense or disposed of in accordance with SPD rules or applicable statutes. The contractor may request that goods be held at contractor's risk for a reasonable period of time for later disposition at the contractor's expense.

For assistance in resolving issues for orders processed through Texas SmartBuy, Managed Term Contracts, or SPD Administered Contracts, contact the SPD Contract Management Office at spd_cmo@cpa.texas.gov.

Shipment Acceptance. Acceptance of a shipment must only occur when goods delivered match the items on the PO and the corresponding receiving report meets the quantities ordered and the specifications required. Agencies must immediately inspect all shipments received as fulfillment of POs and report any discrepancies to the contractor. A contractor must be notified immediately or within the timeline outlined in the contract.

Inside Delivery and Pallets. If the PO specified "Inside Delivery," it is the sole responsibility of the contractor to deliver to the exact floor and room number on the PO. Inspection must include verification of the requirements for inside delivery and if the shipment was to be on pallets. If the shipment is not on pallets as required, the agency may either

1. request the contractor to palletize the shipment at the agency location for no additional charge or
2. accept the shipment with a notation on the receiving report and notify the purchasing department to process a Purchase Order Change Notice (POCN) to remove any additional charges for pallets.

Shipments Delivered in Error. When a shipment includes an item not ordered by the agency, the agency may refuse the shipment when the error has been confirmed by checking the PO and/or receiving documents.

Package/Container Count Discrepancy. The end user or purchaser must inspect the shipment for the number of containers listed on the Bill of Lading. If the number does not match, note the discrepancy on the Bill of Lading prior to the driver leaving. Document the same information on the agency receiving documents. Documentation is necessary to validate the receipt of the containers received by the transportation company.

Non-Conforming or Incorrect Items Received. The end user or purchaser must compare the items received with the PO for brand name and product number. If the items on the Bill of Lading and in the delivery do not match the items on the PO, the shipment may be refused. If the shipment is signed for before it is inspected and the error is discovered after the driver departs, contact the contrac-

470 TEX. GOV'T CODE § 2261.254(a).
471 TEX. GOV'T CODE § 2261.254(b).
472 TEX. GOV'T CODE § 2155.322.
473 TEX. GOV'T CODE § 2155.070.
474 TEX. GOV'T CODE § 2155.069(d).

tor for replacement and pick up immediately upon discovery. Goods found to be non-conforming to specifications during inspection must be documented on all receiving reports and the contractor must be contacted by telephone and with an email confirmation of the telephone notice. It is recommended that the agency takes pictures of the incorrect or non-conforming goods for documentation.

Minor Visible Damage. Minor damage visible on the outside of the containers must be noted on the Bill of Lading prior to signing and prior to the departure of the driver. Recording the damage provides documentation if there is concealed damage. The contractor will be aware of the minor visible damage by the information provided on the Bill of Lading.

Severe Visible Damage to Container or Contents. The agency may refuse the entire shipment or refuse only the damaged containers upon discovery of severe damage to container and contents; however, SPD recommends that the agency either accept the entire shipment or a partial shipment, rejecting only the damaged containers, to prevent unnecessary delay of required goods. If the entire shipment is refused, record the reason for refusal on the Bill of Lading and notify the contractor that the shipment was refused and reshipment is required due to severe damage. It is recommended that the receiving agency takes pictures of the incorrect or non-conforming goods for documentation.

For FOB Origin, if the shipping containers are damaged enough that it is probable that the contents are also damaged, accept the shipment and then record the damage on the carrier's freight bill. The agency is responsible for filing freight claims with the carrier.

Concealed Damage to Contents. Damages to the contents found during inspection and unpacking of a container must be immediately documented and reported to the contractor by telephone and with an email confirmation of the telephone notice. It is recommended that the agency takes pictures of the incorrect or non-conforming goods for documentation. If the end user is not the Contract Manager, then the end-user must contact the Contract Manager as well as the agency accounting department so that payment is not made on the damaged goods.

Pickup and Return of Shipments. The contractor may be required to pick up the damaged goods and those not conforming to specifications and provide replacement in the timeline outlined by the agency or in the original terms of the PO/contract. This must be provided at no additional cost to the agency.

Internal Receiving Report. The shipment must be compared to the PO or receiving document. Locate the PO number on the shipping documents and after immediate inspections of the shipment when the containers are opened, check the following against the PO:

- order quantity per item;
- number of items per package or container; and
- unit of measure for each line item.

Quantity Overages. An agency is not obligated to pay for amounts over the stated quantity on the order unless allowed in the terms and conditions of the contract. If overages are accepted by the agency, a POCN must be processed. It is important to notate overages as well as shortages.

Partial Shipment Considered Complete. The contractor must be contacted to confirm the partial shipment; this step must be taken prior to processing a POCN. After confirmation that no other goods will be received, and by mutual agreement the partial order is considered complete, a POCN and/or contract amendment must be processed and an accurate payment must be based on the goods received at the time of shipment.

Partial Shipment. For partial shipments, the agency must request a timeline, in writing, from the contractor for the balance to be delivered. Free on Board (FOB) Destination, freight included, and the delivery for the balance must be at no additional cost to the agency. The remainder of the partial delivery must be received by the agency within the contracted delivery days after receipt of order for each item or the delivery will be considered late.

Carrier Shipping Methods

A summary of common carrier shipping methods is listed in the following chart.

Carrier Shipping Methods				
Shipping Method	**Carrier Paid By**	**Freight Listed on PO**	**Title Held in Transit By**	**Claims Filed By**
FOB Origin Freight Collect	Agency	Yes	Agency	Agency
FOB Origin Freight Collect & Allowed	Vendor	No	Agency	Agency
FOB Origin Freight Prepaid & Charged Back	Vendor	Yes**	Agency	Agency
FOB Origin Freight Prepaid & Allowed	Vendor	No	Agency	Agency
FOB Destination Freight Collect	Agency	No	Vendor	Vendor
FOB Destination Freight Prepaid & Allowed	Vendor	No	Vendor	Vendor
FOB Destination Freight Collect & Allowed	Agency	No*	Vendor	Vendor
FOB Destination Freight Prepaid & Added	Vendor	Yes**	Vendor	Vendor

* Freight charged to vendor by deducting freight charges from invoice
** Freight charged to agency by adding freight charges to invoice

Invoice Review and Payment

Invoice Review

After goods and services have been inspected and accepted, invoices must be reviewed to verify that (1) the description of goods and services is in sufficient detail to identify the order relating to the invoice and that the quantities and unit measures correspond with the referenced PO and (2) the invoice conforms to CPA invoicing standards.[475]

Invoicing	
The contractor is billing only for goods or services received by the agency.	The goods or services have been inspected and accepted.
The invoice is correct and complies with the pricing, terms, and conditions of the contract.	The total payments do not exceed the contract limits.
Red flags that may indicate fraud include	
Invoices with no physical address for the vendor.	Frequent undocumented or unapproved adjustments, credits, and write-offs.
Invoices for services/goods not rendered.	Multiple remittance addresses for the same vendor.
Payments to the vendor that have increased dramatically for no apparent reason.	Inconsistent invoicing time periods.

[475] 34 TEX. ADMIN. CODE § 20.487.

Contract Managers must be familiar with the payment and pricing terms applicable to each contract. Contract Managers must also monitor performance under the contract to verify that comparable costs are being charged for comparable goods and services.[476] When an agency purchases through SPD contracts, the contractor must submit an invoice to the ordering agency at the address shown on the PO.[477] Agencies or other governmental entities purchasing through SPD contracts may only pay restocking or cancellation fees if the agency or governmental entity determines the charge is justifiable; the extent of these fees should be anticipated when drafting the contract.[478]

A payment is considered overdue on the 31st day after the later of the date of:

- the receipt of the goods;
- performance of the services; or
- receipt of the invoice for the goods or services.[479]

In some cases, a vendor may suspend performance under a contract for nonpayment.[480] To avoid a possible suspension, the Contract Manager must promptly review invoices and, following the agency's internal procedures, notify the contractor of a disputed invoice if the invoice is determined to be inaccurate.

Withholding Payment

Although an agency must pay its contractor promptly, the agency also has the responsibility to protect the interest of the agency. Despite best efforts to resolve an invoice issue, some circumstances may require that payment approval be withheld, no more than 110% of the disputed amount.[481]

Circumstances where it may be necessary to withhold payment include, but are not limited to, the following:

- invoice errors;
- undocumented and/or unsupported costs;
- remediating overpayments to the vendor; and
- non-conforming or unacceptable contractor performance.

If an invoice issue cannot be resolved, the Contract Manager should take the following steps to escalate the issue:

- notify the agency accounts payable division;
- notify division management and the agency's Contract Administration Office (CAO);
- notify the contractor of invoice issues as soon as possible;
- request assistance, if needed, from the agency legal counsel to timely send a disputed invoice letter; and
- maintain documentation for inclusion in VPTS regarding the incident resolution.

An agency shall notify a vendor of an error or disputed amount in an invoice within 21 days of receipt of the invoice. The agency shall include a detailed statement about the disputed amount.[482]

Payment

Purchase Order (PO)

A Purchase Order (PO) is the document most frequently used by agencies to authorize the purchase of goods and services. A requisition is entered with the good or service description. The requisition is then sourced to a purchaser who will write the PO that will be submitted to the contractor. Once the services are performed and/or goods are received, the contractor will request payment by submitting an invoice to the agency along with the PO. CPA encourages contractors to receive payment by direct deposit.[483]

Payment Card

An agency may only use payment cards issued under the SPD contracts. SPD has established several types of payment cards as follows: (1) Commercial Charge Cards used for general purchasing or specifically for travel-related expenditures and (2) State of Texas Retail Fuel Cards used for fuel, authorized maintenance, and roadside assistance purchases.

Each agency must ensure that the authorized cardholder adheres to all purchasing statutes, rules, policies, and procedures when the payment card is used. For instance, transactions that do not qualify as spot purchases must comply with requirements applicable to the requisite procurement method. The agency must adopt procedures that govern the issuance and use of payment cards by the agency's officers and employees. The agency must also include procurement policy guidelines in its internal procedures for payment card use and include documentation of these procedures in its Procurement Plan submitted annually to SPD. SPD requires these procedures as a part of the procurement audit review. The use of a payment card does not exempt an agency, its officers, or its employees from any purchasing requirement of state law or SPD.

476 TEX. GOV'T CODE § 2261.203.
477 TEX. GOV'T CODE § 2155.381.
478 TEX. GOV'T CODE § 2155.384.
479 TEX. GOV'T CODE § 2251.021.
480 TEX. GOV'T CODE § 2251.051.
481 TEX. GOV'T CODE § 2251.042(d); 34 TEX. ADMIN. CODE § 20.487(b).
482 TEX. GOV'T CODE § 2251.042(a), 34 TEX. ADMIN. CODE § 20.487(b).
483 The electronic funds transfer (EFT) provisions of Texas law are codified in Section 403.016 of the Texas Government Code.

The payment card may be used as a payment method for goods and services purchased for dollar amounts within an agency's purchasing authority and the cardholder's authorized charging limit. The following processes must be adhered to:

- **Procurement File or Log:** A procurement file or log must be maintained for each card transaction and must include the NIGP Class/Item code(s) and best value determination.
- **Receipts for Credit Card Transactions:** Keep each payment card transaction receipt in the procurement file. Each receipt must contain a description of the good or service sufficient to support the comptroller expenditure object code used for the type of items being purchased. All receipts must be kept according to the commercial card guidelines and the agency's records retention schedule. Upon request, credit card receipts must be made available to CPA.
- **Capital or Controlled Assets:** The payment card may be used to pay for capital or controlled assets, utilizing the expenditure object code established for the type of assets being purchased. The Texas Identification Number (TIN), Payee Identification Number (PIN), or Vendor Identification Number (VIN) of the selling vendor must be entered into USAS, rather than the TIN/PIN/VIN of the state credit card issuer. (Note the PIN entered into USAS is not a personal identification number that a cardholder may have selected to conduct transactions with chipped payment cards; these card specific security codes must be kept confidential by the cardholder.)

A participating agency may not use a payment card nor reimburse an officer or employee who has used a payment card for nonstate business, consulting services, cash advances, a purchase requiring another agency's approval, a purchase subject to a prepayment audit, or a purchase or payment prohibited by law.[484] Agencies are liable for late payment fees.

Interagency Transaction Voucher (ITV)

An agency may process a payment between agencies for procured goods and services through an Interagency Transaction Voucher (ITV), which is used to transfer funds held in the State Treasury between two agencies. The interagency payment must be accompanied by a Recurring Transaction Index (RTI).[485] The transaction agency (the agency initiating the transfer of funds) must know the receiving agency's RTI Number to process the ITV. This is a common payment method when agencies have entered into an IAC for the exchange of goods and/or services between agencies.

Change Control

Overview

Throughout the term of the contract, changes may become necessary. These changes may be minor, administrative changes such as a change of address, or they can be substantial changes that affect the price and delivery. Depending on the transaction, a formal change control process may be included within the contract. Regardless whether expressly stated in the contract, an agency should have an effective change control process in place. Failure to manage and control changes may result in an unintentional modification to the scope of work, extension of the schedule, increase in the contract cost, circumvention of management controls and diminished contractor accountability. When modifying any part of the contract, the Contract Manager should coordinate with the Contract Developer, end-user and project manager.

An effective change management process includes, but is not limited to, the following:

- Formal, written approval of all changes prior to the change taking place. Do not verbally authorize the contractor to begin working on a change before the change is fully analyzed, documented and approved in writing in conformance with contract requirements.
- Evaluation of the impact of each change to the contracting objective, the corresponding product and/or service, the schedule, cost, and increase in agency overhead resulting from the change, impact to work in progress or completed work, standards, and acceptance criteria.
- If the contract contains a contingency allowance, develop a plan for how any draws against this allowance will be requested and approved.
- Documentation of all changes, no matter how small; avoid any informal undocumented change process.
- Establish a single point of contact to recommend or authorize any change. Document the change as approved or disapproved. If a change is approved, document the change and the impact to the scope of work through a contract amendment or purchase order change notice, whichever is applicable.

[484] 34 TEX. ADMIN. CODE § 5.57.
[485] https://fmx.cpa.texas.gov/fmx/pubs/afrrptreq/interfund/index.php?section=rti&page=rti12.

Types of Contract Amendments

Overview

There are two ways to change a contract. One is a bilateral amendment where all parties to the contract agree that a modification is necessary because the scope of work, the term of the contract, or some other provision must be altered. The second is the right to unilaterally modify the contract — the terms and conditions in the contract determine how the agency may exercise a right to modify the contract without the contractor's consent. An amendment will either be administrative, substantive, or constructive in nature. Care should be taken not to inadvertently change contract terms through course of performance. All contract amendments should be appropriately documented and conform to the contract and agency processes.

Administrative Changes

Administrative changes occur within the scope of the contract and do not affect or alter the rights of the parties. These changes are typically executed via a unilateral amendment. Examples of administrative changes include:

- changes in billing instructions or address;
- corrections of typographical errors not affecting the substance of the contract;
- changes as permitted by the specific contract language; and
- changes in agency personnel assigned to the contract.

Substantive Changes

Substantive Changes are contractual changes that affect the rights of both parties. Such changes generally require bilateral amendments (agreement by both parties). Examples of substantive changes include:

- a change in the price of the contract;
- a change in the delivery schedule;
- a change in the quantity;
- a change of deliverables (*e.g.*, the specifications);
- a change of key personnel: or
- a change of any terms and conditions.

Constructive Changes

If a contractor perceives that work beyond the scope of the contract was ordered by the agency, the contractor may claim that the contract was "constructively" changed, and the contractor may be entitled to additional compensation for the changes. Generally, a constructive change will require a bilateral amendment.

Constructive changes may occur when agency personnel:

- accelerate the delivery schedule;
- direct the work to be performed differently;
- change the sequencing of the work;
- postpone the acceptance or rejection of deliverables;
- delay reviewing invoices and approving payment; or
- interfere with or hinder performance.

Contract Amendment Analysis

Whether or not a contract may be changed depends upon certain principles. State law requires a competitive process in most situations. The specific method of competition depends upon the type of goods or services needed. If a competitive process was used, the resulting contract must be consistent with what was solicited during the competition. Inconsistencies between the solicitation and contract can violate the competitive process requirements.

If a change is needed to a contract, the change has to be within the scope, or parameters of the solicitation. A significant difference in the scope of work would be a material or substantial change and would not be allowed because it was not originally subject to fair competition. To permit such a change would go against the ideas of competition and a fair playing field for all of the vendors. Transparency in government procurement is a key government responsibility.

For example, if a contract to buy 10 desks is amended to include 300 file cabinets, the change is outside the scope of the contract because vendors did not have the opportunity to compete for the sale of 300 file cabinets. Additional vendors may have competed had they known that file cabinets were being solicited. Such a large quantity of file cabinets could also have had an impact upon the pool of vendors that competed for the original solicitation. Other vendors may have been interested in bidding on file cabinets that were not interested in bidding on desks.

When determining what constitutes scope changes to advertised specifications, the crucial question is whether the changes are material or substantial. Material or substantial changes are not measured by the number of changes made to the original specifications, they are measured by determining if the extent of the changes so substantially alters the original specifications that not re-advertising the revised specifications would deny a potential vendor an opportunity to respond to the revised specifications. If a revision is substantial, a new solicitation is needed to ensure compliance with the bidding statutes.[486]

[486] *See Roark v. Stallworth Oil and Gas Inc.*, 813 S.W.2d 492, 496 (Tex. 1991).

Assignment by Contractor and Contractor Name Change

Overview

Assignment occurs when one party to a contract (assignor) transfers its rights under a contract to another party (assignee). Contract law generally permits assignments;[487] however, certain assignments may be subject to enhanced scrutiny.[488] It is recommended that agencies draft their contracts to require the submission of a written request from the contractor to the Contract Manager to change the contractor's name or to recognize a successor in interest to the contract. Agency legal counsel should be consulted if after the proposed assignment, the contractor will not be responsible for any performance under the contract.

Term Contracts, SPD TXMAS Contracts, and SPD-Administered Contracts. The SPD Contract Management Office is responsible for processing assignments for Term Contracts, SPD TXMAS Contracts, and SPD-Administered Contracts. Accordingly, agencies are directed to inform contractors to contact the SPD Contract Management Office.

Payment Assignment

It is a common business practice for a party to transfer the right to receive payment. The assignor is the party transferring the right to receive payment. The assignee is the party receiving the right to receive payment.

Once an agency receives a notice of a financial assignment, it is legally bound to make payment to the assignee. Assignments may be requested by the contractor to show changes in the payee on an order.

The following steps must be taken:

1. Requests for assignments must be in writing from the contractor receiving the order on the company letterhead with the signature of an authorized representative.
2. The agency must issue an assignment letter acknowledging the assignment. The vendor identification number (VIN) will remain that of the original awarded contractor, but the contractor name and payments will be mailed to the assignee.

For additional information refer to Setup Special Circumstances-Assignments in the TexPayment Resource Guide posted on the CPA website.[489]

Delegated Purchases. When a payment assignment is requested on a delegated purchase, the agency must receive a letter from the original awarded contractor assigning the order to the new contractor and a letter from the new assignee noting acceptance of the assignment. Any reference to an SPD order number should be deleted. A copy of the notice must be maintained in the agency's procurement file. The agency is responsible for setting up the assignment mail code for the VIN number of the original contractor in TINS so that the payment may be processed.

Authority to Assign. Generally, a person may assign the right to receive a payment from the State in the same way that the person may assign the right to receive a payment from a private person or entity. Additional information may be found in the eXpendit State Purchase Policies located on the CPA website[490] by selecting the "Miscellaneous Expenditures" tab, clicking on "Payment and Fees," and then choosing "Assignments of Payment from the State."

Questions regarding assignments should be directed to the CPA Claims Division at (512) 463-4850.

Name Change

Any name change requires documentation from the original contractor on company letterhead stating the circumstance of the name change and the new name. The letter should be signed by an authorized representative, showing the change and the effective date. A copy of the assumed name certificate filed with the Secretary of State or a sales tax permit may be obtained as proof of name change. The purchaser will issue a letter amending the PO to change the contractor's name and advise the contractor to contact CPA to set up a new VIN in order to secure payment, if applicable. The purchaser should change the name on the PO file copy and acknowledge the name change.

Buyout or Sale

A buyout or sale occurs when one company is purchased by another. The contractor of record must have the purchase order and, if applicable, formal contract amended to receive payment when the order is delivered. The contractor of record must send the agency a letter stating the circumstances of the buyout or sale. If the contractor has already ceased operating as a separate business, the agency should obtain a letter indicating the sale of the company

[487] The general rule: all contract rights are assignable unless the assignment materially alters the obligor's duties (especially personal services contracts where there is a relationship of trust/confidence between parties), the assignment materially varies the risk (*e.g.*, insurance contracts), or the assignment impairs the obligor's ability to perform. For sales contracts under the TEX. BUS. & COM. CODE, Chapter 2, a party may assign or delegate a contract unless otherwise agreed upon or if the other party has a substantial interest in having the original promisor perform. TEX. BUS. & COM. CODE § 2.210.

[488] *See e.g.*, TEX. GOV'T CODE § 2262.056 (added by the 86th Leg.).

[489] The CPA website is located at Comptroller.Texas.Gov.

[490] The CPA website is located at Comptroller.Texas.Gov.

to the new contractor. To change the company name, the agency should then, as applicable, either issue a letter amending the PO or obtain an amendment to the contract. The new contractor should be directed to contact the CPA Tax Policy Division to obtain a new VIN, if applicable, in order to secure payment.

Replacement Contractor

If the contractor is requesting to recognize a successor, it is the Contract Manager's responsibility to keep the State's interest in mind. The contractor's successor must be responsible and adequately able to perform the contract requirements. The Contract Manager must perform all due diligence to evaluate the proposed new contractor's eligibility and ability to perform. It is also advisable to request and review the documents executed by the contractors that constitute the transaction underlying the proposed assignment. If the replacement contractor is acceptable, the old and new contractors must sign a novation agreement transferring all rights and responsibilities under the contract to the assignee. A sample Novation Assignment Agreement is located in Appendix 29.

Extensions and Renewals

If the contract has an option to extend or renew, the Contract Manager must assess whether the option will be exercised by the agency prior to the expiration of the current contract term. The number, length, and process for exercising renewals and extensions should be specified in the contract. Certain contract extensions may be subject to additional requirements such as those specified in Agency Verification of Contract Extension Compliance.

Force Majeure

Performance may be suspended when the failure to perform is due to excusable causes. An excusable cause must be beyond the contractor's control, and without the fault or negligence of the contractor. Such excusable causes, often referred to as force majeure, include, but are not limited to, Acts of God or of the public enemy, fires, floods, epidemics, strikes, freight embargos, or unusually severe weather.

Severe weather, although beyond the contractor's control, will not generally constitute an excusable delay if it is not considered "unusually severe weather." For example, a snowstorm in Amarillo in February would not be considered unusual, but it would be considered unusual in Austin. On the other hand, a snowstorm in Amarillo in June would indeed be unusual.

If the contractor's performance failure is due to a subcontractor, to qualify as an excusable cause, the default must arise out of a cause beyond the control and without the fault or negligence of either the contractor or subcontractor. Even if this requirement is met, the cause will not be excusable if the supplies or services to be provided by the subcontractor could have been obtained from other sources in time to meet the contract delivery schedule.

Dispute Resolution

Each agency that enters into a contract must include as a term of the contract a provision stating that the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.[491] The objective of any dispute resolution process is to resolve problems before they escalate. To avoid escalation of problems to the next level and ensure the agency has not exacerbated potential problems, it is imperative that agency personnel respond promptly to all contractor inquiries.

Initial steps to be taken:

- **Identify the problem** - many times what may appear to be a problem can be resolved by providing the contractor with information or clarification. The agency must follow internal escalation points and the OAG must be included if a legal dispute arises.
- **Research facts** - the agency must obtain all the information regarding the potential problem from all relevant sources, including the project manager and the contractor.
- **Evaluation** - the agency must review all of the facts in conjunction with the requirements and terms and conditions of the contract. The agency must then determine the appropriate course of action.

Proper dispute resolution is a core skill of successful contract management. It is essential to identify problems early in the performance period and effectively communicate and formalize the process in writing via a cure notice procedure or less formal written procedure. Termination is the last resort; it is a failure by both parties to a contract.

Termination

Most contracts expire by their terms without any affirmative action on the part of the agency. There are times, however, when an agency may want to terminate a contract early. Termination of a contact may be accomplished by

- termination by mutual agreement,
- termination for convenience,

[491] TEX. GOV'T CODE § 2260.004.

- termination for cause, or
- termination for non-appropriations.

When a contract is terminated, the parties are relieved from further unperformed obligations in accordance with the agreed terms and conditions.

Termination by Mutual Agreement

A termination by mutual agreement occurs when both parties consent to the termination of the contract before the expiration date. This type of termination may be documented by the exchange of formal written correspondence or as a contract amendment.

Termination for Convenience

A termination for convenience, also known as no-fault termination, allows a party to terminate any contract, in whole or in part, at any time in its sole discretion. The option for the agency to terminate the contract for convenience should be provided in every contract.

A Contract Developer should seek guidance from agency legal counsel if vendors seek to negotiate out termination for convenience to determine whether the omission of this clause is in the best interest of the agency. The consideration whether to waive the clause will be highly fact specific. For example, in long-term contracts involving extensive capital investment by a vendor, a 30 day termination for convenience by the agency may not be a realistic contract term.

A Contract Developer should also seek legal counsel if a vendor requests that a termination for convenience clause be included in the contract.

The agency must provide the contractor with written notice specifying whether the agency is terminating all or part of the contract. The notice of termination must give the date of termination. If portions of the contract are being selectively terminated, the agency must specify which parts of the contract are being terminated.

The contract must specify the basis for settlement with the contractor upon a termination for convenience, and the agency must follow the contract terms. The contractor will generally be paid for allowable costs incurred up to the date of termination. The agency will not be liable for payment to the contractor related to the terminated portion of the work or any work performed or costs incurred after the effective date of termination. Upon receipt of any invoice from the contractor for work performed prior to the notice of termination, the agency must thoroughly review the invoice to ensure that no excessive costs are included. A sample Notice of Termination for Convenience is located in Appendix 30.

Termination for Cause

Overview

A termination for cause occurs when a party concludes that the other party has failed to perform or make progress, or in any way has breached the contract. An agency is not required to terminate a contract even though the circumstances permit such action. An agency may determine that it is in its best interest to pursue other alternatives and work with the contractor in getting the contract back on track.

Examples of such alternatives include extending the delivery or completion date, allowing the contractor to continue performance under the contract, or working with the contractor's surety to complete the outstanding work.

Factors to consider prior to making a termination for cause decision include:

- Whether the agency has assisted the contractor in curing a default, if applicable.
- The provisions of the contract and applicable regulations.
- The specific contractual failures and the explanation provided for the failures.
- The urgency of the need for the contracted supplies or services. The agency may need to weigh the respective benefits and disadvantages of allowing a delinquent contractor to continue performance or re-soliciting for a new contractor.
- The availability of the supplies or services from other sources and the time required to obtain them (compared to the additional time the current contractor requests to complete the work).
- The availability of funds and resources to re-purchase if such costs cannot be recovered from the delinquent contractor. Under a termination for cause, the agency is generally within its rights to demand re-procurement costs from the defaulting contractor. Nevertheless, the contractor may not be financially capable to finance the re-purchase, or such demand may result in protracted legal action.

If a contract is terminated for cause, the contractor is liable for actual damages and costs incurred by the State unless otherwise stated in the contract. The contractor may be liable for costs associated with re-procuring the goods or services by the agency. The termination notice must be carefully drafted to state the facts pertinent to the cause for termination. Prior to issuing a termination notice, the agency should carefully review the contract and applicable law[492] to ensure compliance with any prerequisites to termination (*e.g.*,

[492] *See e.g.,* TEX. GOV'T CODE § 552.374 (stating the grounds for terminating a contract due to a contractor's failure to timely provide certain contracting information to a governmental body in connection with a Texas Public Information Act request).

adequate notice, opportunity to cure). A sample Notice of Termination for Cause is located in Appendix 30.

Cure Notices

Prior to terminating a contractor for cause, depending on the type of breach, a cure notice may be sent to the contractor if the contract requires it. A cure notice is a letter provided to the contractor that specifies a period of time, such as 30 days, to correct or "cure" the deficiency or violation. Not all defaults can be cured. If the contractor fails to cure the situation or provide satisfactory explanation as requested, the contract may be terminated for cause. A sample Cure Notice is located in Appendix 30.

Corrective Action Plan

If there is a contract breach, the parties may implement a formal corrective action plan. A corrective action plan is a written document that identifies specific activities that must be performed by the contractor to restore compliance with the contract. The plan must be tailored to address the identified deficiency, clearly state the desired outcome, and establish a time frame for the contractor to demonstrate improved performance.

Termination For Non-Appropriation, Excess Obligations Prohibited

A termination for non-appropriation clause, or "funding out" clause, is an Essential Provision that must be included in a contract if the contract term will cross a fiscal year.

The Texas Constitution and the General Appropriations Act prohibit an agency from incurring obligations in excess of amounts lawfully appropriated by the Legislature over the course of a biennium.[493] Therefore, any installment purchase, lease or any other type of purchase which incurs an obligation beyond the current appropriation is strictly prohibited, unless the obligation is expressly conditioned upon continued legislative appropriation. There is one exception to the prohibition against incurring excess obligations. SPD may determine that a proposed installment purchase arrangement is cost effective and certify this finding in response to an agency request.

Any certification by SPD related to obligations incurred for the purchase or lease of automated information systems (AIS) equipment may only be made if the requesting agency has a Biennial Operating Plan (including any amendments) on file with the LBB, and the plan has been approved by the LBB.

Requests for Certifications should be directed to SPD. For CPA to make a certification as required by the General Appropriations Act, the following information must be provided with the purchase requisition and be signed by the agency's purchasing director or other proper authority of the submitting agency:

- A statement comparing the anticipated cost savings to be realized through the present acquisition of the equipment versus the outright purchase of the equipment at a later time when adequate funds become available;
- A statement affirming that the ordering entity expects to be able to make payments beyond the current biennium without having to rely on an increased level of general revenue appropriations;
- An estimate of the total anticipated interest charges over term of the installment contract; and
- A statement indicating that the lease (or installment) purchase is the most cost-effective means of obtaining the needed equipment despite the additional interest cost to the State.

In addition to the above requirements, any purchase agreement subject to this section must contain a clause that enables the agency to cancel the agreement if the Legislature curtails or fails to appropriate money to cover the term of the agreement; this is necessary to prevent any unconstitutional excess obligation. An example of a contract clause is as follows: "Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature."

Penalty for Requisitioning Officer or Employee. If General Appropriations Act, Article IX, Section 6.03 (2022-2023) is violated, the State Auditor shall certify the fact of the violation and the amount of the over-obligation to CPA, and CPA shall deduct an amount equivalent to the over-obligation from the salary or other compensation due to the responsible disbursing or requisitioning officer or employee and apply the amount to the payment obligation.

Agency Reporting of Contracting Information in CAPPS

As stewards of public funds, all agencies are required to manage their finances and human resources in a way that supports sound business principles. Since 1989, state law has required agencies to report their expenditures using a computerized and uniform statewide accounting system created and implemented by CPA. In 2007, to further financial and reporting uniformity, the Legislature required CPA to develop, maintain and support Enterprise Resource Planning (ERP) to ensure that the uniform statewide accounting system includes the administration of general ledger, accounts payable, accounts receivable, budgeting, inventory, asset management,

[493] TEX. CONST. art. III, § 49a; TEX. CONST. art. VIII, § 6; General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 6.03.

billing, payroll, projects, purchasing, grants and human resources. Since then, CPA has been integrating ERP in the uniform statewide accounting system through the Centralized Accounting and Payroll/ Personnel System (CAPPS). In 2015, the Legislature included "solicitations and contracting" as part of the "purchasing" element in ERP. Agencies using CAPPS are required to provide information related to solicitations and contracting according to the requirements that are adopted in rule by CPA.[494]

Contract Close-Out

The contract close-out process is usually a simple but detailed administrative procedure. The purpose of the process is to verify that both parties to the contract have fulfilled their contractual obligations. Accordingly, contract close-out must be conducted in a timely manner.

As part of contract close-out, the Contract Manager must compare actual performance against performance measures, goals and objectives, to determine whether all required work has been completed. A contract is completed when:

- all goods or services have been received and accepted;
- all reports have been delivered and accepted;
- all administrative actions have been accomplished;
- all agency-furnished equipment and materials have been returned;
- all property inventory and ownership issues are resolved including disposition of any equipment or licenses purchased under the contract;
- final acceptance from the project manager has been received; and
- final payment has been made to the contractor.

The Contract Manager must also ensure that vendor performance is reported to VPTS and that the contractor is aware of and is in compliance with records retention requirements.

Vendor Performance Reporting

Overview

A contractor's performance must be reported to VPTS once a contract with a value greater than $25,000 is completed or otherwise terminated.[495] If the value of the contract exceeds $5 million, the agency must review the contractor's performance at least once each year during the term of the contract and at each key milestone identified for the contract. Interagency contracts, interlocal agreements, and memoranda of understanding are not subject to the VPTS reporting requirements. In addition, Section 2155.089(c) of the Texas Government Code excludes several specifically-enumerated contracts from the VPTS reporting requirement.[496]

An agency must evaluate the contractor's performance based on the following:

- information prepared by the agency in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;
- compliance with the material terms of the contract;
- ability to correct instances of contractual non-compliance; and
- other evaluation criteria presented in the VPTS.[497]

For information on how to use the VPTS, refer to the VPTS User Guide located on the CPA website.[498]

The Contract Manager must request best value criteria from the purchaser and review contract documents. In assessing contractor performance, the Contract Manager should consider the following:

- Did the contractor meet the requirements in the contract?
- Were there any other criteria besides meeting price and specifications in the contract?

If so, the Contract Manager must consider those criteria in the vendor performance evaluation.

The Contract Manager must consult all agency personnel involved in the contract, including the Contract Developer and the end user, to determine the fulfillment of best value criteria. Ideally, the Contract Manager or end user would be providing the report.

Scoring a Vendor

The VPTS provides the state procurement community with a comprehensive tool for evaluating vendor performance to reduce future risk in the contract awarding process. Because a performance score can affect the contractor significantly in current and future procurement initiatives, the Contract Manager should consider all relevant information when evaluating performance.

The VPTS permits agencies to submit comments as part of the vendor performance report. Although comments are typically used to explain performance related to low scores, an agency may submit comments in the VPTS regardless of the grade. All comments must

494 TEX. GOV'T CODE § 2101.041(a).
495 TEX. GOV'T CODE § 2155.089; 34 TEX. ADMIN. CODE § 20.115.
496 TEX. GOV'T. CODE §2155.089(c).
497 34 TEX. ADMIN. CODE § 20.509(b).
498 The CPA website is located at Comptroller.Texas.Gov.

be internally reviewed by agency staff prior to submission to the VPTS.

If the score is an "A," "B," or a "C," the public-facing VPTS automatically displays the performance report without agency comments. An agency may contact SPD to request a copy of its comments retained by the VPTS.

Contractors who do not fulfill the requirements of the contract or that are on corrective action plans must not be a given a grade higher than a "C."

Vendor Scoring Guide	
Letter Grade[1]	**Explanation**
A	When a state agency determines that the vendor significantly exceeded the requirements of the purchase order or contract to the state's benefit, that any problems with the purchase order or contract were minor, and that corrective actions taken by the vendor to address such problems were highly effective. If the best value standard was used to award the purchase order or contract, an "A" means that the vendor satisfied that standard.
B	When a state agency determines that the vendor exceeded some requirements of the purchase order or contract to the state's benefit, that any problems with the purchase order or contract were minor, and that corrective actions taken by the vendor to address such problems were effective. If the best value standard was used to award the purchase order or contract, a "B" means that the vendor satisfied that standard.
C	When a state agency determines that the vendor met the requirements of the purchase order or contract and that corrective actions taken by the vendor to address minor problems were satisfactory. If the best value standard was used to award the purchase order or contract, a "C" means that the vendor satisfied that standard but that the vendor's performance did not merit an "A" or "B."
D	When a state agency determines that the vendor did not meet some of the requirements of the purchase order or contract, that problems with the purchase order or contract were serious, and that corrective actions taken by the vendor to address such problems were only marginally effective or not fully implemented. If the best value standard was used to award the purchase order or contract, a "D" means that the vendor did not satisfy that standard.
F	When a state agency determines that the vendor did not meet the requirements of the purchase order or contract, that problems with the purchase order or contract were serious, and that corrective actions taken by the vendor to address such problems were ineffective. If the best value standard was used to award the purchase order or contract, an "F" means that the vendor did not satisfy that standard.

TABLE NOTES

[1] 34 TEX. ADMIN. CODE § 20.509. *See also* TEX. GOV'T CODE § 2262.055.

Interpreting Existing Vendor Scores

Contract Developers and evaluation committees use vendor performance scores during the evaluation of responses. Contract Developers should read the reports in order to make their determination based on the notes left by reporting agencies utilizing the vendor being evaluated, not just limit the review to the evaluation scores from the current solicitation. Vendor performance scores are available on VPTS.

It is important to note that there is a difference between the **report score** and the **vendor score**.

The **report score** is the score the agency assigns for one particular report. Historic reports (prior to February 2017) were graded on a satisfactory/unsatisfactory scale. Current reports are graded by the agency on an A - F scale.

The **vendor score** is the score calculated by averaging all of a vendor's report scores to provide an overall vendor score.

Responses to Vendor Reports

Reports with a letter grade of "A", "B", or "C" are automatically published to the VPTS and are visible to the public. Reports with a letter grade of "D" or "F" are not published for a period of 30 calendar days. During this time, vendors have an opportunity to dispute the report grade and agency remarks by providing documentation and supporting evidence. If there are no vendor responses within the 30-day period, the report and grade are published on the public-facing VPTS website.

Vendor Performance Report Protest

Once a vendor performance report is published, time is essential for vendors to protest a posted grade. Only report grades of "D" or "F" may be protested and the protest must be received by the Comptroller within 10 days of report publication.[499] Protests of report grades submitted more than ten (10) days after the publication of the report will not be accepted.

To protest a report grade, vendors must submit a Vendor Protest Form via email to the VPTS at vendor.performance@cpa.texas.gov. The vendor and/or agency may be contacted for clarification during this process. The Statewide Procurement Division will investigate the protest and make the final grade determination.[500]

Barring Vendors From Participating In State Contracts

SPD may bar a vendor from participating in state contracts, including any contracts where the purchasing authority is delegated to an agency, for substandard performance under a contract with the State or an agency. If there are material misrepresentations by a vendor in a bid or proposal to the State or an agency or during the course of performing a contract with the State or an agency, SPD may bar the vendor from participation in state contracts. In addition, a vendor may be barred due to fraud or breach of a contract with the State or a specific agency.

Other reasons CPA may bar a vendor from participating in state contracts would be repeated unfavorable performance reviews under Section 2155.089 of the Texas Government Code or repeated unfavorable classifications received by the vendor under Section 2262.055 of the Texas Government Code after considering the following factors:

- the severity of the substandard performance by the vendor;
- the impact to the state of the substandard performance;
- any recommendations by a contracting agency that provides an unfavorable performance review;
- whether debarment of the vendor is in the best interest of the State; and
- any other factor the SPD considers relevant, as specified by CPA rule.

SPD may also bar a vendor from participating in state contracts if more than two contracts between the vendor and the State have been terminated by the State for unsatisfactory vendor performance during the preceding three years. If a vendor is barred from participating in state contracts, SPD shall determine the period of debarment. The period for debarment must be commensurate with the seriousness of the vendor's action and the damage to the State's interests.[501] Vendors debarred by SPD cannot be awarded contracts or otherwise purchased from. If a contract already exists at the time of debarment, it shall be terminated by the state agency as soon as practicable.[502]

499 34 TEX. ADMIN. CODE §20.535.
500 34 TEX. ADMIN. CODE §20.537.
501 TEX. GOV'T CODE § 2155.077.
502 34 TEX. ADMIN. CODE § 20.588.

Records Retention

Aside from the responsibility of maintaining the procurement file, the Contract Manager, or designated responsible agency employee, is also responsible for ensuring that contract documents are retained by the agency in the required format for the appropriate amount of time as determined by applicable law and the agency's records retention schedule.

A contract solicitation document that is an electronic document must be retained in the document's electronic form.[503] For purposes of records retention, the term "contract solicitation document" includes any document, whether in paper form or electronic form, that is used by an agency to evaluate responses to a competitive solicitation for a contract issued by the agency.[504] An agency may print and retain the document in paper form only if the agency provides for the preservation, examination, and use of the electronic form of the document during the records retention period, including any formatting or formulas that are part of the electronic format of the document.[505]

The Texas State Library and Archives Commission publishes the Texas State Records Retention Schedule (RRS) to help agencies determine the minimum length of time that records must be retained by an agency before destruction. Each agency is also required to prepare its own records retention schedule.[506] The RRS does not take the place of an agency's retention schedule but is to be used as a guide by the agency in creating and updating its schedule. The retention periods given in the RRS are required minimums; agencies may retain records for a longer period.

The RRS must be read in conjunction with statute enacted in 2015 which requires an agency to retain its contract records until the seventh anniversary of the later date of (1) the contract completion or expiration, or (2) the resolution of all issues that arose from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents.[507]

- If the contract was executed on or after September 1, 2015, most documents in the contract file will have a minimum retention period of AC[508] +7 years (after close of contract plus seven years).
- If the contract was executed before September 1, 2015, then the minimum records retention period is AC+4 years (after close of contract plus four years) or as otherwise indicated in the agency's approved records retention schedule.

A state record must not be destroyed if any litigation, claim, negotiation, audit, public information request, administration review, or other action involving the record is initiated; all action involving the record must be completed and all issues arising from the action resolved before a state record may be destroyed. Although the RRS for contract files is AC + 7 years, a particular agency may opt to maintain contract files longer if there is a business justification for the retention. The reason for retention of records beyond the official retention schedule must be documented in writing.

Post-Payment Audits

CPA performs audits on documents submitted to the Uniform Statewide Accounting System (USAS).[509] CPA's Expenditure Audit Section plans audits on an annual basis and performs a risk assessment each year before initiating audit plans. Agencies are audited for compliance with certain state laws and rules concerning payroll, travel, purchase and procurement and with the processing requirements of the Centralized Accounting and Payroll/Personnel System (CAPPS), USAS, the Uniform Statewide Payroll/Personnel System (USPS), and the Standardized Payroll/Personnel Reporting System (SPRS).

The Expenditure Audit Section may utilize generally recognized sampling procedures to select a sample of transactions to be tested. The agency will supply the complete purchasing package applicable to each Purchase Category Code. The Purchase Category Code List and Post-Payment & Procurement Review Agency Document Checklist are located in Appendix 31 and Appendix 32, respectively.

Items determined to be exempt from competitive bidding must include the legal citation exempting the purchase. An Exemptions List (Document Type 9) is located in Appendix 33. Documents are audited for compliance with purchasing procedures to ensure continued delegation to agencies.

[503] TEX. GOV'T CODE § 441.1855(b). *See also* General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 7.12 (directing agencies to review their document production protocols and apply best practices to produce documents in the most practicable, efficient, and cost effective manner possible that would lead to reduction in the total volume of paper used for general office administration, publications and reproduction and printing services *e.g.*, changing the format of transmitting or receiving documents, such as through electronic rather than hard copy).

[504] TEX. GOV'T CODE § 441.1855(c).

[505] TEX. GOV'T CODE § 441.1855(b).

[506] TEX. GOV'T CODE § 441.185.

[507] TEX. GOV'T CODE § 441.1855.

[508] The term "AC" means after completion, expiration, or termination of the instrument according to its terms.

[509] TEX. GOV'T CODE §§ 403.071, 2155.325; 34 TEX. ADMIN. CODE § 20.488.

Each purchase is audited for items which include, but are not limited to, the following:

1. The invoice matches the PO/contract terms and conditions as well as the documentation showing the receipt of goods delivered or services rendered *i.e.*, the requirement is known as the "Three-Way Match" rule;
2. Final Bidder List (dated CMBL Listing – extracted from CMBL using NIGP Class/Item Codes and, if applicable, agency head or designee approval of supplements to Bidder List);
3. Printouts for the following vendor compliance checks:
    - Debarment
    - SAM
    - Federal Database Check
    - Iran, Sudan, and Foreign Terrorist Organization
    - Boycott Israel
    - Energy Company Boycotts
    - Warrant/Payment Hold;
4. Dated ESBD posting printouts for the Notice of Intent to Procure (if the purchase is over $20 million), the solicitation, including addenda, and the Notice of Award, if purchase is over $25,000.00;
5. State Use Program and /or TCI Program waivers;
6. Acquisition Plan;
7. Complete HUB Subcontracting Plan (HSP);
8. Vendor responses to solicitation;
9. Documentation associated with vendor responses evaluated by committee or bid tabulation;
10. DIR Exemption printout;
11. Dated request for SPD Delegation of Authority and SPD response printout;
12. SAO Nepotism Disclosure Statement for Purchasing Personnel;
13. TEC Disclosure of Interested Parties Form 1295;
14. Evidence of Pre-Contract and Contract Amendment Agency Reviews and Approvals (*e.g.,* agency verification of best value standards, agency verification of complete procurement file);
15. SPD-administered agency-specific procurement requirements;
16. NIGP Class/Item number are listed on purchase order;
17. The Purchase Category Code (PCC) is correctly selected;
18. The correct legal citation is noted on exempt purchases;
19. Verification of proprietary sole source status, authorized signature on Proprietary Purchase Justification, Direct Publication Declaration Statement;
20. Signed Emergency Justification letter;
21. Authorized signatures on all documents;
22. Purchase Order Change Notice (POCN) or contract amendment for extending/renewing a contract;
23. Verification that sales tax (and any other tax from which the State may be exempt) has not been paid by the agency;
24. Contracts crossing the biennium contain an Excess Obligations Prohibited contract clause;
25. The itemized sales receipt that supports the applicable point of sale purchase using a payment card;
26. PO/contract includes the Essential Provisions (including Texas Required Contract Clauses);
27. Most recent version of the agency's annual Procurement Plan;
28. Evidence of LBB reporting; and
29. Evidence of VPTS reporting.

VERSION HISTORY OF THE GUIDE

Release/Revision Date	Version	Summary of Revisions
June 1, 2018	1.0	Publication Date of the Guide
August 1, 2018	1.1	Non-substantive modifications (*e.g.*, format adjustments, inclusion of hyperlinks, correction of typographical errors) throughout the Guide. Non-substantive clarifications to the following sections: RFO Procurement Method, Procurement Method – Consulting Services, Evaluation – Evaluation Committee Process, and Appendix Nos. 1, 18, 22, 23, 24. Substantive revisions to the following sections: Proprietary Purchases, Fuel, Oil, and Grease Purchases, Emergency Purchases, Commercial Charge Card/Payment Card, Post-Payment Audits, and Appendix Nos. 5, 6, 12, 29, 30.
September 5, 2019	1.2	Non-substantive modifications (*e.g.*, format adjustments, inclusion of hyperlinks, correction of typographical errors) throughout the Guide. Non-substantive clarifications to the following sections: Introduction, Professional Certification and Training Program, The State Use Program, and Term Contracts – Overview, Appendix Nos. 21 and 31. Substantive revisions to the following sections: Quality Assurance Team, Needs Assessment, Travel Services Contracts, Federal Government Purchases and Interstate Compacts & Cooperative Agreements, Direct Publications, Emergency Purchases, DIR Cooperative Contracts Program, Procurement Method – Professional Services, Procurement Method – Consulting Services, Procurement Method – Legal Services, Procurement Method – Texas Disaster Act of 1975, Scope of Work, Contract Term and Termination, Risk Mitigation Measures, QAT – Review of Major Information Resources Projects, Texas Register, Evaluation – Bid Process, Evaluation Committee Recommendation, Contract Terms, Contract Award & Amendment, Contract and Amendment Notifications, Contract Manager Responsibilities, Termination for Cause, Termination for Non-Appropriation Excess Obligations Prohibited, Vendor Performance Reporting, Records Retention, Post-Payment Audits, and Appendix Nos. 3, 4, 7, 8, 22, 23, 26, 29, and 30.
December 31, 2019	1.3	Non-substantive modifications (*e.g.*, format adjustments, inclusion of hyperlinks, correction of typographical errors) throughout the Guide. Non-substantive clarifications to the following sections: Introduction, Professional Certification and Training Program, SPD, Quality Assurance Team, Historically Underutilized Business Program Reports, Cost Estimate, The State Use Program, Travel Services Contracts, Printing Services and In-House Copy Centers, Procurement Method – SPD Delegated Purchases – Overview, SPD Review and Delegation Process, Competitive Bidding (IFBs, Informal Bidding), RFO Procurement Method, Procurement Method – Interagency Cooperation Contracts (IACs), Request for Applications, Content – Overview, Content – Introduction, Payment and Pricing Terms, Electronic State Business Daily (ESBD), Administrative Review of Responses, Evaluation of Responses – Overview, Vendor Performance Tracking System Check, Evaluation Committee Recommendation, SAO Nepotism Disclosure Statement for Purchasing Personnel, SAM Check,Texas Register Notice of Award, Enhanced Contract and Performance Monitoring, Inspection, Testing, Acceptance – Overview, and Termination for Cause. Substantive revisions to the following sections: Procurement Method Identification Process, Emergency Purchases, Procurement Method – Reverse Auction Procedure, Procurement Method – Automated Information Systems, DIR Contracts, Texas.Gov Services, DIR Data Center Services, Procurement Method – Consulting Services, Internal Calendar of Events, HUB Subcontracting Plan Requirements, CAT – Review of Solicitations With a Value of $5 Million or More, Centralized Master Bidders List, Solicitation – Receipt and Control of Responses, Oral Presentations, Negotiations – Overview, Major Information Resources Projects, Franchise Tax Check, ESBD Notice of Award, Purchase Order (PO), Payment Card, Assignment by Contractor and Contractor Name Change – Overview, Extensions and Renewals, Termination for Convenience, Vendor Performance Reporting, and Appendix Nos. 6, 7, 8, 22, and 23.

Release/Revision Date	Version	Summary of Revisions
October 27, 2021	2.0	Non-substantive modifications (*e.g.* format adjustments, inclusion of hyperlinks, correction of typographical errors) throughout the Guide. Non-substantive clarifications to the following sections: Introduction - TCI Waiver Process - Determining Contract Value - Trade-In of Used Equipment - Emergency Purchases - Scope of Work - Specifications, Electronic State Business Daily - Appendices 4, 5. Substantive revisions to the following sections: Vendor Communication - SPD, DIR, SAO, Oversight Teams, and Planning Documents – DIR - SAO – Travel Services Contracts – Proprietary Purchases under SPD Delegation by Rule – Proprietary Purchases using the RFO Procurement Method – Minimum Requirement for SPD Delegated Purchases (graphic) - Purchases of $10,000 or less ("Spot" Purchases) - Procurement Outside of SPD Delegation Authority – Informal Bidding (Purchases $25,000 or less) - Competitive Bidding (IFBs, Informal Bidding) - Best Value Standard – Procurement Method, SPD TXMAS Contracts – Procurement Method, Automated Information Systems – Monetary Thresholds for Competitive Actions - DIR TXMAS Contracts – RFO Procurement Method – Procurement Method, Professional Services – Procurement Method, Consulting Services, Procurement Method, Texas Disaster Act of 1975 – Comparison of Competitive Procurement Methods (graphic) - Procurement Lead Time and Template (graphic) - Internal Calendar of Events (graphic) - Electronic Submission and Signatures – Evaluation Criteria for Award – CAT, Review of Solicitations with a Value of $5M or more – QAT, Review of Major Information Resources Projects – Centralized Master Bidders List – Communication with Agency Personnel – Evaluation Committee – Evaluation of Responses, Overview – Federal Database Checks – Energy Company Boycott Check – LBB Reporting Requirements (graphic) - Carrier Shipping Methods (graphic) - Withholding Payment – Vendor Scoring Guide (graphic) - Response to Vendor Reports – Vendor Performance Report Protests – Post-Payment Audits - Appendices 1, 2, 6, 7, 8, 12, 19, 23, 24, 30, 31.
May 3, 2022	2.1	Non-substantive modifications (e.g. format adjustments, inclusion of hyperlinks, correction of typographical errors) throughout the Guide. Non-substantive clarifications to the following sections: Procurement Method Delegation – TCI Purchases – Summary of Minimum Requirements for Delegated Purchases – IT Commodity Items – DIR Cooperative Contracts Program – Coordinated Bulk Purchases of Commodity Items – Limitations on Liability Clauses – Receipt and Control of Responses – Vendor Selection: TCI Program, State Use Program, and Term Contract Purchases – Appendices 4, 23. Substantive revisions to the following sections: Vendor Communication – DIR -- Contract Advisory Team – State Data Center Printing -- Minimum Requirements for Delegated Purchases (graphic) –Determining Contract Value – One-Time Purchases of Goods of $50,000 or less – Purchases of Services of $100,000 or less – SPD Delegation by Rule – Emergency Purchases – Procurement Method: Automated information Systems – Determining Contract Value of IT Commodity Item Procurements – Cloud Computing Services – DIR Review and Signature Approval of Certain SOWs – Exemptions and Exclusions – CAT, Review of Solicitations with a Value of $5 Million or More – ESBD Posting Timelines (graphic) – Solicitation Addenda – LBB Reporting Requirements (graphic) – DIR Statements of Work – ESBD Notice of Award – Barring Vendors from Participating in State Contracts – Post-payment Audits – Appendices 3, 23, 24, 30, 31.

APPENDICES

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Appendix 2:	Acronyms and Abbreviations
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Appendix 4:	Selected Statutory State Employment Restrictions and Required Disclosures
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APPENDIX 1

Glossary

Addendum
A written addition, change, or supplement to a solicitation issued prior to the opening date.

Advance Payment
The payment for goods or services before their delivery to the agency. See Early Payment.

Automated Information System (AIS)
Products and services that are associated with computers (automation) or telecommunications systems as defined in Section 2157.001(1) of the Texas Government Code.

Amendment
Written addition or change to a contract.

Appropriation
Legislative authorization to expend public funds for a specific purpose.

Assignment
Transfer of contractual rights from one party to another party.

Award
The act of accepting an offer, thereby forming a contract between the State and a vendor.

Best Interests of the State
Most advantageous to the State in light of all relevant circumstances.

Bid
An offer to contract with the State, submitted in response to an IFB.

Bid Bond
See Bid Deposit.

Bid Deposit
A deposit required of bidders to protect the State in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the State.

Bid Tabulation
The recording of bids and bid data submitted in response to an IFB. The bid tabulation is used for comparison, analysis, and record keeping.

Bidder
An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or entity that submits a bid, such as an agent, employee and representative. See Respondent.

Bidders List
A list of vendors that have expressed an interest in doing business with the State. See Centralized Master Bidders List.

Bid Sample
A sample required to be furnished as part of a bid, for evaluating the quality of the product offered.

Biennium (State of Texas)
A period of 24 consecutive months, beginning on September 1 of each odd-numbered year. Example: September 1, 2017 through August 31, 2019.

Bill of Lading
Document issued by a carrier identifying merchandise and transportation details.

Blanket Bond
A performance bond that insures a respondent's performance on two or more contracts in lieu of separate bonds for each contract.

Blanket Order
A purchase order to a contractor for a specified time period, specific product and an estimated minimum quantity; with actual delivery to only occur in conformance with subsequent authorization(s) by the ordering entity. Use of minimum estimated call out quantities is advised for this type of order. See Standing Order.

Brand Name
A trade name or product name which identifies a product as having been made by a particular manufacturer.

Breach of Contract
Failure to perform a contractual obligation.

Centralized Master Bidders List (CMBL)
An online directory, maintained by SPD, containing contact information and product categories of vendors registered to receive procurement opportunities from public entities.

Change Order
An amendment, clarification, change, or deletion to the original scope of work to a contract.

Class and Item
The classification system found in the NIGP Commodity Book.

Closing Date
The date and time that offers or proposals are due in response to a solicitation. Used interchangeably with the term "Opening Date."

Commodity
Generally, the term means supplies, materials or equipment. See IT Commodity Item.

Commodity Book
List of NIGP class and item numbers maintained on the CPA website.

Competitive Sealed Bidding
Process of advertising an Invitation for Bids (IFB), the evaluation of the submitted bids, and awarding of the contract in accordance with state law.

Competitive Sealed Proposals
Process of advertising a Request for Proposal (RFP), the evaluation of submitted proposals, and awarding of the contract in accordance with state law.

Competitive Solicitation
The process of inviting and obtaining responses from competing vendors in response to advertised competitive specifications, by which an award is made based on best value. The process contemplates giving potential vendors a reasonable opportunity to compete, and requires that all vendors be placed on a level playing field. Each respondent must respond to the same advertised specifications, terms, and conditions.

Competitive Specifications
A specification stated in such a manner that two or more vendors can meet the specifications on a level playing field.

Confirmation Order
A purchase order issued to a contractor, listing the commodities and terms of an order placed verbally or otherwise, in advance of the issuance of the purchase order. The original date and contractor's representative's name should be included on the order. It is recommended the purchase order include the following statement: "Confirmation Order – Do Not Double Ship."

Consultant
A person who provides or proposes to provide the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.

Consulting Services
The service of studying or advising a state agency under contract that does not involve the traditional relationship of employer and employee. See Major Consulting Services Contract.

Consumable Procurement Budget
That portion of an agency's budget as identified by comptroller expenditure codes attributable to consumable supplies, materials and equipment.

Contract
A legally enforceable agreement between two or more parties.

Contractor
A business entity or individual that has a contract to provide goods or services to the State.

Cooperative Purchasing
A program for qualified entities to use the SPD or DIR contract resources.

Debarment
An exclusion from contracting or subcontracting with state agencies on the basis of any cause set forth in statute or SPD rules, commensurate with the seriousness of the offense, performance failure, or inadequacy to perform.

Delegated Purchase
A purchase made by an agency under the authority of SPD and subject to SPD rules and procedures.

Discount-From-List
Unit prices that are based on a discount from a manufacturer's published price list. Ordering entity can validate the discount price by reviewing the price list or catalog from which the price reduction is figured.

Early Payment
The payment for goods or services after receipt but earlier than the payment due date set forth in Section 2251.021 of the Texas Government Code. See Advance Payment.

Early Payment Discount
A discount from the purchase price allowed to the agency if payment is made within a specified period.

Electronic State Business Daily (ESBD)
An online application, administered by SPD, that publishes solicitations for the purpose of informing vendors of procurement opportunities and provides public notice of contract awards.

Equivalent Product
A product that is comparable in performance and quality to the specified product.

Escalation Clause
A clause in a contract providing for a price increase or decrease under certain specified circumstances.

Executive Sponsor
A high level individual with primary responsibility for implementation and operation of the project. In some instances, the executive sponsor may be the executive head of the entity. In other instances, the executive sponsor may be the division or program director with overall project responsibility.

Fiscal Year (State of Texas)
A period of 12 consecutive months, beginning September 1 of each year and ending August 31 of the next year.

Goods
The term means supplies, materials, or equipment.

Grant
An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to carry out a program in accordance with rules, regulations and guidance provided by the grantor agency. The term does not include technical assistance that provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee is not required to account. See Uniform Grant Management Standards.

Historically Underutilized Business (HUB)
A business as defined by Chapter 2161 of the Texas Government Code and 34 TAC § 20.282.

Informal Solicitation
An unsealed, competitive solicitation used to obtain offers submitted verbally or in writing for purchases with a value of $25,000 or less.

Inspection
Examination and/or testing of merchandise to determine whether it has been received in the proper quantity and condition and to verify that it conforms to the applicable specifications.

Inspection Report
A report made as a result of the agency's inspection, informing the buyer of a product's compliance with advertised specifications.

Interagency Contract (IAC)
Written understanding between two or more agencies as authorized by Chapter 771 of the Texas Government Code.

Interlocal Contract
Written understanding between local government entities, a local government entity and a federally recognized Indian tribe, or a local government entity and a state agency of Texas or another state as authorized by Chapter 791 of the Texas Government Code.

Invitation for Bids (IFB)
A written solicitation requesting the submission of bids; also referred to as a bid invitation.

Invoice
Document from a contractor requesting payment for goods delivered and/or services rendered.

IT Commodity Item
Commercial software, hardware, or technology services, other than telecommunications services, that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more customers. The term includes seat management, through which an agency transfers its personal computer equipment and service responsibilities to a private vendor to manage the personal computing needs for each desktop in the agency, including all necessary hardware, software, and support services.

Late Response
A response that is received after the date and time established for receipt of responses to a solicitation.

Lease Purchase
An installment sale which gives the lessee the right to purchase equipment or other fixed assets at an agreed upon price under certain conditions. Title passes from seller to agency if and at the time the option to purchase is exercised. See Operating Lease.

Life-Cycle Costing
A procurement cost analysis technique which considers operating, maintenance, acquisition price, and other costs of ownership in the award of contracts to ensure that the item acquired will result in the lowest total ownership cost during the time the item's function is required.

Liquidated Damages
A specified contract provision that entitles the State to demand a set monetary amount determined to be a fair and equitable repayment to the State for loss of service due to contractor's failure to meet contract requirements.

Local Government
A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the State.

Major Consulting Services Contract
A consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed $15,000, or $25,000 for an institution of higher education other than a public junior college.

Managed Contract
A SPD Term Contract that cannot be processed through Texas SmartBuy. The purchase order is prepared by the agency, referencing the contract number and pricing, and sent directly to the contractor.

Manufacturer's Price List
A price list published in some form by the manufacturer and available to and recognized by the trade. The term does not include a price list prepared especially for a particular solicitation.

Minor Technicality
A requirement in a solicitation which, if waived or modified by the agency when evaluating responses, would not give a respondent an unfair advantage over other respondents or result in a material change in the contract.

Multiple Award Contract Procedure
A purchasing procedure by which SPD establishes one or more levels of quality and performance and makes more than one award at each level.

Negotiations
A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. In a contractual sense, negotiation means the "dealings conducted between two or more parties for the purpose of reaching an understanding."

Nonresident Bidder
For purposes of the reciprocal preference law, a person whose principal place of business is not in Texas.

Notice of Award
An official announcement of an executed contract. For SPD, the term also refers to a letter signed by the Deputy Comptroller or designee which creates a contract.

Offer
A proposal to contract with the State submitted in response to an RFO.

Opening Date
The date and time that bids are due in response to an IFB. Used interchangeably with the term "Closing Date."

Operating Lease
A contract granting the lessee the use of equipment or other fixed assets for a specified time in exchange for payment. Title remains with the contractor. See Lease Purchase.

Payment Bond
A deposit, pledge, or contract of guaranty supplied by a contractor to protect the State against loss due to the contractor's failure to pay subcontractors and material suppliers.

Payment Card
A commercial charge card that is predominantly used for transactions that require payment upfront. Agencies may only use commercial charge cards obtained under SPD established contract(s).

Performance Bond
A deposit, pledge, or contract of guaranty supplied by a contractor to protect the State against loss due to the contractor's inability to complete the contract as agreed.

Post-Consumer Materials
Finished products, packages, or materials generated by a business entity or consumer that have served their intended end uses, and that have been recovered or otherwise diverted from the waste stream for the purpose of recycling.

Posted Date
The date a document is made available online to the public.

Pre-Consumer Materials
Materials or by-products that have not reached a business entity or consumer for an intended end use, including industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers, and other companies. The term does not include materials and by-products generated from, and commonly reused within, an original manufacturing process or separate operation within the same or a parent company.

Professional Services
Services directly related to the professional practices specified by the Professional Services Procurement Act, Chapter 2254, Subchapter A, of the Texas Government Code.

Proposal
An offer to contract with the State, submitted in response to an RFP.

Protest Procedures
Procedures for resolving vendor protests relating to purchasing issues.

Public Opening
The public opening of bids, offers, or proposals, in which the names of the respondents to a solicitation are publicly read and recorded. No prices are divulged at an offer or proposal opening as these types of solicitations are subject to negotiation.

Purchase Order
A document issued by a customer to a seller, indicating types, quantities, and agreed prices for products or services the seller will provide to the customer.

Recycled Material Content
The portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.

Recycled Materials
Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

Recycled Product
A product that meets the requirements for recycled material content as prescribed by the rules established by the Texas Commission on Environmental Quality in consultation with CPA.

Remanufactured Product
A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the OEM performance specifications; provided, however, the warranty period for a remanufactured product may differ from the OEM warranty period.

Rent
Payment for the use of property.

Request for Information (RFI)
A general invitation to the vendor community requesting information that may be used in a potential future solicitation.

Request for Offers (RFO)
A written solicitation requesting the submission of offers for AIS which include hardware, software and other information technology goods and services.

Request for Proposals (RFP)
A written solicitation requesting the submission of proposals.

Request for Qualifications (RFQ)
A written solicitation requesting the submission of qualifications or specialized services. Typically used for the procurement of professional services.

Responsive
The bid, offer, or proposal complies with all material aspects of the solicitation document, including submission of all required documents.

Respondent
An individual or entity that submits an offer or proposal. The term includes anyone acting on behalf of the individual or entity that submits an offer or proposal, such as an agent, employee, and representative. See Bidder.

Responsible
For purposes of the reciprocal preference law, a governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident bidder underbids the lowest bid submitted by a responsible resident bidder by the amount authorized by statute.

Salvage Value
The estimated value of a property when the user completes its use of the property.

Scope of Work
A section of a solicitation that provides a description of the products and services to be provided by the vendor.

Sealed Bids or Proposals
A response which is kept secure and unopened until after the due date and time specified in the solicitation.

Service
The furnishing of skilled or unskilled labor or professional work.

Set Aside Contract
Term used to refer to the State Use Program and the Texas Correctional Industries (TCI) purchasing program.

Solicitation
A document such as an IFB, RFO, RFP or RFQ requesting responses from vendors to provide specified goods and services. The term also refers to the process of obtaining responses from vendors to provide specified goods and services.

Specifications
The “line item” descriptors within a solicitation that define the good or service that the vendor must offer to be considered for award.

Standard
The established and fixed measure used in assessing quality or performance.

Standing Order
A purchase order to a contractor for a specified time period during which a specific quantity of product will be delivered on specified delivery dates. See Blanket Order.

State
The State of Texas.

Statute
A law enacted by the state or federal government.

Successor-in-Interest
Any business entity that acquires or otherwise obtains the controlling ownership of a business entity.

Surplus
Federal and State surplus property programs administered by TFC. Each program has its own laws, rules, and procedures.

Term Contract
A contract established by SPD for the purchase or lease of goods and services used in large quantities by several agencies.

Texas Bidder
For the preference to resolve tie bids, "Texas bidder" means a business (1) incorporated in Texas, (2) that has its principal place of business in Texas, or (3) that has an established physical presence in Texas. See Texas Resident Bidder.

Texas Grant Management Standards (TXGMS)
Uniform grant and contract administration procedures, developed under the authority of Chapter 783 of the Texas Government Code, to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state and federal agencies.

Texas Resident Bidder
For purposes of reciprocal preference law, "resident bidder" refers to a person whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas. See Texas Bidder.

Texas SmartBuy
The State's central e-procurement system for non-IT goods and services.

Texas Specification
A specification adopted by SPD and used whenever possible in the purchase of the item involved. Established standard of minimum quality for products or services purchased in volume by the State.

Unit Price
The price for a good or service in accordance with the unit of measure provided in the solicitation.

Vendor
A potential provider of goods or services to the State.

APPENDIX 2

Acronyms and Abbreviations

AIS	Automated Information System
ARO	After Receipt of Order
BAFO	Best and Final Offer
BI	Bodily Injury (insurance)
BLS	Bureau of Labor Statistics (federal agency)
BOM	Bill of Materials
CAO	Contract Administration Office
CAPPS	Centralized Accounting and Payroll/ Personnel System
CAT	Contract Advisory Team
CCTS	Capitol Complex Telephone System
CFR	Code of Federal Regulations
CMBL	Centralized Master Bidders List
CNA	Central Nonprofit Administration
COI	Conflict of Interest or Certificate of Insurance
COTS	Commercial Off the Shelf
CPA	Comptroller of Public Accounts
CPI	Consumer Price Index
CPO	Chief Procurement Officer
CRP	Community Rehabilitation Program
CTCD	Certified Texas Contract Developer
CTCM	Certified Texas Contract Manager
DBITS	Deliverables-Based Information Technology Services
DIR	Department of Information Resources
DPS	Department of Public Safety
DSC	Data Center Services (DIR)

EIR	Electronic Information Resources
ESBD	Electronic State Business Daily
FOB	Free On Board
FOIA	Freedom of Information Act (federal)
FSPP	Federal Surplus Property Program
GCI	General Contract Information (Texas SmartBuy Contracts)
GSA	General Services Administration (federal agency)
HSP	HUB Subcontracting Plan
HUB	Historically Underutilized Business
IAC	Interagency Cooperation Agreement
ICT	Information Communication Technology
IFB	Invitation for Bids
IT	Information Technology
ITV	Interagency Transaction Voucher
LAR	Legislative Appropriations Request
LBB	Legislative Budget Board
MIRP	Major Information Resources Project
MOLA	Master Operating Lease Agreement
MOU	Memorandum of Understanding
NASPO	National Association of State Procurement Officials
NDA	Non-Disclosure Agreement
NIGP	National Institute of Governmental Purchasing
NOA	Notice of Award
OAG	Office of the Attorney General
OCC	Outside Counsel Contract

OEM	Original Equipment Manufacturer
OMB	Office of Management and Budget (federal)
OMR	Open Market Requisition (Request)
OVFM	Office of Vehicle Fleet Management
PAR	Progress Assessment Report (HSP)
PCC	Purchase Category Code
PD	Property Damage (insurance)
PI	Personal Injury (insurance)
PIN	Payee Identification Number
PM	Project Manager
PO	Purchase Order
POCN	Purchase Order Change Notice
POD	Procurement Oversight and Delegation
PPI	Producer Price Index
PR	Price Request
QAT	Quality Assurance Team
QAP	Quality Assessment Plan
REQ	Requisition
RFA	Request for Applications
RFI	Request for Information
RFO	Request for Offers
RFP	Request for Proposals
RFQ	Request for Qualifications
RTI	Recurring Transaction Index
RtR	Request to Retain (OAG Outside Counsel Contracts)
SAM	System for Award Management (federal)
SAO	State Auditor's Office
SOW	Scope of Work or Statement of Work
SPD	Statewide Procurement Division
STMP	State Travel Management Program
T&Cs	Terms and Conditions
T&M	Time and Materials
TAC	Texas Administrative Code
TCI	Texas Correctional Industries
TCO	Total Cost of Ownership
TDCJ	Texas Department of Criminal Justice
TEC	Texas Ethics Commission
TEX-AN	Texas Agency Network (DIR)
TFC	Texas Facilities Commission
TIN	Texas Identification Number
TPIA	Texas Public Information Act
TWC	Texas Workforce Commission
TXFS	Texas Fleet System
TXGMS	Texas Grant Management Standards
TXMAS	Texas Multiple Award Schedule
UCC	Uniform Commercial Code (federal)
UOM	Unit of Measurement
USAS	Uniform Statewide Accounting System
USC	United States Code
USPS	United States Postal Service
VIN	Vendor Identification Number
VPTS	Vendor Performance Tracking System
VPR	Vendor Performance Report

APPENDIX 3

Agency-Vendor Model Communication Procedure

Introduction

The Statewide Procurement Division (SPD) has established this Agency-Vendor Model Communication Procedure to provide guidance to both state agencies and the vendor community on appropriate communications during the pre-solicitation phase of the procurement cycle. Pre-solicitation vendor communication is written or in-person communication initiated by a vendor to introduce a product, service, or other innovative idea that is not in response to a solicitation. Guidelines for communication during the solicitation process are available in the Texas Procurement and Contract Management Guide in the Vendor Communication section. Any communication between agencies and vendors post-award should be directed to the designated contract manager.

While this document serves as the Agency-Vendor Communication Procedure for the Statewide Procurement Division, state agencies and local government entities are encouraged to use this document as a foundation for their own Agency-Vendor Communication Procedure.

Background

Working with the vendor community and potential contractors early and often as a precursor to a procurement helps the state gain better product or service information and improves the quality of market research efforts. Frequent and effective communication between the public and private sectors helps agencies develop specifications and requirements that best meet agency business needs and assures best value to the state. This procedure aims to provide guidance and context for state agencies and the vendor community alike.

Purpose

The objective of implementing an Agency-Vendor Communication Procedure is to proactively improve the communication between the vendor community and public procurement professionals in Texas. More accessible education on vendor opportunities (particularly in technology and other sectors experiencing rapid change), implementing new standards, and fully incorporating existing communication avenues will strengthen the communication and relationship between the two parties.

The Agency-Vendor Communication Procedure and the strategies outlined within will help agencies improve and streamline communication with the vendor community. It will also serve as initial guidance for the vendor community to conduct introductory communication with state agencies, identify the parameters public procurement professionals are working within, and establish standards for positive relationship building.

In the following five sections, this procedure will discuss:

A. The encouraged implementation of an agency-vendor liaison
B. Important actions vendors can take to increase their chances of doing business with the state
C. Proper avenues of communication for vendors and agencies
D. An explanation of the law and rule that govern public procurement in Texas
E. Frequently asked questions

A. Agency-Vendor Liaison

Purpose: State agencies are encouraged to designate an Agency-Vendor Liaison (preferably within the procurement division) to strengthen the agency-vendor community relationship and to serve as a primary, facilitating point-of-contact to vendors who believe their product or service could be of value to the agency.

Implementation: The Agency-Vendor Liaison will facilitate introductory vendor communications, support agency staff and subject matter experts researching their validity and help educate agency procurement staff about the potential for these new goods or services.

Responsibilities include:

- Establishing strong relationships with the vendor community.
- Strengthening practices within the agency to improve communications with the vendor community.
- Engaging and encouraging vendor feedback on agency procurements.
- Providing outreach to the vendor community on the standard procurement practices of the State/agency.
- Responding to vendor requests and submissions in a timely manner.
- Establishing an agency-specific Vendor Communication Policy that is publicly accessible, and
- Facilitating initial introductions and communications between the vendor community and agency subject matter experts, program managers, and procurement staff.

B. Doing Business in Texas

Prospective vendors should become acquainted with local and state procurement laws, policies, and standards. As a result of enhanced scrutiny on public procurement, the State of Texas has implemented various measures to foster competition for state business as well as promote transparency throughout the procurement process.

A vendor can improve its chances of doing business with the State by incorporating the following actions:

1. **Properly classify the goods and services offered.** The State of Texas uses the NIGP (National Institute for Governmental Purchasing) commodity codes categorize goods and services. These NIGP codes are divided into purchasing class and item codes (numeric) that best represent the goods and/or services offered. Properly identifying goods and/or services will help public procurement professionals accurately identify interested vendors in particular industries.

2. **Register as a Texas Vendor.** Vendors seeking contracting opportunities with the state should register for the Centralized Master Bidders List (CMBL). The CMBL is a database used by state of Texas procurement professionals to develop a mailing list for vendors to receive bid opportunities based on the goods or services that they can provide to the state. https://comptroller.texas.gov/purchasing/vendor/cmbl/

3. **Obtain Historically Underutilized Business (HUB) certification, if eligible.** The Statewide HUB Program at the Texas Comptroller of Public Accounts certifies qualified small businesses as Historically Underutilized Businesses (HUBs). To qualify, an applicant owner must own 51% or more of the business and control day-to-day operations, and must be economically disadvantaged either as a woman business owner, minority business owner, or service-disabled veteran business owner. https://comptroller.texas.gov/purchasing/vendor/hub/certification-process.php

4. **Regularly Search the Electronic State Business Daily (ESBD).** State and local governments post on the Electronic State Business Daily (ESBD), the state's search engine for its most valuable contract opportunities. Vendors can search by government agency or by class and item number to find current contract opportunities statewide. http://www.txsmartbuy.com/esbd

5. **Check Qualifications.** Vendors must be in good standing with state and federal entities. Prospective vendors are encouraged to confirm if their business entity is subject to Texas franchise tax and determine if they are in good standing or "active". Public procurement professionals will also ensure that potential vendors are in good standing with the federal government by checking federal databases, such as SAM.gov. In addition, vendors must comply with any additional prohibitions that are prescribed in statute. These prohibitions are identified in the *Texas Procurement and Contract Management Guide*.

Below are some of the proactive measures that vendors can take to ensure visibility with state agencies and public procurement staff:

Table 1: Vendor Communication Checklist		
Communication Actions	**N/A**	**Yes**
Request public records to review recent past procurements		
Respond to Requests for Information (RFI)		
Attend Industry Day, Industry Fair, or Conference		
Register for the Centralized Master Bidders List (CMBL)		
Select all applicable NIGP codes		
Obtain HUB Certification, if eligible		
Regularly review the Electronic State Business Daily (ESBD)		

C. Proper Avenues of Communication for Vendors and Agencies

To invite and increase vendor communication, the Vendor-Agency Liaison should establish multiple avenues of information and communication for the vendor community.

Agency website. State agency websites should provide information for the vendor community that includes a schedule and status of upcoming solicitation opportunities, link to the Electronic State Business Daily (ESBD), the agency's Agency-Vendor Communication procedures (if any), contact information for the Agency-Vendor Liaison if any), and other outreach or training opportunities, if applicable.

Automated Inquiry Form. Where feasible, state agencies are encouraged to provide a vendor inquiry form. This form will prompt a prospective vendor to provide a state agency with information about their organization and the goods and services offered.

Below is a list of possible components to be included in an agency inquiry form.

Table 2	
Vendor Information	**Technical Information**
Vendor Name Vendor Type Vendor Website Vendor primary point of contact Name Phone number Email address TIN, if applicable	Concise title and abstract (200 words or less) of the proposal Objectives Method of Approach Nature and extent of anticipated results How the good/service will support the agency's mission Waiver of proprietary data (confidential information should not be submitted)

Phone. If communicating by phone, the Agency-Vendor Liaison should follow-up via email to maintain records of the communication.

Email. State agencies and Agency-Vendor Liaisons should encourage email correspondence from the vendor community. It is recommended that a shared email box (example: vendorcommunication@stateagency.gov) be created to encourage the vendor community to email with their suggestions or pitches. Agency-Vendor Liaisons should make every attempt to respond to these emails in a timely manner, even if it is to simply acknowledge receipt.

Upon response, the Agency-Vendor Liaison should request the following information from the vendor:

Below is a list of possible components to be included in an agency email response.

Table 3

Vendor Information	Technical Information
Vendor Name Vendor Type Vendor Website Vendor/Organization primary point of contact Name Phone number Email address TIN, if applicable	Concise title and abstract (200 words or less) of the proposal Objectives Method of Approach Nature and extent of anticipated results How the good/service will support the agency's mission Waiver of proprietary data (confidential information should not be submitted.)

In-person or virtual meetings. When meeting in-person or virtually, state agency personnel must maintain impartiality and not provide any information that would give any vendor a competitive edge over another. It is strongly recommended that state agencies review the following guidance to ensure in-person or virtual meetings are conducted with utmost care for the competitive process.

- Emphasize that the primary purpose of the meeting is for the state agency to learn about the industry and marketplace. Ask questions and gain an understanding of the advantages and issues associated with a particular approach or business practice. Ask the vendor clarifying questions but avoid expressing opinions or preferences. The meeting should not be the basis for further action and should not unintentionally solicit a proposal.
- Avoid unauthorized commitments (i.e. an agreement that is not binding because the agency representative making the agreement lacks the proper authority to enter into that agreement on behalf of the agency). Each vendor meeting should end with a statement similar to: "Nothing discussed in this meeting authorizes you to work, start work, or bill for work. Any understanding on your part to the contrary is not valid."
- Treat all vendors and potential vendors fairly and impartially.
- Conduct business with integrity, fairness, and openness. Not only must the procurement process have integrity, but the actions of each individual involved in a public procurement must reflect integrity, fairness, and openness. Avoid organizational conflicts of interest or even the appearance of a conflict.
- Understand ethical responsibilities, and notify manager or supervisor, legal counsel, or other agency leadership, as applicable, of any concerns.
- Control the meeting and its agenda. Always prepare and follow a meeting agenda. Before the meeting, identify specific information that the vendor should address
- Always make the information provided to one vendor the same as provided to all vendors. Provide a standard information package to all vendors that provides up-to-date and accurate information about the agency mission and requirements. Do not provide nonpublic information.
- Ensure impartiality. Do not give, or accept, preferential treatment from any private party.
- Document the results of the meeting. Documenting the results and findings of a meeting is a critical part of the market research effort. Record the date, place, and meeting participants, including company affiliation and contact information.

D. Expectation Management

The process of procurement in the public sector may appear cautious and resistant to change for the following reasons:

- Reliability and consistency are critical (in lieu of risk).
- Errors, misjudgments, and unethical behaviors are amplified, and the effects are long-lasting.
- Even the appearance of impropriety can have negative ramifications.
- Erosion of public trust can be swift, and rebuilding trust in public institutions can be slow.

To foster competition within the state and increase transparency in the procurement process, Texas has enacted several laws and administrative rules that require state agencies to take or avoid certain actions. The vendor community is encouraged to review current legislation and other adopted policies, starting with the *Texas Procurement and Contract Management Guide*.

E. Frequently Asked Questions

State agencies are committed to fostering open communication with the private sector whenever necessary, practicable, and appropriate. Providing answers to the following frequently asked questions can help strengthen communication and close existing communication gaps.

Question: "Are state agencies able to meet one-on-one with potential vendors?"
Answer: Agency personnel can meet one-on-one with potential vendors as long as no vendor receives preferential treatment. It is up to the individual agency whether and when to hold meetings.

Question: "Can state agencies accept vendor pitches before a solicitation?"
Answer: Yes, there are acceptable informal methods for vendors to introduce pitches as detailed in this document. Note that the acceptance of the information through a vendor pitch will not directly result in a contract award.

Question: "Can state agencies review vendor pitches that have been made in person, by phone, or over email?"
Answer: Yes, during the pre-solicitation phase, market research is critical and reviewing vendor pitches is a potential component of an agency's market research. This communication can happen via phone, in person or over email.

Question: "Do state agencies typically believe they are best served by continuing to work with an incumbent vendor?
Answer: While there can be implementation efficiencies and cost reasons to continue with an incumbent vendor or product, state agencies are generally open to consider a new vendor. The government may lose by limiting procurement opportunities to those vendors it already works with. In fact, it is in the best interest of the state to stay abreast of current market trends, latest industry standards, and cutting-edge products and services. Agencies must seek "best value" regardless of the source.

Question: "Why does it seem as though the government is slow and resistant to change?"
Answer: The government has stakeholders at every level of the process and must be sure to follow federal and state laws (if applicable) as well as instituted agency policies. The state must weigh every risk, bearing in mind the variety of laws and its inherent ability to directly and indirectly affect the state's population through its use of taxpayer money.

APPENDIX 4

Selected Statutory State Employment Restrictions and Required Disclosures

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Restrictions During State Employment

Dealings with Public Servants

Employees of agencies who perform purchasing functions under SPD's delegated authority shall adhere to the same ethical standards required of CPA employees, and shall avoid all conflicts of interest in their purchasing activities.[1] The Deputy Comptroller and an employee who exercises discretion in connection with a contract, payment, claim, or other pecuniary transaction under SPD's purchasing authority may not have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the State; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation.[2] For purposes of this statute, the terms "value," "reward," and "compensation" include anything with a monetary value of $5 or more.[3] This prohibition includes the spouse and dependent children of the Deputy Comptroller or agency employee.[4]

Prohibited Financial Interest in Certain Private Vendor Contracts

A state agency[5] may not enter into a contract with a private vendor for the purchase of goods or services solicited through a PO if the amount of the PO exceeds $25,000 and any of the following agency officers or employees have a financial interest in the vendor:

- a member of a state agency's governing body,
- the governing official, executive director, general counsel, chief procurement officer, or procurement director; or
- a family member related to one of the persons described in items (1) or (2) within the second degree of kinship by affinity or consanguinity.[6]

An agency employee or official has a financial interest in a vendor if the employee or official

- owns or controls, directly or indirectly, an ownership interest of at least 1 percent in the person, including the right to share in profits, proceeds, or capital gains or
- could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.[7]

Contracting with Current Executive Head of State Agency

A state agency may not enter into a contract with the executive head of the state agency or with a person who employs a current executive head of a state agency, unless the governing body

- votes in an open meeting to approve the contract, and
- notifies the Legislative Budget Board, not later than the fifth day before the date of the vote, of the terms of the proposed contract.[8]

Contracts by State Officers with Governmental Entities

A state officer[9] may not solicit or accept from a governmental entity a commission fee, bonus, retainer, or rebate that is compensation for the officer's personal solicitation for the award of a contract for services or sale of goods to a government entity.[10] This prohibition does not apply to a court appointment or a contract that is awarded to the state officer by competitive bid as provided by law and that is not otherwise prohibited by law.[11]

Certain Leases Prohibited

A member of the Legislature, an executive or judicial officer elected in a statewide election, or a business entity in which the legislator or officer has a substantial interest may not lease any office space or other real property to the State, a state agency, the Legislature or legislative agency, the Supreme Court of Texas, the Court of Criminal Appeals, or a state judicial agency.[12] However, a member of the Legislature or a business entity in which the legislator has a substantial interest may donate the use of office space that the member or entity owns and that is located in the member's district to the house of the Legislature in which the member serves to be

1 34 TEX. ADMIN. CODE § 20.157.
2 TEX. GOV'T CODE § 2155.003.
3 1 TEX. ADMIN. CODE § 45.3(b)(3).
4 1 TEX. ADMIN. CODE § 45.3(b)(1).
5 "State agency" includes the Texas Department of Transportation and an institution of higher education acquiring goods or services under Section 51.9335 or 73.115, Education Code; however, the prohibition discussed does not apply to the Employees Retirement System of Texas, except for a contract with a nongovernmental entity for claims administration of a group health benefit plan. TEX. GOV'T CODE § 2261.251. Additionally, Texas Education Code § 51.923 governs the conflicts of interest of the members of the governing board of an institution of higher education. TEX. GOV'T CODE § 2261.252(f).
6 TEX. GOV'T CODE §§ 2261.252(b); 2261.252(e). *See also* Tex. Att'y Gen. Op. No. KP-0259 (2019) (determining that Section 2261.252(e) of the Texas Government Code does not abrogate the common-law conflict of interest doctrine for state agency purchase orders of $25,000 or less).
7 TEX. GOV'T CODE § 2261.252(c); 34 TEX. ADMIN. CODE § 20.158(c). A financial interest does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation. TEX. GOV'T CODE § 2261.252(d).
8 TEX. GOV'T CODE § 669.003.
9 A "state officer" is defined as an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency. TEX. GOV'T CODE § 572.002(12).
10 TEX. GOV'T CODE § 572.056(a).
11 TEX. GOV'T CODE § 572.057(b).
12 TEX. GOV'T CODE § 572.057(a).

used for the member's official business.[13] A lease made in violation of this prohibition is void.[14]

Elected or Appointed Officer's Private Interest in Measure or Decision

An elected or appointed officer,[15] who is a member of a board or commission having policy direction over a state agency and who has a personal or private interest in a measure, proposal, or decision pending before the board or commission, shall publicly disclose the fact to the board or commission in an open meeting and may not vote or otherwise participate in the decision.[16] An individual who violates this prohibition may be removed from office.[17]

Prohibition of Economic Benefit Related to Publications and Other Printed Matter

In accordance with Article XVI, Section 21, of the Texas Constitution, an officer or employee of the State may not, directly or indirectly, profit by or have a pecuniary interest in the preparation, printing, duplication, or sale of a publication or other printed matter issued by a department or agency of the executive branch.[18] A person who violates this prohibition shall be dismissed from state employment.[19]

Legislator's Interest in Contracts

A member of the Legislature is prohibited from having an interest in a contract with the State or county if the contract was authorized by any law passed during the term for which the legislator was elected.[20]

Post-Employment Restrictions

Certain Employment for Former State Officer or Employee Restricted

A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract was signed or the procurement was terminated or withdrawn.[21]

Contracting with Former Executive Head of State Agency

A state agency may not enter into a contract with a person who at any time during the four years before the date of the contract was the executive head of the state agency, or with a person who employs a former executive head of a state agency, unless the governing body (1) votes, in an open meeting, to approve the contract, and (2) notifies the Legislative Budget Board, not later than the fifth day before the date of the vote, of the terms of the proposed contract.[22]

Contracting with Certain Former Agency Employees

A state agency[23] may not enter into an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract.[24] This restriction does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.[25]

Representation by Former Officer or Employee of Regulatory Agency Restricted

There are two general "revolving door" provisions in Section 572.054 of the Texas Government Code. For purposes of Section 572.054 of the Texas Government Code, CPA, the Secretary of State, and DIR are included within the definition of "regulatory agency."[26] Employees of certain agencies may be governed by post-employment provisions stricter than those in Section 572.054 of the Texas Government Code.

13 TEX. GOV'T CODE §572.057(d).
14 TEX. GOV'T CODE § 572.057(b).
15 TEX. GOV'T CODE § 572.002(1), (4) (defining appointed officer and elected officer, respectively).
16 TEX. GOV'T CODE § 572.058(a).
17 TEX. GOV'T CODE § 572.058(b).
18 TEX. GOV'T CODE § 2052.302.
19 TEX. GOV'T CODE § 2052.302.
20 TEX. CONST. art. III, § 18.
21 TEX. GOV'T CODE § 572.069.
22 TEX. GOV'T CODE § 669.003.
23 For purposes of this section, "state agency" includes a "public senior college or university," as that term is defined by Section 61.003 of the Education Code. TEX. GOV'T CODE § 2252.901(d).
24 TEX. GOV'T CODE § 2252.901(a).
25 TEX. GOV'T CODE § 2252.901(a).
26 TEX. GOV'T CODE §§ 572.002(8), Tex. Gov't Code 572.054(g), (g-1).

Former Board Members and Executive Directors. A former member of the governing body or a former executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served before the second anniversary of the date the member or executive head ceased to be a member of the governing body or the executive head of the agency if the communication or appearance is made (1) with the intent to influence and (2) on behalf of any person in connection with any matter on which the person seeks official action.[27]

Former State Officers and Employees. A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, and is compensated at or above a certain salary level, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.[28] This restriction does not apply to a rulemaking proceeding that was concluded before the officer's or employee's service or employment ceased.[29]

A former state officer or employee covered by this provision is prohibited from ever representing any person or receiving any compensation for services rendered on behalf of any person regarding a particular matter in which the individual "participated" while serving with the agency. A "particular matter" means a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding.[30] "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.[31] The determination of whether an individual participated in a matter is not limited to those of personal involvement. Participation can mean having supervisory authority over others who have personal involvement with a particular matter, even if such authority was never exercised.[32]

Required Disclosure Statements

Non-Disclosure and Conflict of Interest Certification for Contract Developers and Purchasers

Employees of agencies performing purchasing functions under SPD's delegated authority are required to adhere to the same ethical standards required of CPA employees.[33] Contract Developers and purchasers certify their compliance with the conflict of interest prohibition described in Section 2155.003 of the Texas Government Code by completing a Non-Disclosure and Conflict of Interest Certification. A sample of this document is located in Appendix 4. Contract Developers and Purchasers must sign the certification prior to engaging in any purchasing activity. In addition, state employees have a responsibility to promptly disclose any actual or potential conflict of interest that occurs at any time during the procurement process. It is best practice for the Non-Disclosure and Conflict of Interest Certification for Contract Developers and Purchasers to be signed on a regular basis. The timing of when the certification must be signed on a periodic basis (*e.g.,* every fiscal year, calendar year, employment date anniversary) may vary according to each agency's policy.

Conflict of Interest Disclosure Statement for Procurement and Contract Management Employees

Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.[34] This disclosure requirement applies only to a contract for the purchase of goods or services solicited through a purchase order if the amount of the purchase order exceeds $25,000.[35] For contracts subject to the disclosure requirement, a state agency employee or official is required to disclose any potential conflict of interest specified by state law or agency policy that is known by the employee or official at any time during

- the procurement process, from the initial request for bids for the purchase of goods or services from a private vendor until the completed final delivery of the goods or services or
- the term of a contract with a private vendor.[36]

27 TEX. GOV'T CODE § 572.054(a).
28 TEX. GOV'T CODE § 572.054(b)-(c).
29 TEX. GOV'T CODE § 572.054(d).
30 TEX. GOV'T CODE § 572.054(h)(2).
31 TEX. GOV'T CODE § 572.054(h)(1).
32 Tex. Ethics Comm. Op. No. 285 (1995).
33 34 TEX. ADMIN. CODE § 20.157.
34 TEX. GOV'T CODE § 2261.252(a).
35 TEX. GOV'T CODE § 2261.252(e).
36 TEX. GOV'T CODE § 2261.252(a-1).

State Auditor's Office Disclosure Statement for Purchasing Personnel

Before a state agency[37] may award a major contract, defined as a contract with a value of at least $1 million,[38] for the purchase of goods or services to a business entity, each of the agency's purchasing personnel[39] working on the contract must submit a completed disclosure statement to the administrative head of the state agency.[40] The purchasing personnel must disclose, on the form prescribed by the State Auditor's Office, any relationship about which the purchasing personnel is aware with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds $25,000, or other owner of the business entity that is within the degree of kinship described by Section 573.002 of the Texas Government Code.[41] The SAO Disclosure Statement for Purchasing Personnel is located on the SAO website.[42]

Disclosure of Interested Parties – Texas Ethics Commission Form 1295

A governmental entity[43] or state agency[44] may not enter into a contract with a business entity[45] that requires an action or vote by the governing body of the entity or agency before the contract may be signed, has a value of at least $1 million, or is for services that would require a person to register as a lobbyist under Chapter 305 of the Texas Government Code unless the business entity submits a disclosure of interested parties statement to the governmental entity or state agency.[46] A contract does not require an action or vote by the governing body of a governmental entity or state agency if

- the governing body has legal authority to delegate to its staff the authority to execute the contract,
- the governing body has delegated to its staff the authority to execute the contract, and
- the governing body does not participate in the selection of the business entity with which the contract is entered into.[47]

A disclosure of interested parties statement is not required for the following contracts if entered into or amended on or after January 1, 2018:

- sponsored research contract of an institution of higher education;
- an interagency contract of a state agency or an institution of higher education;
- a contract related to health and human services if
    1. the value of the contract cannot be determined at the time the contract is executed and
    2. any qualified vendor is eligible for the contract;
- a contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity;
- a contract with an electric utility, as that term is defined by Section 31.002 of the Utilities Code; or
- a contract with a gas utility, as that term is defined by Section 121.001 of the Utilities Code.[48]

For purposes of this disclosure requirement, an "interested party" means a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.[49]

For contracts subject to this disclosure requirement, the business entity must submit the disclosure of interested parties on the form prescribed by the Texas Ethics Commission to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.[50] The Form 1295 Certificate of Interested Parties is located on the Texas Ethics Commission website.[51] Not later than the 30th day after the date the governmental entity or state agency receives a disclosure of interested parties from the business entity, the governmental entity or state agency must log into the Texas Ethics Commission website to acknowledge receipt of the applicable business entity's disclosure statement.[52]

37 For purposes of this statute "state agency" includes an institution of higher education as defined by Section 61.003 of the Education Code and contracts of the Texas Department of Transportation that relate to highway construction or highway engineering. TEX. GOV'T CODE § 2262.004(d).

38 TEX. GOV'T CODE § 2262.001(4).

39 The term "purchasing personnel" means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding (1) contract terms or conditions on a major contract, (2) who is to be awarded a major contract, (3) preparation of a solicitation for a major contract, or (4) evaluation of a bid or proposal. TEX. GOV'T CODE § 2262.004(a)(2).

40 TEX. GOV'T CODE § 2262.004(b).

41 TEX. GOV'T CODE § 2262.004(b).

42 The SAO website is located at www.sao.texas.gov.

43 The term "governmental entity" means a municipality, county, public school district, or special-purpose district or authority. TEX. GOV'T CODE § 2252.908(a)(2).

44 The term "state agency" means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government including an institution of higher education as defined by Section 61.003, Education Code. TEX. GOV'T CODE § 2252.908(a)(4).

45 The term "business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. TEX. GOV'T CODE § 2252.908(a)(1).

46 TEX. GOV'T CODE § 2252.908(d).

47 1 TEX. ADMIN. CODE § 46.1(c).

48 TEX. GOV'T CODE § 2252.908(c).

49 TEX. GOV'T CODE § 2252.908(a)(3).

50 TEX. GOV'T CODE § 2252.908(d)-(e).

51 The Texas Ethics Commission website is located at www.ethics.state.tx.us.

52 TEX. GOV'T CODE § 2252.908(f).

Disclosure of Financial Interest in Consulting Services Contract

An officer or employee of a state agency shall report to the chief executive of the agency, not later than the 10th day after the date on which a private consultant submits an offer to provide consulting services to the agency, any financial interest that

- the officer or employee has in the private consultant who submitted the offer or
- an individual who is related to the officer or employee within the second degree by consanguinity or affinity, as determined under Chapter 573 of the Texas Government Code, has in the private consultant who submitted the offer.[53]

This reporting requirement applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts.[54]

Disclosure of Consulting Services Contract with a Former State Employee

An individual who offers to provide consulting services to a state agency and who has been employed by that agency or by another agency at any time during the two years preceding the making of the offer shall disclose in the offer

- the nature of the previous employment with the agency or the other agency,
- the date the employment was terminated, and
- the annual rate of compensation for the employment at the time of its termination.[55]

Disclosure by Outside Financial Advisor or Service Provider

Not later than April 15th of each year, a financial advisor or service provider described by Section 2263.004 of the Texas Government Code shall disclose certain relationships and direct or indirect pecuniary interests in writing, on a prescribed form, to the administrative head of the applicable state governmental entity and to the state auditor. The financial advisor or service provider shall disclose a relationship without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.[56] The financial advisor or service provider shall promptly file a new or amended statement with the administrative head of the applicable state governmental entity and with the state auditor whenever there is new information to report.[57]

53 TEX. GOV'T CODE § 2254.032(a).
54 TEX. GOV'T CODE § 2254.032(b).
55 TEX. GOV'T CODE § 2254.033(a).
56 TEX. GOV'T CODE § 2263.005(b).
57 TEX. GOV'T CODE § 2263.005(e).

APPENDIX 5

Sample Non-Disclosure and Conflict of Interest Certification for Contract Developers and Purchasers

[COMPTROLLER STATEWIDE PROCUREMENT EMPLOYEE] NON-DISCLOSURE AND CONFLICT OF INTEREST CERTIFICATION

Fiscal Year [2022] Certification

A special responsibility is imposed on all people who are entrusted with the disposition of the state's funds. The fiduciary nature of the purchasing function, particularly when expending public funds, makes it critical that all persons involved in the process remain independent, free of obligation or suspicion, and free from the perception of impropriety. Premature or unauthorized disclosure of information regarding a proposed solicitation irreparably harms the State's interests and may constitute a violation of Section 39.02 of the Texas Penal Code, the antitrust laws of the United States and the State of Texas, and/or the Texas Public Information Act (Chapter 552, Texas Government Code). Credibility and public confidence are vital throughout the purchasing and contracting system. The appearance of impropriety can be as harmful as the conduct itself. It is with this in mind that the following certification is set forth.

I,_____, the undersigned hereby certify that I understand and agree to be bound by the commitments contained herein.

I participate in procurement processes for the [Agency Name].

I agree that I will disclose any information about which I am aware regarding my involvement in any agency decision-making or recommendations on a procurement that could constitute a conflict of interest or create the appearance of impropriety. I understand my relationship with an employee of a business entity that is or may be a respondent or subcontractor may constitute a conflict of interest when that employee is my spouse, child, spouse's child, parent, spouse's parent, child's spouse, brother, sister, grandparent, spouse's grandparent, grandchild, spouse's grandchild, spouse's sibling, sibling's spouse, nephew, niece, uncle, aunt, great-grandparent, or great-grandchild. For purposes of this disclosure, a step-relationship or adoptive relationship is considered the same degree as a natural relationship. If, during any procurement process, I become aware of any actual, potential, or perceived conflict, I will immediately notify my manager and [the assigned legal counsel or my agency's ethics office].

I agree that I will not participate in any procurement process if I have, or if I am aware that any member of my immediate family has, an actual, potential, or perceived financial interest in a procurement, including, but not limited to, employment or prospective employment, in a business or organization that may be a respondent (a respondent may be called a proposer, an offeror, a bidder or other like term) or a subcontractor to a respondent. The term "immediate family," as used in this Certification means: One's parents, spouse, children, brothers, and sisters, whether residing together or not.

I agree that I will not solicit or accept anything of value from an actual or potential respondent. Should I receive a gift, whether solicited or unsolicited, from an actual or potential respondent or a current, potential, or previous vendor, I agree to follow my agency's policies regarding disposal of the gift.

When participating in procurement processes, I will act on my own accord and not act under duress. I will not participate in a procurement process if I am currently employed by, or if I am receiving any compensation from, or if I will be the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in return for favorable consideration of a respondent(s) during a procurement process.

I will not let any preconceived position I may have regarding the relative merits impact the fair and impartial performance of my responsibilities, nor will I perform my responsibilities based on a personal preference or position regarding the worth or standing of any respondents participating in any procurement. Further, I will, to the utmost of my ability, ensure that the solicitation and the specifications provide all potential respondents an equal and fair opportunity to submit a proposal for evaluation, taking care to ensure that specifications and evaluations are not intended to favor any particular respondent, performing any and all tasks related to the solicitation in an unbiased manner, to the best of my ability, and with the best interest of the State of Texas paramount in all decisions.

I agree not to disclose or otherwise divulge any information pertaining to a procurement including, but not limited to, the following: the development of the solicitation, the content of any response received, the ranking of any response, or the status of the procurement, to anyone other than authorized agency personnel (*e.g.*, approved evaluators, management) assigned to the procurement unless such communication is lawful and in the ordinary course of business consistent with my agency's purchasing policy. I understand the terms "disclose or otherwise divulge" to include but are not limited to, reproduction of any part or portion of any response, or removal of same from designated areas without prior authorization from my manager. If I receive a request for information regarding a procurement from a vendor or other member of the public, I will follow my agency's procedures for responding to such requests which may include providing notification to personnel designated by my agency to manage public information requests.

I agree to perform any and all duties relating to the award process in an unbiased manner, to the best of my ability, and with the best interest of the State of Texas paramount in all decisions.

[Agency-specific additional certifications:

Agency may insert additional text here.

Add this section only if the agency desires to include additional agency-specific certifications on this form.]

I will immediately inform both my management and [the legal counsel assigned to my division or my agency's ethics office] if, at any time during the procurement process, any of these statements are no longer true and correct.

I have been given the opportunity to review this statement prior to signing. If I have questions or concerns about this statement, I am to contact my management or [assigned legal counsel or my agency's ethics office]. **I have not made any changes or deletions on this form without informing my manager or [assigned legal counsel or my agency's ethics office].**

Should I violate any of the conditions of this agreement, I understand that I may be subject to the agency's disciplinary policies as well as possible actions relating to any professional certifications or licenses that I may hold.

_____ _____

(Signature) (Date)

APPENDIX 6

SPD Programs and Online Systems

Programs

Statewide Procurement Policy and Outreach

The Statewide Procurement Policy and Outreach program consists of the Outreach team, the Training and Policy Development team, and the Procurement Oversight & Delegation team. This program conducts policy research, performs solicitation reviews, and approves delegation of purchasing authority for services. The Outreach team provides customer support for procurement inquiries including, but not limited to, questions regarding the Texas SmartBuy support and memberships, the Centralized Master Bidder's List, and Vendor Performance reporting. To contact the Outreach team, please call 512-463-3034, option #1, or email spd.outreach@cpa.texas.gov.

The Training and Policy Development team develops and administers the contract development and contract management training for certification of public procurement professionals. The team also provides continuing education courses required for maintenance of certifications. To contact the Training and Policy Development team, please call (512) 463-5355, or email ctp@cpa.texas.gov.

Statewide Contract Development

The Statewide Contract Development team develops statewide contracts for use by state agencies, institutions of higher education, and Texas SmartBuy Members for a broad range of goods and services. The Statewide Contract Development team is responsible for issuing and overseeing solicitations that will establish Term Contracts and contracts for non-delegated goods and services through competitive solicitation processes. In addition, TXMAS contracts are developed by the Statewide Contract Development team from contracts awarded by the federal government or another governmental entity of another state. To contact the Statewide Contract Development team, please call (512) 463-7985, or email open.market@cpa.texas.gov.

Statewide Contract Management Office

The Statewide Contract Management Office assists state agencies, institutions of higher education, Texas SmartBuy Members, contractors, and internal customers with day-to-day contract management, contract administration, reporting requirements, and vendor performance issues related to statewide contracts. To contact the SPD Contract Management Office, please call (512) 463-3034, or email spd.cmo@cpa.texas.gov.

Historically Underutilized Business Program

The Statewide Historically Underutilized Business (HUB) Program promotes full and equal business opportunities in an effort to remedy disparity in state procurement and contracting. The Statewide HUB Program collaborates with various minority and women business trade organizations and development centers to circulate information pertaining to the initiatives of the Statewide HUB Program. To contact the Statewide HUB Program, please call (512) 463-3377, or email StatewideHUBProgram@cpa.texas.gov.

Office of Vehicle Fleet Management

The Office of Vehicle Fleet Management (OVFM) is charged with the establishment and management of the state vehicle reporting system, a computerized database known as the Texas Fleet System (TXFS), to assist state agencies and institutions of higher education with the management of their fleet vehicles. The OVFM is also charged with the creation, publication and distribution of the biennial State of the Fleet Report. To contact the OVFM, please call (512) 936-8458, or email ovfm@cpa.texas.gov.

State Travel Management Program

The State Travel Management Program (STMP) provides contract travel services to state agencies, institutions of higher education, and Texas SmartBuy members including local governments, public school districts, charter schools and community colleges. These contracts help the State manage travel expenditures, monitor travel activity, and provide discounted travel services resulting in a more efficient use of taxpayer dollars. To contact the STMP, please call (512) 463-3435, or email STMP@cpa.texas.gov.

Statewide Mail Operations

Statewide Mail Operations provides state agencies and institutions of higher education a variety of mail operations services including delivery, collection and metering of United States Postal Service (USPS) domestic and international mail as well as delivery and collection of state warrants. The interagency mail service transports more than one million pieces of mail between state agencies annually, eliminating the need to pay postage for items delivered between state agency locations using this service. To contact Statewide Mail Operations, please call (512) 463-9520 or (512) 463-3440, or email spd.mailroom@cpa.texas.gov.

Online Systems

Electronic State Business Daily

The Electronic State Business Daily (ESBD) is an online application used for posting solicitations for the purpose of informing vendors of procurement opportunities and providing public notice of contract awards. Information on access to and use of the ESBD is found in the ESBD Guide. To contact the SPD Outreach team regarding issues or questions related to the ESBD, please call (512) 463-3034, or email esbdsupport@cpa.texas.gov.

Centralized Master Bidder's List

The Centralized Master Bidder's List (CMBL) is an online directory that provides public procurement professionals the ability to foster competition between vendors. The CMBL provides the ability to develop a mailing list of vendors, which may be tailored based on the products or services provided by the vendors and the specific district(s) the vendors serve. For assistance in registration or general questions regarding the CMBL, please contact the CMBL Help Desk at (512) 463-3459, or email e.cmbl@cpa.texas.gov.

Texas SmartBuy Online Ordering System

Texas SmartBuy is the State's central eProcurement system for non-IT goods and services. State agencies and other Texas SmartBuy members can search SPD contracts and place purchase orders through Texas SmartBuy. Local governments that wish to purchase from SPD contracts must first join the Texas SmartBuy Membership program. Information regarding Texas SmartBuy is located in the Texas SmartBuy Public User Guide. To contact the SPD Outreach team regarding questions related to Texas SmartBuy, please call (512) 463-3034, or email txsmartbuy@cpa.texas.gov.

Procurement Oversight & Delegation Portal

The Procurement Oversight & Delegation web portal is used by state agencies to submit

1. requests for SPD delegation authority for service contracts with an anticipated value of more than $100,000,
2. solicitations that have an anticipated value of $5 million or greater for CAT review, and
3. solicitations for major information resource projects that require CAT review.

To contact the Procurement Oversight & Delegation team, please find contact information at https://comptroller.texas.gov/purchasing/contracts/pod/, or email spd.oversight@cpa.texas.gov.

Vendor Performance Tracking System

The Vendor Performance Tracking System (VPTS) provides the state procurement community with a comprehensive online tool for evaluating vendor performance to reduce risk in the contract award process. For information on vendor performance reporting, please see the VPTS User Guide. To contact the SPD Outreach team regarding questions related to the VPTS, please call (512) 463-3913, or email vendor.performance@cpa.texas.gov.

APPENDIX 7

Sample Acquisition Plan

ACQUISITION PLAN

Agency Name

[Solicitation Name]

Document Version: Revision Date:

Requested Contract Start Date:
Projected Award and Start Date:
Projected Contract Completion Date:
Projected Contract Closeout Date:

Contract Developer		
Name	Title/Division	
Signature		Date
Executive Sponsor (if designated)		
Name	Title/Division	
Signature		Date
Contract Manager		
Name	Title/Division	
Signature		Date
End-User Division Director/Manager		
Name	Title/Division	
Signature		Date
Project Manager		
Name	Title/Division	
Signature		Date
Budget & Internal Accounting		
Name	Title	
Signature		Date

(This is agency specific based on who the agency wants approving the Acquisition Plan)

Section 1. Solicitation Overview

1.1 Needs Assessment

(Describe the business reason(s) for initiating the solicitation, specifically stating the business problem.)

1.2 Justification of Solicitation Procurement Method

(Describe the reason for choosing IFB/RFP/RFO/RFQ/RFA.)

1.3 Contract Goals and Objectives

(Describe the business goals and objectives of the contract.)

1.4 Solicitation/Contract Scope of Work

(Describe the contract scope. The scope defines contract limits and identifies the products and/or services delivered under the contract. The scope establishes the boundaries of the contract and should describe products and/or services that are outside of the contract scope.)

Contract Includes:

Contract Excludes:

1.5 Critical Success Factors

(Describe the factors or characteristics that are deemed critical to the success of the contract, such that, in their absence the contract will fail.)

Critical Success Factors:

1.6 Assumptions

Assumptions:

1.7 Constraints

Constraints:

1.8 Potential Risks

(Identify potential risks related to the procurement/contract. Consider all major contract risks, including information security risks.)

Risk	Risk Details

1.9 Insurance and Bonds

(Check the box if proof of insurance or bond is to be provided, and then designate minimum amount of coverage.)

Required	Type of Insurance and/or Bond(s) To Be Provided	Minimum Amount of Coverage
☐	Commercial General Liability	
☐	EO/Professional Liability	
☐	Workers Comp/Employer Liability	
☐	Umbrella/Excess Insurance	
☐	Auto Insurance Liability	
☐	Crime/Employee Dishonesty	
☐	Cyber Liability	
☐	Performance Bond	
☐	Other Insurance/Bond	

Section 2. Internal Calendar of Events

(Examples of activities for an internal calendar of events are listed in the table below. The activities in the Internal Calendar of Events should be tailored to the specific procurement.)

Internal Calendar of Events		
Activity	**Planned Start Date**	**Estimated Completion**
Budget (approval/questions)		
Kick Off Meeting (Contract Developer, Contract Manager, End User)		
Post Notice of Intent to Procure > $20M		
Draft Solicitation		
Agency Approvals for Solicitation Issuance		
CAT Review ≥ $5M QAT Review for MIRP contract ≥ $10M SPD Delegation Review: Services > $100K SPD Delegation Review: Goods > $50K		
Solicitation Issued		
Pre-Bid/Offer/Proposal Conference		
Due Date for Written Questions		
Date of Issuance of Agency's Written Answers		
Due Date for Responses		
Vendor Selection Evaluation Committee (RFP, RFO, RFQ) or Bid Tabulation (IFB)		
Negotiation (if permitted) and Contract Formation		
Contract Award		
Transition Meeting Between Contract Developer and Contract Manager		
Post Award Meeting with Contractor		
Project Schedule		
Contract End Date		

Section 3. Contract Organization Structure

3.1 Contract Administration Team

(Identify Contract Developer, Contract Manager, end-user, project manager, legal counsel, and any other person representing the agency contract team structure.)

Role	Resource Name
Contract Developer	
Contract Manager	
End-user	
Project Manager	
Legal Counsel	

3.2 Roles and Responsibilities Detail

(Examples of responsibilities for each role are listed in the table below. The responsibilities for each role should be tailored to the specific procurement.)

Role	Responsibility
Contract Developer	Perform the following activities, prior to contract execution: • receive and process requisitions, • assess need, • develop and review specifications, • develop and review scopes of work, • identify and select procurement method, • identify and prepare evaluation criteria, • prepare and advertise solicitation, • provide guidance to evaluation committee, • negotiate terms and conditions, and • prepare and complete contract award documents.

Role	Responsibility
Contract Manager	Participate with the procurement team in solicitation development and the review of contract documents. Serve as the primary point of contact for agency communication with the contractor regarding all matters pertaining to the contract. Manage any state property used in contract performance, *e.g.,* computers, telephones, identification badges. Implement a quality control and contract monitoring process. Monitor the contractor's progress and performance to ensure products and services procured conform to the contract requirements and keep timely records of findings. Consult with agency legal counsel in a timely manner to address any legal concerns and/or issues. Manage, approve, and document any changes to the contract through the amendment process authorized by the terms of the contract. Inspect and approve the products and/or services by submitting a written document accepting the deliverables or obtain documentation from end users responsible for receipt that inspection and approval have been completed. Verify accuracy of invoices and authorizing payments consistent with the contract terms. Monitor the contract budget to ensure sufficient funds are available throughout the terms of the contract. Identify and resolve disputes with the contractor in a timely manner. Exercise state remedies, as appropriate, when a contractor's performance is deficient. Maintain appropriate records in accordance with records retention policy. Confirm all products and/or services have been delivered and delivery is completed prior to the expiration date of the contract. Perform contract closeout processes by ensuring the contract file contains all necessary contract documentation, formal acceptance documented, vendor performance reported to VPTS, and document lessons learned.
End-user	Gather requirements and provide end-user support working closely with the Contract Developer and Contract Manager, as appropriate. Provide feedback to Contract Developer and Contract Manager and other procurement team members on process change suggestions.

Role	Responsibility
Project Manager	Manages the project following project management methodology as prescribed by the agency Project Management Office. Leads the planning and development of all project deliverables; actively monitors progress and quality of project tasks and deliverables. Identifies and resolves project problems and conflicts, escalating to the Contract Manager when necessary. Communicates project status, issues and risks to chain of command and the Contract Manager and recommends corrective action when necessary. Manages and coordinates project activities of all project team members.
Legal Counsel	Provide legal advice on solicitations, including an appropriate procurement method, and contract terms and conditions. Draft or assist Contract Developer in drafting the solicitation. Prepare other contract instruments to support or comprise part of a contract (*e.g.*, solicitation templates, other specialized t&cs). Negotiate terms and conditions and contract language, as needed. Draft and review contracts including the following: • Leases, • Licenses, • Loan agreements, • Grants, • Interagency agreements (IACs and MOUs), • Interlocal agreements, • Non-disclosure agreements (NDAs), • Consulting services agreements, • Legal services agreements (*e.g.*, outside counsel contracts, expert witness agreements), and • Professional services agreements.

Section 4. Specification Requirements

Deliverables

(Ask the end user what is being purchased, and break requirements up into functional categories in order to explore granular detail of each requirement. Add topics and rows as appropriate.)

(Topic #1)

1.0
1.1
1.2
1.3

(Topic #2)

2.0
2.1
2.2
2.3

(Topic #3)

3.0
3.1
3.2
3.3

Section 5. Special Terms and Conditions

(Define any special terms and conditions to be included in the contract that will influence the risk factors.)

Section 6. Payment Structure

(Describe the payment conditions (terms and schedule) that will fulfill the contract.)

6.1 Payment Terms

(Payment considerations include whether the pricing terms align with applicable industry standards and whether consideration for all possible costs associated with the purchase have been taken into account.)

6.2 Payment Schedule

(The payment schedule specifies the period allowed an agency to pay the contractor, i.e., monthly payment schedule, or other similar provisions.)

Section 7. Documenting Files

(Provide the documenting techniques that will be used for the contract.)

Section 8. Change Control

(Describe the process to be used to modify the contract.)

Section 9. Contract Close-out

(List all contract close-out activities. To ensure a contract is completed every duty should be marked when complete.)

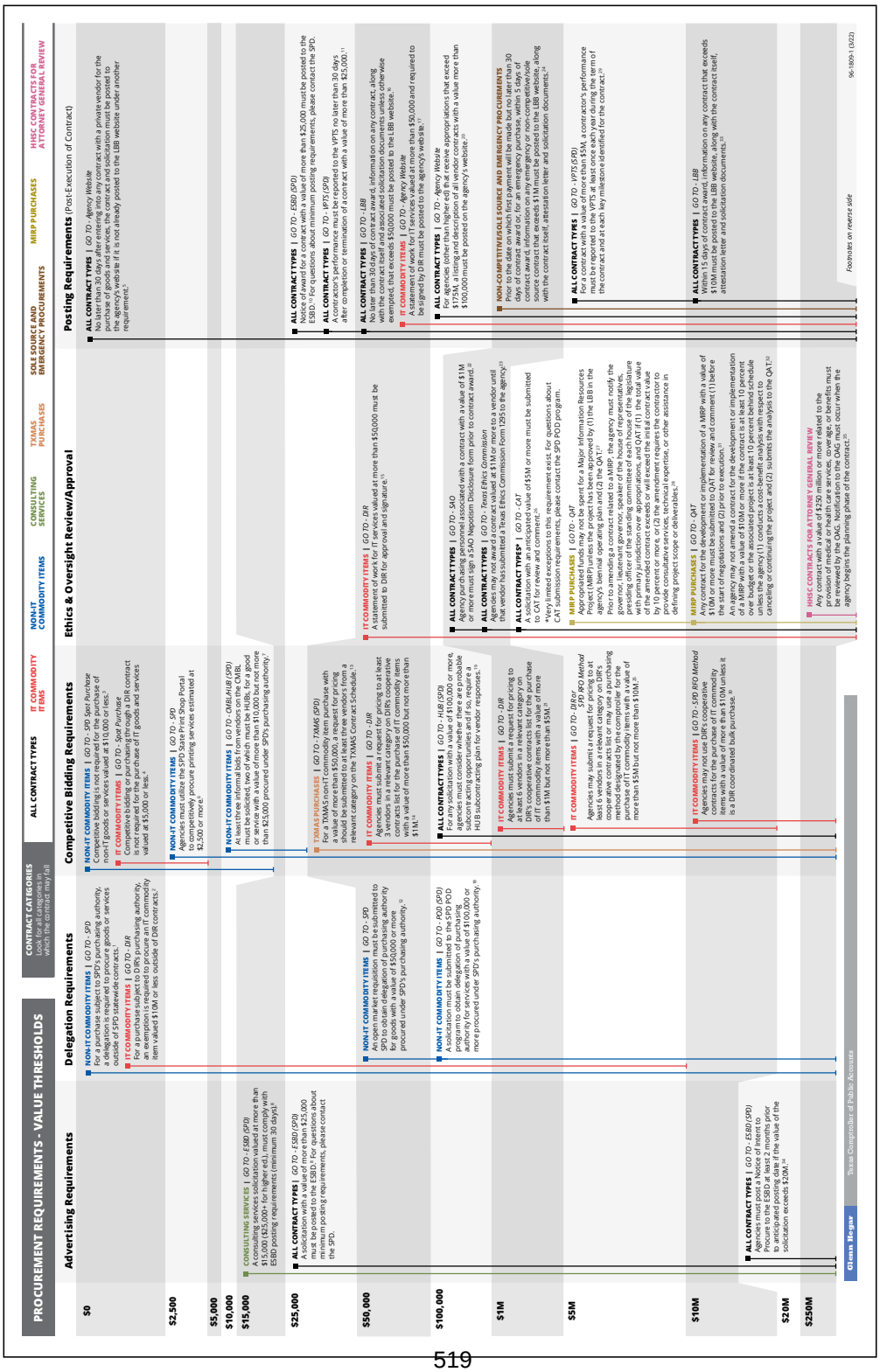
- ☐ All goods or services have been received and accepted.
- ☐ All reports have been delivered and accepted.
- ☐ All administrative actions have been accomplished.
- ☐ All agency furnished equipment and materials have been returned.
- ☐ All property inventory and ownership issues are resolved including disposition of any equipment or licenses purchased under the contract.
- ☐ Final acceptance from the Project Manager has been received.
- ☐ Final payment has been made to the contractor.
- ☐ Contractor's performance has been reported to the Vendor Performance Tracking System (VPTS).

APPENDIX 8

Procurement Value Threshold Chart

To download full document, visit:

https://comptroller.texas.gov/purchasing/docs/procurement-requirements.pdf



APPENDIX 9

Sample Procurement File Checklist

SOLICITATION NO. _____	Contract Developer (CTCD) or Purchaser _____ Secondary Point of Contact _____

SOLICITATION DOCUMENTATION	N/A	Included
Notice of Intent to Procure for contract >$20M	☐	☐
Draft/Initial solicitation documentation – All Parts/Attachments/Exhibits		☐
Stakeholder Meeting Documentation (*e.g.,* Needs Assessment, Cost Estimate, Acquisition Plan)	☐	☐
Requisition	☐	☐
HUB Coordinator Review of Subcontracting Opportunities	☐	☐
Proprietary Purchase Justification	☐	☐
Emergency Justification	☐	☐
External Reviews/Approvals Obtained (including evidence of agency request and receipt of approval) ☐CAT review for contract ≥ $5M, ☐QAT review for MIRP contract ≥ $10M, ☐SPD Review/Delegation Letter, ☐DIR approval of SOW PR with value > $50,000, ☐DIR Exemption from use of DIR Cooperative Contracts for IT commodity items, ☐DIR/LBB approval not to use DCS services, ☐Governor Finding of Fact, ☐SAO delegation to obtain audit services, ☐OAG approval to retain outside counsel services, ☐Other: _____	☐	☐
If CAT or QAT review received, either (1) comply with recommendations or (2) submit written explanation regarding why the recommendation is not applicable to the procurement	☐	☐
Final Solicitation (including all parts/attachments/exhibits)	☐	☐
Final Bidder List (dated CMBL Listing – Extracted from CMBL using NIGP Class/Item Codes and, if applicable, agency head or designee approval of supplements to Bidder List)	☐	☐
Internal Approval to Issue Solicitation	☐	☐
ESBD Posting (including dated ESBD printout of posting and/or ESBD Generated E-mail Notification of Confirmation of Posting)	☐	☐
Solicitation Announcement issued to all vendors on Final Bid List. (Email printout)	☐	☐
Texas Register Publication (including dated Texas Register printout and/or Texas Register Email Notification of Confirmation of Publication)	☐	☐
Solicitation Issuance via email (*e.g.,* informal bidding) (including evidence of issuance to Bidder List)	☐	☐
Pre-Proposal Conference Agenda and Sign-in Sheet (including dated ESBD printout of posting and/or ESBD Generated E-mail Notification of Confirmation of Posting) ☐Voluntary, ☐Mandatory	☐	☐
Copies of Questions from Potential Respondents (including proof of timely receipt)	☐	☐
Question and Answer Document Issued (including evidence of issuance *e.g.,* ESBD printout of posting and/or ESBD Generated E-mail Notification of Confirmation of ESBD Posting)	☐	☐
Solicitation Addenda Issued (all parts/attachments/exhibits including evidence of issuance *e.g.,* ESBD printout of each posting and/or each ESBD Generated E-mail Notification of Confirmation of Posting) Addenda: ☐1, ☐2, ☐3, ☐4, ☐5	☐	☐
Scoring Matrix finalized		☐
Evaluation Committee Members selected	☐	☐
Evaluation Committee Member Qualifications for contract > $20M	☐	☐

EVALUATION DOCUMENTATION	N/A	Included
Copies of Responses (including proof of timely receipt)		☐
Administrative Review Documentation for each Response (*i.e.,* responsiveness screening tracking sheet for each response)		☐
HUB Coordinator Review of HSP for each Response (including evidence of approval/disapproval)	☐	☐
Vendor Performance Report or dated printout showing "no results found" or "none" for each Respondent		☐
Signed Non-Disclosure and Conflict of Interest Statement from each Evaluation Committee Member and, if applicable, Technical Advisor	☐	☐
Evaluation Committee Meeting Documentation (including agenda, guidelines)	☐	☐
Copy of Clarification Questions Issued to Respondent(s) (including evidence of issuance)	☐	☐
Copy of Answers Received from Respondent(s) to Agency's Clarification Questions (including evidence of receipt)	☐	☐
Copy of Oral Presentation Agenda and Sign-in Sheet	☐	☐
Copy of each Presenter's Oral Presentation Documents	☐	☐
All Completed Evaluation Committee Member Score Sheets (score sheets from all scoring committee members for all scoring rounds) Scoring Round: ☐1, ☐2, ☐3	☐	☐
Bid Tabulation or Master Evaluation Score Sheet (completed)		☐
Quality control review performed on Bid Tabulation or Master Evaluation Score Sheet		☐
Internal Approval for ☐Tentative Contract Award, ☐Cancellation of Solicitation		☐
CONTRACT AWARD AND CONTRACT AMENDMENT DOCUMENTATION	**N/A**	**Included**
Updated/Revised Solicitation Documents following negotiations ☐BAFO, ☐HSP, ☐Insurance, ☐Other: _____	☐	☐
External Reviews/Approvals Obtained (including evidence of agency request and receipt of approval) ☐QAT (MIRP contract ≥ $10M), ☐DIR (SOW > $50,000), ☐OAG approval of outside counsel services contract; ☐Other: _____	☐	☐
Required Agency Verifications: ☐Agency Verification of Best Value Standards (refer to 34 TAC § 20.217(a)), ☐Agency Verification of Compete Procurement File (refer to TEX GOV'T CODE § 2262.053), ☐Compliance of Procurement with State Law and Agency Policy and Notification of Potential Issues for Contract > $5M (refer to TEX GOV'T CODE § 2261.255), ☐Other: _____	☐	☐
Required Agency Approval and Signature of Contract > $1M (refer to TEX GOV'T CODE § 2261.254(c)-(d))	☐	☐
Signed Conflict of Interest Disclosure Statement for Procurement and Contract Management Employees (TEX. GOV'T CODE § 2261.252).	☐	☐
Signed SAO Nepotism Disclosure Form for Agency Personnel for Contract ≥ $1M	☐	☐
Vendor signed Texas Ethics Commission Form 1295 for Contract	☐	☐
CPA Debarred Vendor List Check		☐
SAM Check of Vendor		☐
Iran, Sudan & Foreign Terrorist Organization Check of the TTSTC Divestment Statutes Lists		☐
Boycott Israel Check of the TTSTC Divestment Statutes Lists	☐	☐
Energy Company Boycott Check of the TTSTC Divestment Statutes Lists	☐	☐
Warrant Hold Status Check		☐
Franchise Tax Status Check		☐
Signed Contract	☐	☐
Purchase Order		☐
Notice of Award (including evidence of issuance) ☐ESBD, ☐Texas Register, ☐Email Notification to Bidder List (*e.g.,* informal bidding) ☐QAT (MIRP contract ≥ $10M), ☐LBB contract reporting, ☐Other: _____	☐	☐
Notice of Cancellation of Solicitation (including evidence of issuance) ☐ESBD, ☐Texas Register, ☐Email Notification to Bidder List (*e.g.,* informal bidding) ☐QAT, ☐Other: _____	☐	☐

APPENDIX 10

Proprietary Purchase Justification Template

PROPRIETARY PURCHASE JUSTIFICATION

(TEX. GOV'T CODE § 2155.067)

Texas Comptroller of Public Accounts
Attn: Statewide Procurement Division
P.O. Box 13186
Austin, Texas 78711-3186

Re: Proprietary Purchase Justification for **insert:** NIGP commodity code/general item description

The Propriety Purchase Justification must include the following information in order to document best value to the State:

(1) describe the product or service the agency proposes to purchase, and provide a statement regarding the agency's business need and planned use;

(2) explain why the agency specifications for the product or service are written as they are, and why those specifications are necessary to accomplish the agency's goal for the procurement;

(3) state the reason that no other competing products or services will satisfy the need of the agency and provide examples of the technical, practical, or operational risks that would occur if competing products or services are selected; and

(4) specify whether the purchase is sole source or competitive.

NOTE: The signature of the Executive Head or Presiding Officer of a state agency (or designee) is required. If anyone other than the Executive Director or Presiding Officer of the agency will sign the submission, the agency must have the appropriate signed delegation available, and must promptly provide that delegation letter upon request to SPD.

APPENDIX 11

Federal and State Surplus Property Programs Procedures

Acquisition and Disposal of Surplus Property

Before making a procurement of any kind, an agency should ensure that it cannot first fulfill the business need by using the State and Federal Surplus Property Programs. The Texas Facilities Commission (TFC) is charged with administering the State and Federal Surplus Property Programs. TFC's Surplus Property Program has three locations in Texas – Austin, Fort Worth, and San Antonio. TFC's State surplus property is located at its Austin location, whereas the Federal property is located at the Fort Worth and San Antonio warehouses.

Both the state and federal programs serve the purpose of transferring surplus government property to state agencies. However, the federal and state programs differ in their relationship with state agencies. The State Surplus Property Program offers state agencies assistance with the acquisition and disposal of state agency surplus property, while the Federal Surplus Property Program offers state agencies the opportunity to acquire federal agency surplus property. State agencies must use TFC for the disposal of surplus and salvage state agency property unless exempted.[1] Participation in the Federal Program is encouraged to ensure best value to the state, but is not specifically mandated by law. For more information, please visit https://www.tfc.texas.gov/divisions/supportserv/prog/statesurplus/.

The best way to avoid wasteful spending is to transfer surplus or unwanted property to another organization. Acquisitions from the surplus property program are exempt from competitive bidding requirements.[2] If an item is available in Surplus Property, then it may be possible to fulfill the need of the end user without the need to purchase an item from a third party. During the property disposal process, state agency purchasers, asset managers, and contract managers should be aware of potential waste, fraud and theft. Due to improper disposal, an agency could miss out on significant revenue from the sale of surplus and salvage property. The following section will cover the acquisition process and also some key factors in the disposal process.

State Surplus Property Program

There are two methods to acquire State Surplus Property – via transfer directly from the surplus agency, or from public sales at the Austin storefront. State agencies are highly encouraged to take advantage of the Transfer Process (method #1), particularly for vehicles and other high dollar items.

(1) Transfer from State Agency

- State agencies are required to post all surplus and salvage property on TFC's website[3] for 10 business days. During the posting period, state property is available for transfer to state agencies, political subdivisions, and TFC-approved assistance organizations.[4]
- Using this method, the requesting agency picks up the property from the surplus agency. TFC does not need to approve interagency transfers; however, TFC must approve the price for all transfers to political subdivisions.
- Keep in mind that property is available for a limited amount of time. Requests for property must be received within the 10 business day posting period to take advantage of this method.
- Examples of items commonly available for transfer include office furniture and equipment, vehicles, heavy equipment, trailers, and computer equipment.

(2) From the TFC Storefront (Public Sales)

- After the transfer period ends, the property is then offered for sale to the public through the TFC Storefront in Austin, or through online auction. The price will be closer to fair market value, therefore state agencies are encouraged to utilize the transfer method described above in the interest of conserving state resources.

1 TEX. GOV'T CODE § 2175.
2 TEX. GOV'T CODE § 771.003.
3 http://tfc.state.tx.us/divisions/supportserv/prog/statesurplus/political-subdivisions-and-non-profits/property-available-for-transfer.html.
4 TEX. GOV'T CODE § 2175.001.

- The property available at TFC's State Surplus Storefront comes from two sources: State agencies and the Transportation Security Administration (TSA). The TSA turns over abandoned and willfully surrendered property collected at Texas airports to TFC, and in turn, TFC sells it to the public from their storefront in east Austin. The airport property, however, is not available for transfer, only for sale.
  - The general public, including state agencies, may purchase items from the Austin Storefront. TFC's Austin Storefront offers a variety of items, including cars, trucks, SUVs, office equipment, supplies, and furniture.
  - State agency property (priced at $200 or less) is available to state agencies for transfer at no cost. This does not apply to TSA property, or property for personal use.
  - Online auctions are conducted as-needed for specialty items and property located outside of the Austin area. TFC does not recommend agencies use this method to purchase property.

How to Dispose of State Surplus and Salvage Property

TFC is responsible for overseeing the advertisement and disposal of all state agency surplus and salvage personal property (regardless of initial or current value), including:

- Scrap metal, recycling (except paper),
- Vehicles, including wrecked/salvage,
- Modular furniture (cubicles),
- Office furniture and equipment,
- Computer peripherals and other electronics, and
- Computers.

This policy applies to capitalized, controlled, and non-capitalized assets. If an agency thinks an item may not have significant value, it does not exempt the agency from statutory requirement to go through TFC.[5] Unless a state agency has specific legal authority or written delegated authority from TFC, then the agency may not dispose of surplus or salvage property without

- advertising it for transfer, and
- contacting TFC to determine the final disposal or sale method. TFC monitors state property disposal records and may report violations to the Legislative Budget Board.

To initiate the disposal process, state agencies are required to post all surplus and salvage property on TFC's website[6] for 10 business days (also called the "advertisement period"). During the advertisement period, state property is available for transfer to state agencies, political subdivisions, and TFC-approved assistance organizations.[7] Requests from state agencies have priority over all other organizations; however, if no state agency requests the property, the first organization requesting the property and agreeing to the price is entitled to it.

For transfers to political subdivisions and TFC-approved assistance organizations during the 10 business day-advertisement period:

- TFC, in conjunction with the owning agency, determines the price, if any, for each item;
- agencies are responsible for verifying an assistance organization's eligibility by obtaining a copy of the organization's TFC-issued approval letter which includes a list of property that the organization has been approved to request; and
- for transfers to political subdivisions and assistance organizations, a TFC Certificate of Acquisition form must also be completed, signed, and forwarded to TFC.

If the property has not been transferred during the advertisement period, an agency may contact TFC for final disposal instructions once the item falls off TFC's advertisement website. At this point, there are three options:

- Sell from TFC warehouse;
- Auction in place; or
- TFC-authorized donation in lieu of abandonment.

5 TEX. GOV'T CODE § 2175, SubCh. F.
6 http://tfc.state.tx.us/divisions/supportserv/prog/statesurplus/political-subdivisions-and-non-profits/property-available-for-transfer.html.
7 TEX. GOV'T CODE § 2175.001.

If TFC cannot otherwise sell or dispose of the property, or has determined that the property has no resale value, then the property may be destroyed as worthless salvage.

Contact TFC's State Surplus Property Program to dispose of property:

- For items to be dropped off at Austin Warehouse, complete a TFC Bill of Lading, and submit to storefront.surplus@tfc.state.tx.us.
- NOTE: San Antonio and Fort Worth Warehouses will not accept State property.
- For items to be auctioned in place, complete a TFC Auction Request Form, and submit to auctions@tfc.state.tx.us.
- State agencies and political subdivisions (*i.e.*, cities, counties, school districts, and state institutions of higher education) that are interested in sending data processing equipment to a TCI computer recovery facility can contact the nearest computer recovery facility. TFC will accept peripherals (monitors, mice, keyboards, printers), but cannot accept CPUs, tablets or laptops.

For more information, including all State Agency Forms, please visit the TFC website: https://www.tfc.texas.gov/divisions/supportserv/prog/statesurplus/index.html. The State Surplus Property Program can be reached at (512) 463-1990 or storefront.surplus@tfc.state.tx.us.

Federal Surplus Property Program

The Federal Surplus Property Program offers state agencies the opportunity to obtain surplus federal government property at pennies on the dollar (when comparing TFC's fees to the original value of the property). TFC has a standing inventory of thousands of items at its San Antonio and Fort Worth Warehouses. If an agency cannot find what it needs in TFC's inventory, then TFC's Federal Program will accept a request, and notify the agency if/when that item is available. Purchasing from this program is exempt from the typical requirements to obtain bids and post solicitations.[8]

TFC's Federal Surplus Property Program manages the disposition of surplus property donated to the state by federal programs. TFC's Federal Surplus Property Program requests, warehouses, and transfers surplus federal government equipment to eligible organizations in Texas. TFC certifies organizations as eligible under federal management regulations to receive and use the property. All state agencies are eligible; however, agencies must have an active account to be able to obtain property. Private citizens and the general public may not participate in this program.

The program is not funded by the Legislature, but is supported by the revenues generated from handling fees. This means that the cost of maintaining the staff and facilities are passed on to the program participants in the form of the handling fee. Handling fees will vary according to condition of the item and demand, but are usually significantly lower than the cost of comparable items on the open market. The difference in value is considered a "donation" from the federal government; hence, participants in the program are referred to as "donee." As a recipient of surplus property under the Federal Surplus Property Program, the agency is considered a sub-recipient of federal financial assistance. The fair market value of property received must be reported as part of the Schedule of Expenditures of Federal Awards in an agency's Annual Financial Report. Property received through this program are subject to federal handling and use restrictions including the requirement that the recipient organization keep and use the property for a certain amount of time (usually 12-18 months) before disposing of it. Payment for handling fees may be made by an Interagency Transfer Voucher (ITV).

For questions about the Federal Surplus Property Program, please contact TFC at 512-463-2688 or federal.surplus@tfc.state.tx.us.

TFC's Federal Surplus Warehouses are located in San Antonio and Fort Worth. For complete details, including a link to complete inventory, warehouse contact information, and forms, please visit: https://www.tfc.texas.gov/divisions/supportserv/prog/fedsurplus/index.html.

[8] TEX. GOV'T CODE § 771.003.

APPENDIX 12

Sample State of Texas Disaster Declaration

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that Tropical Depression Harvey poses a threat of imminent disaster, including severe flooding, storm surge and damaging winds, in the counties of Aransas, Austin, Bee, Calhoun, Chambers, Colorado, Brazoria, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson, beginning August 23, 2017.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of August, 2017.

GREG ABBOTT
Governor

ATTESTED BY:

ROLANDO B. PABLOS
Secretary of State

FILED IN THE OFFICE OF THE SECRETARY OF STATE
4pm O'CLOCK
AUG 23 2017

APPENDIX 13

Contract Management Standards For Emergency Purchases*

	ANTICIPATE	PREPARE	FAMILIARIZE
BEFORE (PREPARATION)	• Establish and submit a Continuity of Operations Plan (COOP) to the State Office of Risk Management[1] • Take inventory of any pre-positioned supplies/ locations • Check Texas SmartBuy for any current emergency related agreements	• Create a procurement logistics and resource management plan • Establish policies and procedures for resource acquisition • Develop a communication plan • Establish emergency-related contracts • Perform procurement-focused training and exercises	• Robert T. Stafford Relief and Emergency Assistance Act[2] • FEMA's Public Assistance Program[3] • Texas Disaster Act of 1975[4] • State of Texas Emergency Management Plan[5]
	ACT	**PROCURE**	**RECORD**
DURING (RESPONSE)	• Activate Continuity of Operations Plan (COOP), as necessary • Utilize state/federal resources as available • Implement procurement logistics and resource management plan	• Review and understand the Governor's Disaster Declaration and its impact on public procurement • Make disaster-related procurements during the emergency period • Competitive bidding still required • Specific contract provision clauses may be required for using federal funds	• Keep a procurement log detailing procurement activities • Record receipt of goods and services (to include information of any "oral receipts") • Maintain close coordination with cost reimbursement personnel (state and/or federal)
	DOCUMENT	**DEFINE AND IDENTIFY**	**FINALIZE/CLOSE-OUT**
AFTER (RECOVERY)	• Centralize procurement-related documentation to support purchases made, preferably electronically • Obtain all required certifications necessary to access federal funds	• Follow established plans and define timeframes to complete tasks • Identify required actions and assign responsibilities • Reflect on 'lessons learned' to improve future emergency protocols	• Monitor and terminate services for contracts that are no longer needed • Return all equipment and unused supplies to originating entity • Start reimbursement process, if applicable

TABLE NOTE:

* TEX. GOV'T CODE § 2262.057.

1 https://www.sorm.state.tx.us/coop
2 https://www.fema.gov/disasters/stafford-act
3 https://www.fema.gov/assistance/public/program-overview
4 TEX. GOV'T CODE 418
5 https://tdem.texas.gov/state-of-texas-emergency-management-plan/

APPENDIX 14

Sample Evaluation Criteria and Scoring Strategies

Example 1: Weighted Scores, Scoring Scale, and Price Formula

RFP Solicitation	
Evaluation Criteria	**Weight**
Respondent's Past Performance, Qualifications, and Experience	20%
Respondent's Proposed Plan for Providing Services	40%
Price	40%
Total:	**100%**

Possible Scoring Strategy			
PRICE EVALUATION CRITERION	**Use a mathematical formula to determine the weighted price score.**		
Price of Lowest Response **Price of Response Being Evaluated x Maximum No. of Available Points* = Weighted Price Score**** *Number of Points Assigned corresponds to the numerical percentage assigned to the criterion. **Do not round.			
NON-PRICE EVALUATION CRITERIA	**Evaluators assign a raw score for each criterion using a 100 point scoring scale. The cumulative score is determined by converting the raw score for each criterion into a weighted score using the applicable weighted percentage.**		
DESCRIPTION OF CRITERIA	**RAW SCORE (0-100 PTS)**	**WEIGHT**	**WEIGHTED SCORE**
Respondent's Past Performance, Qualifications, and Experience		20%	
Respondent's Proposed Plan for Providing Services		40%	
Total Weighted Points:			

SCORING SCALE – Past Performance, Qualifications, and Experience		
Score	**Rating**	**Definition**
90-100	**Excellent**	Respondent demonstrates a broad range of relevant experience and completed projects within the last three (3) years of similar scale and complexity with at least one (1) completed contract of larger scale and complexity.
80-89	**Good**	Respondent demonstrates a broad range of relevant experience and completed projects of similar scale and complexity within the last 3 years.
70-79	**Satisfactory**	Respondent demonstrates relevant experience and completed projects of similar scale and complexity within the last 3 years.
50-69	**Marginal**	Respondent demonstrates marginal experience and completed projects of similar or smaller scale and complexity within the last 3 years.

1-49	**Unsatisfactory**	Respondent demonstrates limited experience. Bidder has either not completed any relevant projects within the last 3 years or completed projects were of smaller scale and complexity.
0	**Unacceptable**	Response does not address requirement.
SCORING SCALE – Proposed Plan for Providing Services		
Score	**Rating**	**Definition**
90-100	**Excellent**	Response demonstrates excellent understanding of the requirements. Response clearly details how provided services will significantly exceed all specified requirements.
80-89	**Good**	Response clearly demonstrates an understanding of the requirements. Response exceeds, to varying degrees, one or more specified requirements.
70-79	**Satisfactory**	Response demonstrates an understanding of the requirements. Response satisfies the identified requirements in an adequate manner.
50-69	**Marginal**	Response demonstrates only a limited understanding of the requirements. Response has deficiencies, to varying degrees, of one or more specified requirements.
1-49	**Unsatisfactory**	Response does not demonstrate an understanding of the requirements. Response contains significant deviations from one or more key requirements.
0	**Unacceptable**	Response does not address the requirements or response does not meet the minimum requirements.

Example Score Sheet					
Evaluation Criteria	**Weight**	**Bidder 1**		**Bidder 2**	
		Raw Data	***Weighted Score***	**Raw Data**	***Weighted Score***
Respondent's Past Performance, Qualifications, and Experience	20%	80	*16*	100	*20*
Respondent's Proposed Plan for Providing Services	40%	80	*32*	50	*20*
Price	40%	$75	*26*	$50	*40*
Total:	**100%**		*74*		*80*

Example 2: Subcriteria, Maximum Available Points Allocation, Reasonableness of Price

RFO Solicitation	
Evaluation Criteria	**Weight**
Respondent's Past Performance, Qualifications, and Experience	35%
Respondent's Proposed Plan for Providing Services	35%
Reasonableness of Price	30%
Total:	**100%**

Possible Scoring Strategy				
Evaluation Criteria		**Points are assigned to each criterion equal to the weight percentage advertised in the solicitation. Evaluators assign a score within maximum range of points allocated for the criterion.**		
Description of Criteria		**Weight**	**Maximum Possible Points**	**Assigned Points**
Respondent's Past Performance, Qualifications, and Experience		35	35	
Subcriteria	1. Respondent's Past Performance	*(10)*	*(10)*	
	2. Respondent's Overall Experience & Qualifications	*(10)*	*(10)*	
	3. Qualifications & Experience of Respondent's Proposed Personnel	*(15)*	*(15)*	
Respondent's Proposed Plan for Providing Services		35	35	
Reasonableness of Price		30	30	
Total:		**100**	**100**	

Example Score Sheet					
Evaluation Criteria		**Weight**	**Maximum Possible Points**	**Assigned Points**	
				Respondent 1	**Respondent 2**
Respondent's Past Performance, Qualifications, and Experience		35	35	29	29
Subcriteria	1. Respondent's Past Performance	*(10)*	*(10)*	*8*	*8*
	2. Respondent's Overall Experience & Qualifications	*(10)*	*(10)*	*9*	*8*
	3. Qualifications & Experience of Respondent's Proposed Personnel	*(15)*	*(15)*	*12*	*13*
Respondent's Proposed Plan for Providing Services		35	35	32	30
Reasonableness of Price		30	30	20	27
Total:		**100**	**100**	**81**	**86**

APPENDIX 15

Solicitation Announcement Example

SOLICITATION ANNOUNCEMENT

TO: Interested Parties

FROM: Contract Developer Name, Agency Name

RE: Title of Solicitation and Solicitation No.

DATE:

This is an official notification that [Agency Name], an agency of the State of Texas, has issued a Request for Proposals No. ____ ("RFP") for [Title of Solicitation]. Please promptly review the RFP posted on the *Electronic State Business Daily* ("ESBD") for general information regarding the solicitation and key deadlines applicable to respondents and responses.

To reduce costs, [Agency Name] will mail a hard copy of the solicitation only to those requesting a copy. To request a copy, an *authorized representative* must complete, sign below, and return via email to:

Contract Developer Name

Re: RFP No. _____

Email: _____

Telephone requests will not be accepted. [Agency Name] will not mail copies to parties that do not complete, sign, and return this form as instructed in this notice. [Agency Name] is not responsible for solicitations lost in the mail or delivered after the closing date and time for submission. This notice does not obligate [Agency Name] to award any contracts as a result of the solicitation.

☒ I understand that the complete solicitation is available electronically on the following website: http://www.txsmartbuy.com/esbd.

☒ I request that [Agency Name] mail a copy of RFP No. _____, as follows:

Name of Individual or Entity	
Address (include city, state, zip)	
Point of Contact:	
Telephone Number:	
Email Address:	

APPENDIX 16

Pre-Bid/Offer/Proposal Conference Guidelines

Solicitation Content. If a pre-bid/offer/proposal conference is conducted by the agency, the solicitation must include the following:

- Date and time of the conference. The date must allow sufficient time for respondents to receive and review the solicitation prior to the conference. Typically, this is at least 10 days after the solicitation is published.
- Exact physical location (address and room number) of the conference.
- If attendance at the conference is mandatory, then the following statement must be included in the solicitation: "Failure to attend the pre-bid/offer/proposal conference will result in disqualification of the response."
- Agency point of contact information for scheduling site visit appointments, if applicable.

Pre-Conference Activities. Prior to the conference, the Contract Developer typically

- finalizes the conference agenda;
- prepares the conference sign-in sheet; and
- schedules a meeting with the agency staff that will attend the conference so the team may review, at a high level, the published solicitation documents, the conference agenda, and the conference protocol.

Conference Activities. A typical agenda for a pre-bid/offer/proposal conference is as follows:

- **Opening** – The Contract Developer provides opening remarks which include the Solicitation Title and Number and the purpose for the conference. The Contract Developer's administrative announcements may also include the following:
  - Provide notification if the conference is being recorded.
  - Advise attendees to turn cell phone alerts off or to vibrate.
  - Remind attendees to sign the sign-in sheet at commencement of the conference, especially if conference is mandatory.
  - Inform attendees that answers will be given to questions raised at the conference whenever possible; however, any answer that changes or affects the solicitation will be reviewed and published in an addendum. Vendors may not rely on verbal answers that differ from solicitation requirements.
- **Introduction** – Contract Developer introduces agency representatives and explains their roles in the procurement. Depending on number of vendors attending the conference, the Contract Developer may ask that attendees introduce themselves and identify the company they are representing. If the conference is mandatory, the Contract Developer will collect sign-in sheets prior to the solicitation overview/review phase of the conference and, if applicable, site visit.
- **Solicitation Overview/Review** – The solicitation is reviewed page-by-page or section-by-section. It is not necessary or recommended to read the entire document, but the entire document should be addressed. Questions should be answered as the pages or sections are discussed. Site inspections may be conducted prior to or after the solicitation review, depending on the circumstances, but prior to close of the conference. If site inspections are conducted, all attendees should return to conference room and be permitted to ask any questions that relate to the site inspection. The Contract Developer will take notes of any addendum items and significant discussions.
- **Closing Summary** – The Contract Developer confirms the changes, if any, that are being considered by the agency and summarizes any unanswered questions to be addressed by the agency at a later date. Attendees should be reminded that no verbal changes to the solicitation are binding on the agency; all changes to the solicitation must be in the form of a written addendum to the solicitation.

Post-Conference Activities. After the conference, the Contract Developer typically performs the following tasks:

- Prior to the end of the conference, if practical, make copies of the sign-in sheet for the attendees;
- Determine whether the response due date should be extended based on questions raised during the conference;
- Prepare the question and answer document and, if applicable, the solicitation addendum with input from the program staff; and
- Maintain any conference minutes (may or may not be transcribed) or notes in the procurement file.

APPENDIX 17

Sample Q&A

Title of Solicitation

Solicitation Number

Official Responses to Questions From Potential Respondents

[Date posted/issued]

1. **Is this a follow-on contract? Is there an incumbent company providing these services? If so, could you tell us their name?**

   Response: An incumbent company is not currently providing the requested services.

2. **I was wondering if a pre-bid meeting has been arranged for this opportunity? If so, could you give me some details on it, so we could try and attend.**

   Response: A pre-proposal conference will not be held for this RFP. Refer to the Anticipated Schedule of Events on page 1 of the RFP.

3. **The numbering of requirements on page 25 goes from D.4.5.3 to D.4.5.5. Is it the State's intent to skip D.4.5.4 or is there a requirement missing?**

   Response: There was a formatting error on page 25 of the RFP; no requirements are missing.

4. **What is the name of the current vendor?**

   Response: Refer to the response to Question No. 1.

5. **Is there a page limit for the vendor's offer?**

   Response: No; there is not a designated maximum page limit for a proposal submitted in response to this RFP. However, Section III, Part 3.1 (Introduction) of the RFP states that conciseness and clarity of content in proposals are required; vague and general proposals may be considered non-responsive, and may result in disqualification.

6. **My company, [Company Name], is a Texas HUB certified vendor. Do I have to submit the HSP?**

   Response: Yes.

7. **Will the State consider an extension of the due date to provide greater participation by more vendors?**

   Response: Refer to Addendum No. 1.

APPENDIX 18

Sample Solicitation Addendum

Title of Solicitation
Solicitation Number
Addendum No. 1
[Date posted/issued]

The solicitation is amended as follows:

1. Section I, Item Number 7 (Deadline for Offers) is deleted and replaced with the following:

   7. Deadline for Offers: In Issuing Office No Later Than: Month/Day/Year; 2:00 p.m., Central Time.

2. Section II, Part D (Key Personnel) is amended by adding the following as new Paragraph 5.

   (5) Successful Respondent, at the request of the Agency Project Manager, shall cooperate in all reasonable respects with contractors retained by Agency in connection with the Services, and any other Agency-designated entities which are associated with the Services provided under the contract.

3. The last sentence in the first paragraph of Part P (Timeline) of Section II is deleted in its entirety.

Acknowledgement of Receipt of Addendum No. 1:

Respondent/Entity Name: _____

Signature of Authorized Representative: _____

Printed Name, Title: _____

Date: _____

Respondent should sign and return this acknowledgement with its response or otherwise acknowledge Addendum Number 1 in its response.

APPENDIX 19

Sample Administrative Review Checklist

Administrative Review Checklist	Respondent Name	Respondent Name	Respondent Name	Respondent Name	Respondent Name	Respondent Name
Response Received by Deadline	Y	Y	Y	Y	Y	N
Required Original and No. of Hard Copies Provided	Y	Y	Y	Y	Y	N/A*
Execution of Offer Signed	Y	Y	Y	Y	N	N/A*
HSP Completed and Signed	Y	Y	Y	Y	N	N/A*
HSP approved by HUB Coordinator	Y	Y	Y	Y	N	N/A*
Response Valid for 90 Days	Y	Y	Y	Y	Y	N/A*
Respondent Questionnaire (description of offered goods/services, etc.) Completed	Y	Y	Y	Y	Y	N/A*
Three References Provided	Y	Y	Y	Y	Y	N/A*
Mandatory Price Sheet Completed	Y	Y	Y	Y	N	N/A*
Conflict of Interest Form Completed and Signed	Y	Y	Y	Y	N	N/A*
Conflict of Interest Noted	N	N	N	N	unkn	N/A*
Nondisclosure Agreement Signed	Y	Y	Y	Y	N	N/A*
Response Responsive to Solicitation	Y	Y	Y	Y	N	N

* Late response is not opened. Respondent will be notified that the response was rejected because it was not timely received.

APPENDIX 20

Evaluation Committee Guidelines

Note: This procedure is provided as a general guideline for agencies to use and may be customized to meet individual agency needs.

- [ ] The Contract Developer collects a signed Evaluation Committee Member Non-Disclosure and Conflict of Interest Disclosure Statement from each committee member. The Contract Developer will check each statement to ensure that it is signed and has not been modified. For any committee member not in attendance at the scheduled meeting, responses will not be provided until the Non-Disclosure and Conflict of Interest Disclosure Statement is signed and participation in an evaluation committee briefing has occurred.

- [ ] The Contract Developer will provide initial procurement training (ethics, fundamental principles of procurement, best value standards, and evaluation weights and criteria) as well as guidance on the evaluation process to evaluation committee members. (See attached sample Committee Member Training Outline.)

- [ ] The Contract Developer will hand out evaluation packages to each committee member. Each package should include:

    - [ ] Copy of the Non-Disclosure and Conflict of Interest Disclosure Statement. Committee members should each have a copy of the Non-Disclosure and Conflict of Interest Disclosure Statement as a reminder of their responsibilities.

    - [ ] Copy of the Evaluation Committee Briefing document (see attached).

    - [ ] Complete copy of the solicitation and any addenda and Q&A documents. (Members should already be familiar with these documents prior to the meeting).

    - [ ] Copy of each responsive response received.

    - [ ] Evaluation Committee Member Scoring Matrix. (If hard copy, provide appropriate number of copies for the number of responses received).

- [ ] The Contract Developer will go over the briefing document (see attached) with the committee.

- [ ] The Contract Developer will explain the scoring process and walk through the evaluation scoring matrix to ensure each scoring committee member understands how the matrix works and how the responses will be evaluated.

- [ ] Generally, the Contract Developer remains during the meeting to answer any questions which may arise and to ensure proper procedures are followed. The preferred practice is for the evaluation committee to conduct their evaluations at the same time in the same room. Sometimes, due to time constraints, remote location of committee members, or other circumstances, it is not possible for all members to be together for the evaluation. If the evaluation committee conducts their evaluation from their respective workspaces, the Contract Developer will provide a deadline for when the evaluation scoring matrices are to be completed.

- [ ] After the evaluation is completed, the evaluation scoring matrices are submitted to the Contract Developer and maintained in the procurement file.

Evaluation Committee Briefing

Committee Members

- Committee members must be independent and objective, without any conflict of interest.
- Each committee member's participation should not create even the appearance of impropriety.
- Each committee member must comply with the agency and State's conflict of interest disclosure policies.
- Each committee member must sign the *Evaluation Committee Member Non-Disclosure and Conflict of Interest Disclosure Statement*.
- Each committee member must be knowledgeable about the matter under evaluation and add value to the process.
- All committee members must attend every evaluation meeting, each oral presentation, and all site visits to respondent premises.

Committee Member Training Outline

- Procurement values & ethical standards
- Procurement method used for the solicitation (RFP/RFO/RFQ)
- Best value standards (2155.074, 2155.075, 2156.007, 2157.003, 2254.003, 2254.027)
- Evaluation criteria in the solicitation
  - How each criterion reflects best value standard
- Introduction of solicitation documents
  - Solicitation document
  - Addenda documents, if applicable
  - Q&A documents, if applicable
  - Vendor performance reports, if applicable
  - Vendor references, if applicable

Evaluation/Scoring

- Each scoring committee member will independently and impartially score each response using only the evaluation factors and weights identified in the solicitation.
- Scores are not divulged between committee members. Members may ask questions if they are unable to find information, do not understand information in a response, or require the technical assistance of other members.
- Evaluations by the committee are based solely on the written responses, oral presentations or other factors as instructed by the Contract Developer and assigned attorney for that particular solicitation and consistent with the solicitation.
- Committee members may not conduct their own independent research on respondents (such as online research) and may not consider any independent research or other extraneous information in their scoring.
- With approval of the Contract Developer or assigned attorney as applicable, the chair may appoint one or more committee members to assist with specific administrative tasks (such as checking references) which are allowable under the solicitation.
- The committee may determine that clarification of the response is necessary prior to scoring. The Contract Developer or the assigned attorney, as appropriate, will submit written clarification questions to the respondents.
- Each committee member will record the scores for each response on the scoring matrix provided by the chair.
- Some solicitations may involve multiple scoring rounds to narrow the competitive field. The Contract Developer will brief the committee if the particular solicitation involves that possibility.
- The committee may determine that requests for oral presentations by all or only the top rated respondents are desirable and consistent with the particular solicitation. The Contract Developer or the assigned attorney, as appropriate, will notify the respondents about oral presentations.
- The chair will tally the individual committee member's evaluation scores and provide the committee with a master score sheet showing the total scores.

- Each committee member will review the master score sheet to verify the accuracy of the scoring.
- Committee members will not lobby each other to change scores; however, the chair may discuss the portions of the responses from which the scores were derived to ensure that each member understood that portion of the solicitation and the response.
- The Contract Developer, with assistance from the assigned attorney, if needed, will verify that the appropriate method of scoring was used by each committee member.
- The chair will prepare, sign and date the evaluation committee's master score sheet.
- The chair will prepare the appropriate internal approval memo (*e.g.*, recommendation of tentative contract award memo, recommendation to narrow the competitive field memo, recommendation to cancel procurement).

Confidentiality

- All evaluations and responses are highly confidential and may not be disclosed. The responses must be safeguarded by the committee members.
- Evaluations, including comments made on score sheets, are subject to the Texas Public Information Act. Written comments on score sheets are not discouraged. Evaluation committee members' written comments may aid the reviewer in circumstances where the score is unusually low or high. Evaluation committee member comments are also helpful in the event of a debriefing as they may assist a respondent in identifying strengths and weaknesses of the response.
- Committee members may not communicate with respondents or anyone else outside the committee regarding the responses received or the evaluation process without prior approval of the Contract Developer or the assigned attorney, as appropriate. Examples of permitted communications are those facilitated by the Contract Developer such as consultations with technical advisors assigned to the committee and attendance at an oral presentation.

Evaluation Committee Member
Non-Disclosure and Conflict of Interest Disclosure Statement

I, _____, the undersigned, hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein. I am acting at the request of the [Agency Name] as a participant in the [Name of Procurement].

I am acting of my own accord and am not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any responses or involved respondent in return for favorable consideration. I have no preconceived position on the relative merits of any of the submitted responses nor have I established a personal preference or position on the worth or standing of any respondent participating in this action.

I agree not to disclose or otherwise divulge any information pertaining to the contents, status, or ranking of any submitted responses to anyone other than the evaluation committee chair or other evaluation committee members. I understand the terms "disclose or otherwise divulge" to include, but are not limited to, reproduction of any part or portion of any responses, or removal of same from designated areas without prior authorization from the Contract Developer. I agree to consult with the assigned Contract Developer or legal counsel, as appropriate, if I have any questions regarding the guidance provided to the evaluation committee. I agree to perform any and all evaluations of said submitted responses in an unbiased manner, to the best of my ability, and with the best interest of the State of Texas paramount in all decisions.

_____

Signature

_____

Printed Name

_____

Date

Evaluation Committee
Master Score Sheet
for
[Title and No. of Solicitation]

Criteria		Weight (Maximum Points Permitted)	Committee Score			
			Respondent Name	Respondent Name	Respondent Name	Respondent Name
1.	List criterion from solicitation					
2.	List criterion from solicitation					
3.	List criterion from solicitation					
4.	List criterion from solicitation					
5.	List criterion from solicitation					
Total		**[100 points]**				

Signature of Evaluation Committee Chair: _____

Printed Name of Evaluation Committee Chair: _____ **Date:** _____

APPENDIX 21

Sample Evaluation Committee Member Scoring Matrix

Criteria		Weight (Maximum Points Permitted)	Score				
			Respondent Name	Respondent Name	Respondent Name	Respondent Name	Respondent Name
1.	List criterion from solicitation						
2.	List criterion from solicitation						
3.	List criterion from solicitation						
4.	List criterion from solicitation						
5.	List criterion from solicitation						
	Total	**[100 points]**					

APPENDIX 22

Sample Reference Check Form

Telephone Interview Reference Check
For
[Title of Solicitation]

Respondent Name:	
Company to be contacted as a Reference:	
Name and Title of Designated Reference:	
Contact Number for Designated Reference:	
Point of Contact Information for Individual Responding to Reference Check if Different than Point of Contact Designated in the Response:	

Introduction: Hello, my name is [caller's name] with [agency name]. We are currently evaluating vendor proposals for [solicitation title] and checking vendor references. Your name and number were provided to us as a reference for [vendor name]. Do you have a few minutes to answer some questions?

Questions:

1. Has the vendor provided [description of products/services] to your organization in the past 3 years? Yes ☐ No ☐

2. How long has the vendor provided [description of products/services] to your organization?

   _____

3. What is the approximate annual value of the vendor's contract?

   _____

4. Did the vendor stay within budget? Yes ☐ No ☐

5. On a rating scale of 0 to 3 – where (0) Unsatisfactory, (1) Marginally Satisfactory, (2) Satisfactory, (3) Exceeds Expectations, and (N/A) Not Applicable – please provide answers to the following questions:

   a. How satisfied was your organization with the timeliness of the vendor's delivery of products or performance of services under the contract?

   0 ☐, 1 ☐, 2 ☐, 3 ☐, N/A ☐, Declined to Respond ☐

   b. How satisfied was your organization with the skill, knowledge, cooperativeness, and professional manner of the personnel assigned by the vendor?

   0 ☐, 1 ☐, 2 ☐, 3 ☐, N/A ☐, Declined to Respond ☐

c. How satisfied was your organization with the vendor's ability to resolve problems?

0 ☐, 1 ☐, 2 ☐, 3 ☐, N/A ☐, Declined to Respond ☐

d. How satisfied was your organization with the vendor's customer service?

0 ☐, 1 ☐, 2 ☐, 3 ☐, N/A ☐, Declined to Respond ☐

e. Overall, how satisfied was your organization with the vendor's performance?

0 ☐, 1 ☐, 2 ☐, 3 ☐, N/A ☐, Declined to Respond ☐

6. Do you have any comments? Yes ☐ No ☐

_____

_____

_____

_____

_____

Reference Check Conducted By:

Printed Name:	
Date & Time:	
Signature:	

Reference check activities were unsuccessful for the following reason(s):

☐ Designated point of contact declined to answer any questions.

☐ Designated point of contact information provided in response was incorrect.

☐ Designated point of contact was determined to be "unavailable" after _____ unsuccessful attempts on the following dates and times: _____

☐ Other: _____

_____

APPENDIX 23

List of Preferences

PREFERENCE FOR PRODUCTS OF PERSONS WITH MENTAL RETARDATION OR PHYSICAL DISABILITIES.
TEXAS GOVERNMENT CODE § 2155.441.

(a) The products of workshops, organizations, or corporations whose primary purpose is training and employing individuals having mental retardation or a physical disability shall be given preference if they meet state specifications regarding quantity, quality, delivery, life cycle costs, and price.

(b) The workshops, organizations, or corporations shall test the products to the extent necessary to ensure quality in accordance with Section 2155.069 and may enter into contracts with a private or public entity to assist with testing.

(c) The comptroller is not required to purchase products under this section that do not meet formal state specifications developed by the comptroller or meet commercial specifications approved by the comptroller.

PREFERENCE FOR ENERGY EFFICIENT PRODUCTS.
TEXAS GOVERNMENT CODE § 2155.442.

The comptroller shall give preference to energy efficient products in purchases made under this subtitle if:

(1) the products meet state specifications regarding quantity and quality; and

(2) the cost of the product is equal to or less than the cost of other similar products that are not energy efficient.

PREFERENCE FOR RUBBERIZED ASPHALT PAVING.
TEXAS GOVERNMENT CODE § 2155.443.

The comptroller may give preference to rubberized asphalt paving made from scrap tires by a facility in this state in purchases of rubberized asphalt paving material if the cost as determined by a life-cycle cost benefit analysis does not exceed by more than 15 percent the bid cost of alternative paving materials.

PREFERENCE TO TEXAS AND UNITED STATES PRODUCTS AND TEXAS SERVICES.
TEXAS GOVERNMENT CODE § 2155.444.

(a) The comptroller and all state agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Texas bidders as follows:

(1) goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods produced in this state or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal; and

(2) agricultural products grown in this state shall be given first preference and agricultural products offered by Texas bidders shall be given second preference, if the cost to the state and quality are equal.

(b) If goods, including agricultural products, produced or grown in this state or offered by Texas bidders are not equal in cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal.

(c) In this section:

(1) "Agricultural products" includes textiles and other similar products.

(1-a) "Service-disabled veteran" means a person who is a veteran as defined by 38 U.S.C. Section 101(2) and who has a service-connected disability as defined by 38 U.S.C. Section 101(16).

(2) "Texas bidder" means a business:

(A) incorporated in this state;

(B) that has its principal place of business in this state; or

(C) that has an established physical presence in this state.

(d) The comptroller and all state agencies making purchase of vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation native to the region if the cost to the state is not greater and the quality is not inferior.

(e) The comptroller and all state agencies procuring services shall give first preference to services offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident and shall give second preference to services offered by other Texas bidders if:

(1) the services meet state requirements regarding the service to be performed and expected quality; and

(2) the cost of the service does not exceed the cost of other similar services of similar expected quality that are offered by a bidder that is not entitled to a preference under this subsection.

(f) The comptroller and each state agency conducting an advertising campaign that involves the creation or production of a commercial shall give preference to a commercial production company and advertising agency located in this state if:

(1) the services meet state requirements regarding the service to be performed and regarding expected quality; and

(2) the cost of the service does not exceed the cost of other similar services of similar expected quality that are offered by a bidder that is not entitled to a preference under this subsection.

(g) For purposes of Subsection (f), "commercial production company" means a corporation, limited liability company, partnership, or other private entity that includes as one of its purposes the production of one or more television, film, radio, or other media-related commercials.

(h) The Music, Film, Television, and Multimedia Office within the office of the governor has exclusive rulemaking authority for purposes of:

(1) determining whether an advertising campaign is subject to the requirements of this section;

(2) establishing a bid process for purposes of the services described by Subsection (f); and

(3) establishing criteria to determine whether a commercial production company or advertising agency is located in this state for the purposes of this section.

PREFERENCE UNDER SERVICE CONTRACTS.
TEXAS GOVERNMENT CODE § 2155.4441.

A state agency that contracts for services shall require the contractor, in performing the contract, to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside this state.

PREFERENCE FOR RECYCLED, REMANUFACTURED, OR ENVIRONMENTALLY SENSITIVE PRODUCTS.
TEXAS GOVERNMENT CODE § 2155.445.

(a) The comptroller and state agencies shall give preference to recycled, remanufactured, or environmentally sensitive products, as those terms are defined by rule of the comptroller, in purchases made under this subtitle if:

(1) the product meets state specifications regarding quantity and quality; and

(2) the average price of the product is not more than 10 percent greater than the price of comparable nonrecycled products.

(b) The comptroller regularly shall review and revise its procurement procedures and specifications for the purchase of goods to:

(1) eliminate procedures and specifications that explicitly discriminate against recycled, remanufactured, or environmentally sensitive products, as those terms are defined by rule of the comptroller; and

(2) encourage the use of recycled, remanufactured, or environmentally sensitive products.

(c) In developing new procedures and specifications, the comptroller shall encourage the use of recycled products and products that may be recycled or reused or that are remanufactured or environmentally sensitive.

(d) In addition to the products covered by the definition adopted by rule under this section, in this section "recycled product" includes recycled steel products. The preference for recycled steel products under this section applies also to products purchased in connection with projects described by Section 2166.003.

PURCHASE OF RECYCLED OIL.
TEXAS GOVERNMENT CODE § 2155.447.

The comptroller, all state agencies, and all state agency employees who purchase motor oil and other automotive lubricants for state-owned vehicles shall give preference to motor oils and lubricants that contain at least 25 percent recycled oil if the cost to the state and the quality are comparable to those of new oil and lubricants.

PREFERENCE TO PRODUCTS AND SERVICES FROM ECONOMICALLY DEPRESSED OR BLIGHTED AREA.
TEXAS GOVERNMENT CODE § 2155.449.

(a) In this section, "economically depressed or blighted area" means an area that:

(1) is an economically depressed or blighted area as defined by Section 2306.004; or

(2) meets the definition of a historically underutilized business zone as defined by 15 U.S.C. Section 632(p).

(b) The comptroller and all state agencies procuring goods or services shall give preference to goods or services produced in an economically depressed or blighted area if:

(1) the goods or services meet state specifications regarding quantity and quality; and

(2) the cost of the good or service does not exceed the cost of other similar products or services that are not produced in an economically depressed or blighted area.

PREFERENCE FOR PRODUCTS OF FACILITIES ON FORMERLY CONTAMINATED PROPERTY.
TEXAS GOVERNMENT CODE § 2155.450.

The comptroller and state agencies shall give preference to goods produced at a facility located on property for which the owner has received a certificate of completion under Section 361.609, Health and Safety Code, if the goods meet state specifications regarding quantity, quality, delivery, life cycle costs, and price.

VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS.
TEXAS GOVERNMENT CODE § 2155.451.

(a) This section applies only to a contract to be performed, wholly or partly, in a nonattainment area or in an affected county, as those terms are defined by Section 386.001, Health and Safety Code.

(b) The comptroller and state agencies procuring goods or services may:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(c) The preference may be given only if the cost to the state for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

PREFERENCE FOR CONTRACTORS PROVIDING FOODS OF HIGHER NUTRITIONAL VALUE.
TEXAS GOVERNMENT CODE § 2155.452.

(a) The comptroller and state agencies making purchases of food for consumption in a public cafeteria may give preference to contractors who provide foods of higher nutritional value and who do not provide foods containing trans fatty acids for consumption in the cafeteria.

(b) In complying with this section, the comptroller and state agencies shall review the Department of Agriculture's nutrition standards.

APPENDIX 24

Texas Required Contract Clauses

In accordance with Section 2262.051(d)(1) of the Texas Government Code, this document identifies the model contract clauses for the essential provisions that an agency must include in a contract to protect the interests of the State. Except as otherwise specifically noted as an "EXCEPTION" in this document, the Texas Required Contract Clauses are required to be included in both solicitations and contracts.

The wording of the Texas Required Contract Clauses must substantially conform to the Standard Text or Alternate Text. For instance, it is an acceptable practice to remove the reference to the solicitation for the clause appearing in a contract. Also, the following terms may be revised by the agency as appropriate for conformity with the applicable solicitation and contract documents: **Agency**, **Respondent**, **Response**, and **Solicitation**. Examples of conforming terms include, but are not limited to, the following:

- "**Agency**" to agency name, Customer, or Client
- "**Respondent**" to Bidder, Proposer, Applicant, Contractor, or Vendor
- "**Response**" to Bid, Proposal, Offer, or Application
- "**Solicitation**" to Invitation for Bids, Request for Proposals, Request for Offers, Request for Applications, Pricing Request, or Request for Qualifications

General guidance is provided along with examples of supplemental text that routinely accompany the required clause. Any additional text included by the agency must not conflict with or weaken a Texas Required Contract Clause. It is recommended that public procurement professionals seek assistance from agency legal counsel prior to modifying the Standard Text or Alternate Text as slight variations may result in the agency's non-compliance with applicable statutes and rules.

Note: The Essential Provisions which must be included in every contract are comprised of (1) the terms necessary for the formation of a legally binding contract and (2) the Texas Required Contract Terms. For a discussion of the terms necessary for the formation of a legally binding contract, refer to the *Texas Procurement and Contract Management Guide*.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Antitrust Affirmation	The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response, neither I nor any representative of the Respondent have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response, neither I nor any representative of the Respondent have violated any federal antitrust law; and (3) neither I nor any representative of the Respondent have directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.	Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent.	TEX GOVT CODE § 2155.005	As directed by Section 2155.005(b) of the Texas Government Code, the OAG prepared the Antitrust Certification which is published at https://www.texasattorneygeneral.gov/. The OAG is charged with investigating and prosecuting violations of the Texas Free Enterprise & Antitrust Act and the federal antitrust statutes which prohibit anti-competitive conduct. Supplemental text to the required clause may include the following: Respondent assigns to the Agency all of Respondent's rights, title and interest in and to all claims and causes of action Respondent may have under the antitrust laws of Texas or the United States for overcharges associated with this Solicitation or any resulting contract.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Assignment	Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this provision is void and without effect.	Respondent may not assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of the Agency, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.	TEX GOVT CODE § 2262.056(b)	EXCEPTION: Clause only applies to solicitations and contracts for services Section 2262.056 of the Texas Government Code states the following: (a) In this section: (1) "Major information resources project" has the meaning assigned by Section 2054.003. (2) "Sensitive personal information" has the meaning assigned by Section 521.002, Business & Commerce Code. (b) A vendor awarded a services contract by a state agency may not assign the vendor's rights under the contract to a third party unless the assignment is approved by the state agency. (c) At least 14 days before a state agency rejects or approves a vendor's proposed assignment under Subsection (b), the state agency shall notify the Legislative Budget Board of the proposed assignment if the contract subject to the assignment: (1) is for a major information resources project; or (2) involves storing, receiving, processing, transmitting, disposing of, or accessing sensitive personal information in a foreign country.
Buy Texas Affirmation	In accordance with Section 2155.4441 of the Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.	Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, relating to use of service contracts and the purchase of products and materials produced in the State of Texas. Or Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.	TEX GOVT CODE § 2155.4441	EXCEPTION: On a case-by-case basis, and with the advice of legal counsel, the preface "to the extent applicable" may be added to the clause in contracts when circumstances indicate that Section 2155.4441 of the Texas Government Code does not apply to the transaction; for example, to contracts that are solely for goods.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Child Support Obligation Affirmation	Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate in addition to other remedies set out in 231.006(f).	Under Section 231.006(d) of the Texas Family Code, regarding child support, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code, must include in the Response the names and social security numbers of each person with at least 25% ownership of the business entity submitting the Response. Or Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.	TEX FAM CODE §§ 231.006, 231.302	Section 231.006(d) of the Texas Family Code mandates the use of statutorily specified text. Section 231.006(a) of the Texas Family Code provides that a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to: (1) receive payments from state funds under a contract to provide property, materials, or services; or (2) receive a state-funded grant or loan. In situations where Responses are submitted to the agency via unencrypted email, Responses should only contain the last four digits of the SSN in order to comply with the sensitive personal information acquisition requirements of Section 2054.1125 of the Texas Government Code. In the event a Respondent is subject to Section 231.006 of the Texas Family Code, the agency, in accordance with its information security protocol, should request the Respondent to submit the complete social security number via separate, secure transmission prior to conducting the evaluation. Supplemental text to the required clause may include the following: **FEDERAL PRIVACY ACT NOTICE**: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The Social Security number will be used to identify persons that may owe child support and will be kept confidential to the fullest extent allowed under Section 231.302(e) of the Texas Family Code.
Cloud Computing State Risk and Authorization Management Program (TX-RAMP)	Pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Respondent represents and warrants that it complies with the requirements of the state risk and authorization management program and Respondent agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the contract.		TEX GOV'T CODE § 2054.0593 1 TAC § 202.27	Clause only applies to contractors doing business with an agency for cloud computer services subjected to the state risk and authorization management program. A state agency shall ensure contractor's compliance with the program for contracts it enters or renews after January 1, 2022. The state risk and authorization management program is set out in 1 TAC § 202.27 for state agencies.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Computer Equipment Recycling Program	Respondent certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.	If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.	TEX HEALTH & SAFETY CODE § 361.965(c) 1 TAC §217.10 30 TAC §§328.131-155	EXCEPTION: Clause only applies to solicitations and contracts for the purchase or lease of computer equipment, which is defined in Section 361.952(2) of the Texas Health and Safety Code as "a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner." Section 361.965(c) of the Texas Health and Safety Code states the following: (c) A state agency that purchases or leases computer equipment shall require each prospective bidder to certify the bidder's compliance with this subchapter. Failure to provide that certification renders the prospective bidder ineligible to participate in the bidding.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Contracting Information Responsibilities	In accordance with Section 552.372 of the Texas Government Code, **Respondent** agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the **Agency** for the duration of the contract, (2) promptly provide to the **Agency** any contracting information related to the contract that is in the custody or possession of the **Respondent** on request of the **Agency**, and (3) on termination or expiration of the contract, either provide at no cost to the **Agency** all contracting information related to the contract that is in the custody or possession of the **Respondent** or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the **Agency**. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the contract and the **Respondent** agrees that the contract can be terminated if the **Respondent** knowingly or intentionally fails to comply with a requirement of that subchapter.	**Respondent** represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the contract and the **Respondent** agrees that the contract can be terminated if the **Respondent** knowingly or intentionally fails to comply with a requirement of that subchapter.	TEX GOVT CODE § 552.372	EXCEPTION: Clause only applies to certain solicitations and contracts. Section 552.371(a) of the Texas Government Code states the following: (a) This section applies to an entity that is not a governmental body that executes a contract with a governmental body that: (1) has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by the governmental body; or (2) results in the expenditure of at least $1 million in public funds for the purchase of goods or services by the governmental body in a fiscal year of the governmental body. Section 552.372 of the Texas Government Code states the following: (a) A contract described by Section 552.371 must require a contracting entity to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the contract, either: (A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or (B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Contracting Information Responsibilities *(continued)*				(b) Unless Section 552.374(c) applies, a bid for a contract described by Section 552.371 and the contract must include the following statement: "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter." (c) A governmental body may not accept a bid for a contract described by Section 552.371 or award the contract to an entity that the governmental body has determined has knowingly or intentionally failed to comply with this subchapter in a previous bid or contract described by that section unless the governmental body determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of this subchapter.
COVID-19 Vaccine Passport Prohibition	Respondent certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Respondent's business. Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract.	Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract.	TEX HEALTH & SAFETY CODE § 161.0085	Businesses with a "vaccine passport" requirement are not eligible to enter into a contract payable with state funds.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Critical Infrastructure Affirmation	Pursuant to Government Code Section 2274.0102, **Respondent** certifies that neither it nor its parent company, nor any affiliate of **Respondent** or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.	**Respondent** certifies (i) that **Respondent**, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of **Respondent**, is not owned by or the majority of stock or other ownership interest of **Respondent** is not held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; (ii) that **Respondent** including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of **Respondent**, is not owned by or the majority of stock or other ownership interest of **Respondent** is not held or controlled by a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure; and (iii) that **Respondent** including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of **Respondent**, is not headquartered in China, Iran, North Korea, Russia, or a country designated by the Governor as a threat to critical infrastructure.	TEX GOVT CODE § 2274.0102	EXCEPTION: Clause only applies to solicitations and contracts in which the contractor would be granted direct or remote access to or control of critical infrastructure, as defined by Section 2274.0101 of the Texas Government Code, in this state, other than access specifically allowed for product warranty and support purposes. The Governor may designate countries as a threat to critical infrastructure under Section 2274.0103 of the Texas Government Code. Agencies should promptly add any country that is designated by the Governor to this clause.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Cybersecurity Training	Respondent represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.	If Respondent has access to any state computer system or database, Respondent shall complete cybersecurity training and verify completion of the training program to the Agency pursuant to and in accordance with Section 2054.5192 of the Government Code. Or Respondent shall ensure that any Respondent employee or subcontractor employee who has access to a state computer system or database shall complete a cybersecurity training program certified under Section 2054.519 of the Texas Government Code. Such training is required to occur during the contract term and the renewal period. Respondent shall provide Agency with verification of the completion of the requisite training	TEX GOVT CODE § 2054.5192	EXCEPTION: Clause only applies to solicitations and contracts where contractors have access to a state computer system or database. Section 2054.5192 of the Texas Government Code states the following; (a) In this section, "contractor" includes a subcontractor, officer, or employee of the contractor. (b) A state agency shall require any contractor who has access to a state computer system or database to complete a cybersecurity training program certified under Section 2054.519 as selected by the agency. (c) The cybersecurity training program must be completed by a contractor during the term of the contract and during any renewal period. (d) Required completion of a cybersecurity training program must be included in the terms of a contract awarded by a state agency to a contractor. (e) A contractor required to complete a cybersecurity training program under this section shall verify completion of the program to the contracting state agency. The person who oversees contract management for the agency shall: (1) report the contractor's completion to the department; and (2) periodically review agency contracts to ensure compliance with this section.
Data Management and Security Controls	In accordance with Section 2054.138 of the Texas Government Code, Respondent certifies that it will comply with the security controls required under this contract and will maintain records and make them available to Agency as evidence of Respondent's compliance with the required controls.		TEX GOV'T CODE § 2054.138.	Clause only applies when an agency is entering into or renewing a contract with a vendor authorized to access, transmit, use, or store data for the agency. Each agency shall determine its security controls which shall be proportional to the agency's risk under contract based on the sensitivity of its data.
Dealings with Public Servants Affirmation	Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.	Pursuant to Section 2155.003 of the Texas Government Code, Respondent represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the contract.	TEX GOVT CODE §§ 572.051(a)(1), 2155.003 34 TAC § 20.157	Employees of agencies that perform purchasing functions under the delegated authority of SPD shall adhere to the same ethical standards as CPA employees, and shall avoid all conflicts of interest in their purchasing activities. The Texas Ethics Commission administers and enforces Section 2155.003 of the Texas Government Code and has adopted rules at 1 TAC §§ 45.1, 45.3, 45.7.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Debts and Delinquencies Affirmation	Respondent agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.	Respondent agrees that any payments due under the contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support. Or Respondent acknowledges and agrees that, to the extent Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Respondent is otherwise owed under the contract may be applied toward any debt Respondent owes the State of Texas until the debt is paid in full. These provisions are effective at any time Respondent owes any such debt or delinquency.	TEX GOVT CODE § 2252.903	
Disaster Recovery Plan	In accordance with 13 TAC § 6.94(a)(9), Respondent shall provide to Agency the descriptions of its business continuity and disaster recovery plans.	Upon request of Agency, Respondent shall provide the descriptions of its business continuity and disaster recovery plans. Or Upon request of Agency, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.	TEX GOVT CODE § 441.190 13 TAC § 6.94(a)(9)	EXCEPTION: Clause is recommended for all contracts but is an Essential Clause for solicitations and contracts with vendors that have custody of vital state records. 13 TAC § 6.94(a)(9) states that each state agency must require all third-party custodians of records to provide the state agency with descriptions of their business continuity and/or disaster recovery plans as regards to the protection of the state agency's vital state records. The term "vital state record" is defined in Section 441.180(13) of the Texas Government Code to mean any state record necessary to: (C) the resumption or continuation of state agency operations in an emergency or disaster; (D) the re-creation of the legal and financial status of the agency; or (E) the protection and fulfillment of obligations to the people of the state. Supplemental text to the required clause may provide additional details regarding the required business continuity and disaster recovery plans (*e.g.*, title and date of plan).

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Disclosure of Prior State Employment	In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by Agency or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.		TEX GOVT CODE § 2254.033	EXCEPTION: Clause only applies to solicitations and contracts for consulting services under Chapter 2254 of the Texas Government Code. Section 2254.034 of the Texas Government Code states the following: (a) A contract entered into in violation of Sections 2254.029 through 2254.031 is void. (b) A contract entered into with a private consultant who did not comply with Section 2254.033 is void. (c) If a contract is void under this section: (1) the comptroller may not draw a warrant or transmit money to satisfy an obligation under the contract; and (2) a state agency may not make any payment under the contract with state or federal money or money held in or outside the state treasury. (d) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Dispute Resolution (General)	The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.	Disputes arising under the contract shall be resolved in accordance with the dispute resolution process provided in Chapter 2260 of the Texas Government Code. Or The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract. If the Contractor's claim for breach of Contract cannot be resolved informally with the **Agency**, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the **Agency** if the parties are unable to resolve their disputes as described above. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the **Agency**, the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.	TEX GOVT CODE § 2260.004	EXCEPTION: See "Dispute Resolution (Engineering, Architectural, or Construction Services)" Section 2260.004 of the Texas Government Code states the following: (a) Each unit of state government that enters into a contract to which this chapter applies shall include as a term of the contract a provision stating that the dispute resolution process used by the unit of state government under this chapter must be used to attempt to resolve a dispute arising under the contract. (b) The attorney general shall provide assistance to a unit of state government in developing the contract provision required by this section. Supplemental text to the required clause may include specific details of the agency's dispute resolution process adopted by rule.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Dispute Resolution (Engineering, Architectural, or Construction Services)	Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under this contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d). (a) Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the **Respondent**'s claim for breach of contract cannot be resolved by the parties in the ordinary course of business, **Respondent** may make a claim against **Agency** for breach of contract and the **Agency** may assert a counterclaim against the **Respondent** as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, **Respondent** must provide written notice to **Agency** of a claim for breach of the contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the **Respondent** seeks as damages; and (3) the legal theory of recovery. (b) The chief administrative officer, or if designated in the contract, another officer of the **Agency**, shall examine the claim and any counterclaim and negotiate with the **Respondent** in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052. (c) If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this contract as to the parts of the claim that are not resolved.		TEX. CIV. PRAC. & REM. CODE CH 114	EXCEPTION: Clause only applies to solicitations and contracts for engineering, architectural, or construction services. Under Chapter 114 of the Texas Civil Practices and Remedies Code, a claim for breach of a contract for engineering, architectural, or construction services or for materials related to those services, in which the amount of controversy is not less than $250,000 can be brought directly in district court without exhausting the administrative requirements of Chapter 2260 of the Texas Government Code. Consult with legal counsel regarding applicability of this clause.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Dispute Resolution (Engineering, Architectural, or Construction Services)	(d) If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with **Agency**, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the **Respondent**'s sole and exclusive process for seeking a remedy for an alleged breach of contract by the **Agency** if the parties are unable to resolve their disputes as described in this section. (e) Nothing in the contract shall be construed as a waiver of the state's or the **Agency**'s sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. **Agency** does not waive any privileges, rights, defenses, or immunities available to **Agency** by entering into this contract or by its conduct, or by the conduct of any representative of **Agency**, prior to or subsequent to entering into this contract. (f) Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the **Respondent**: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.			

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Energy Company Boycotts	If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.	Respondent represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.	TEX GOV'T CODE § 2274.002	EXCEPTIONS: Clause only applies to contracts and contractors that meet the following criteria: (i) a "company" within the definitions of Section 2274.001(2) of the Tex. Gov't Code; (ii) with 10 or more full-time employees; and (iii) with a contract to be paid a value of $100,000 or more wholly or partially from public funds of the governmental entity. The clause does not apply to a governmental entity that determines the requirements of Section 2274.002(b) of Tex. Gov't Code are inconsistent with its duties related to debt obligations or funds as described in Section 2274.002(c) of the Tex. Gov't Code.
Entities that Boycott Israel	If Respondent is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Respondent certifies that Respondent does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Respondent does not make that certification, Respondent must indicate that in its Response and state why the certification is not required.	Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response. Or Respondent represents and warrants that (1) it does not, and shall not for the duration of the contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.	TEX GOVT CODE § 2271.002	EXCEPTION: Clause only applies to certain solicitations and contracts. Section 2271.002 of the Texas Government Code states the following: (a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of $100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Section 2271.001(2) of the Government Code defines "company" to be the meaning assigned by Section 808.001 of the Texas Government Code, except that the term does not include a sole proprietorship.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
E-Verify Program	**Respondent** certifies that for contracts for services, **Respondent** shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of: 1. all persons employed by **Respondent** to perform duties within Texas; and 2. all persons, including subcontractors, assigned by **Respondent** to perform work pursuant the contract within the United States of America.	**Respondent** certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of: 1. all persons employed to perform duties within Texas during the term of the contract; and 2. all persons, including subcontractors, assigned by **Respondent** to perform work pursuant to the contract within the United States of America.	Executive Order No. RP-80 Tex. Att'y Gen. Op. No. KP-70 (2016)	EXCEPTION: Clause only applies to solicitations and contracts for services from agencies that are under the direction of the Governor. EXCEPTION: On a case-by-case basis, and in consultation with legal counsel, the preface "to the extent not prohibited by federal law or regulation" may be added to the clause in contracts when circumstances indicate that strict compliance with the required clause is inconsistent with current federal law or regulation. Supplemental text to the required clause may include the following: If it is determined that **Respondent** has violated the certifications set forth in this Section, then (1) **Respondent** shall be in breach of contract, (2) **Agency** shall have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to **Agency** under the contract, **Respondent** shall be responsible for all costs incurred by **Agency** to obtain substitute services to replace the terminated contract.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Excess Obligations Prohibited	The contract is subject to termination or cancellation, without penalty to **Agency**, either in whole or in part, subject to the availability of state funds.	Any contract resulting from this **Solicitation** is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Or **Respondent** understands that all obligations of **Agency** under the contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the contract may be terminated by **Agency**. Or The contract shall not be construed as creating a debt on behalf of **Agency** in violation of Article III, Section 49a of the Texas Constitution. **Respondent** understands that all obligations of **Agency** under the contract are subject to the availability of state funds. Or The contract is subject to termination or cancellation, without penalty to **Agency**, either in whole or in part, subject to the availability of state funds. **Agency** is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If **Agency** becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either **Agency**'s or **Respondent**'s delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, **Agency** will not be liable to **Respondent** for any damages, that are caused or associated with such termination, or cancellation, and **Agency** will not be required to give prior notice.	TEX CONST Art III § 49a TEX CONST Art VIII § 6 General Appropriations Act, Senate Bill 1, 87th R.S. at Art IX, § 6.03	EXCEPTION: Clause is recommended for every contract but constitutes an Essential Clause for any contract with a term that crosses the biennium. The Texas Constitution and the General Appropriations Act prohibit an agency from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium. Therefore, any installment purchase, lease, or any other type of purchase which incurs an obligation beyond the current appropriations is strictly prohibited, unless such obligation is expressly conditioned upon continued legislative appropriation. For information regarding the one exception to the prohibition against incurring excess obligations, refer to the "Termination for Non-Appropriations, Excess Obligations Prohibited" Section of the Guide. Penalty for Requisitioning Officer or Employee. If General Appropriations Act, Senate Bill 1, 87th R.S. at Article IX, Section 6.03 is violated, the State Auditor shall certify the fact of the violation and the amount of the over-obligation to CPA, and CPA shall deduct an amount equivalent to the over-obligation from the salary or other compensation due to the responsible disbursing or requisitioning officer or employee, and apply the amount to the payment obligation. Supplemental text to the required clause may include the following to clarify the effect of the termination in advance payment situations such as software procurements: Termination under this Section shall not affect **Agency**'s right to use previously paid licensed software through the term of each such license, or any maintenance or support paid prior to such termination.
Excluded Parties	**Respondent** certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control.		Executive Order No. 13224	EXCEPTION: Clause applies as long as Executive Order No. 13224 is in effect. Executive Order 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), was issued by President George W. Bush on September 23, 2001, as a response to the attacks on September 11, 2001.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Executive Head of a State Agency Affirmation	Under Section 669.003 of the Texas Government Code, Respondent certifies that it does not employ, or has disclosed its employment of, any former executive head of the Agency. Respondent must provide the following information in the Response. Name of Former Executive: _____ Name of State Agency: _____ Date of Separation from State agency: _____ Position with Respondent: _____ Date of Employment with Respondent: _____	In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the Agency, (2) a person who at any time during the four years before the date of the contract was the executive head of the Agency, or (3) a person who employs a current or former executive head of the Agency. Or Under Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Respondent represents that no person who served as an executive of Agency, in the past four (4) years, was involved with or has any interest in the contract. If Respondent employs or has used the services of a former executive of Agency, then Respondent shall provide the following information in the Response: name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Respondent, and the date of employment with Respondent.	TEX GOVT CODE § 669.003	Section 669.003 of the Texas Government Code states the following: A state agency may not enter into a contract with the executive head of the state agency, with a person who at any time during the four years before the date of the contract was the executive head of the state agency, or with a person who employs a current or former executive head of a state agency affected by this section, unless the governing body: (1) votes, in an open meeting, to approve the contract; and (2) notifies the Legislative Budget Board, not later than the fifth day before the date of the vote, of the terms of the proposed contract.
False Statements	Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.	If Respondent signs the Response with a false statement or it is subsequently determined that Respondent has violated any of the representations, warranties, guarantees, certifications, or affirmations included in the Response, Respondent will be in default under the contract and Agency may terminate or void the contract. Or The undersigned certifies that the information contained in this Response is accurate and complete. Or *Other text that specifies that the Response was reviewed for accuracy and completeness by Respondent prior to submission to the Agency.*	TEX GOVT CODE § 2155.077(a)(2)	EXCEPTION: Clause is recommended for every contract but constitutes an Essential Clause for solicitations. Under SPD's debarment rules at 34 TAC § 20.585, the director of SPD may debar a contractor for a period of no more than five years upon a finding that the contractor committed fraud in the procurement or performance of the contract, including the submission of falsified documents by the contractor or any person under the direction or control of the contractor.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Financial Participation Prohibited Affirmation	Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.	Pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from Agency to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.	TEX GOVT CODE § 2155.004	Section 2155.004(b) of the Texas Government Code mandates the use of statutorily specified text. Supplemental text to the required clause may include the following: This Section does not prohibit a Respondent or contract participant from providing free technical assistance.
Firearm Entities and Trade Associations Discrimination	If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.	Respondent verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.	TEX GOVT CODE §. 2274	APPLICABILITY: This clause applies only to a contract that: (1) is between a governmental entity and a company with at least 10 full-time employees; and (2) has a value of at least $100,000 that is paid wholly or partly from public funds of the governmental entity. EXCEPTIONS: This clause is not required when a state Agency: (1) contracts with a sole-source provider; or (2) does not receive any bids from a company that is able to provide the written verification required by Section 2274.002(b) of the Texas Government Code.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Foreign Terrorist Organizations	**Respondent** represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.	Section 2252.152 of the Texas Government Code prohibits **Agency** from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. **Respondent** certifies that it not ineligible to receive the contract. Or In accordance with Texas Government Code, Chapter 2252, Subchapter F, **Respondent** hereby represents and warrants that it is not a company identified on the lists prepared and maintained under Texas Government Code §§ 2270.0052 (companies with business operations in Sudan), 2270.0102 (companies with business operations in Iran), or 2270.0152 (companies known to have contracts with or provide supplies or services to a foreign terrorist organization). Notwithstanding the foregoing, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or to a foreign terrorist organization, is not subject to contract prohibition under this clause. A company claiming such exemption must submit the official copy of the declaration.	TEX GOVT CODE § 2252.152	Section 2252.152 (Contracts With Companies Engaged In Business With Iran, Sudan, Or Foreign Terrorist Organization Prohibited) of the Texas Government Code states the following: A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 2270.0052, 2270.0102, or 2270.0152. In accordance with Section 2252.153 of the Texas Government Code, CPA has posted on its website a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Former Agency Employees	Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.	In accordance with Section 2252.901 of the Texas Government Code, Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract. Or *For professional services procurements* In accordance with Section 2252.901 of the Texas Government Code, Respondent represents and warrants that for professional services contracts as described by Chapter 2254 of the Texas Government Code, if a former employee of the Agency was employed by Respondent within one year of the employee's leaving the Agency, then such employee will not perform services on projects with Respondent that the employee worked on while employed by the Agency.	TEX GOVT CODE § 2252.901	EXCEPTION: Clause only applies to solicitations and contracts that are employment contracts or professional services and consulting services contracts under Chapter 2254 of the Texas Government Code, if appropriated money will be used to make payments under the contract. Section 2252.901(a) of the Texas Government Code provides a narrow exception to the prohibition with regards to the professional services contracts. Section 2252.901(a) of the Texas Government Code states the following: A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.
Governing Law and Venue	The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.		TEX GOVT CODE § 2155.0012	

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Human Trafficking Prohibition	Under Section 2155.0061 of the Texas Government Code, the **Respondent** certifies that the individual or business entity named in this **Response** or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate		TEX GOVT CODE § 2155.0061	Section 2155.0061 mandate the use of statutorily specified text. Section 2155.0061 of the Texas Government Codes states the following: (a) A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of any offense related to the direct support or promotion of human trafficking. (b) A bid or award subject to the requirements of this section must include the following statement: "Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate." (c) If a state agency determines that an individual or business entity holding a state contract was ineligible to have the bid accepted or contract awarded under this section, the state agency may immediately terminate the contract without further obligation to the vendor. (d) This section does not create a cause of action to contest a bid or award of a state contract.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Indemnification (General)	RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.		TEX CONST Art VIII § 6 TEX GOVT CODE § 2254.0031	EXCEPTION: *See* "Indemnification (Engineering or Architectural Services)" NOTE: Depending on the transaction, the parties may also negotiate an additional indemnification clause to specifically address intellectual property. *See* "Indemnification (IP)." Vendor created liability under a contract may pose a financial risk to the State in violation of the prohibition against Excess Obligations. Legal counsel should be sought prior to the agency agreeing to a mutual indemnification or indemnification of another entity as such an obligation may constitute a "debt" in violation of law. *See* Tex. Att'y Gen. Op. No. MW-475 (1982). A statute may expressly authorize the state's indemnification of another entity. *See* TEX GOV'T CODE § 808.003. Supplemental text to the required clause may include the following: THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE RESPONDENT TO INDEMNIFY OR HOLD HARMLESS THE STATE OR AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF AGENCY OR ITS EMPLOYEES. For the avoidance of doubt, Agency shall not indemnify Respondent or any other entity under the contract.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Indemnification (Engineering or Architectural Services)	RESPONDENT SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO RESPONDENT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO RESPONDENT, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM		TEX GOVT CODE § 2254.0031 TEX LOCAL GOVT CODE § 271.904(a)-(e) and (g).	EXCEPTION: Clause only applies to solicitations and contracts involving architectural or engineering services. Section 2254.0031 of the Texas Government Code states the following: (a) A state governmental entity may require a contractor selected under this subchapter to indemnify or hold harmless the state from claims and liabilities resulting from the negligent acts or omissions of the contractor or persons employed by the contractor. A state governmental entity may not require a contractor to indemnify, hold harmless, or defend the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees. (b) Notwithstanding any other provision of law, Sections 271.904(a)-(e) and (g), Local Government Code, apply to a contract for architectural or engineering services between an architect or engineer selected under this subchapter and a state agency as defined by Section 2052.101. Sections (a)-(e) and (g) of the Texas Local Government Code states, among other things, that indemnifications provisions in contracts for architectural or engineering services are void and unenforceable unless limited to specific acts provided for within the statute.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Indemnification (IP)	RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF RESPONDENT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) AGENCY'S AND/OR RESPONDENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO AGENCY BY RESPONDENT OR OTHERWISE TO WHICH AGENCY HAS ACCESS AS A RESULT OF RESPONDENT'S PERFORMANCE UNDER THE CONTRACT. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, RESPONDENT WILL REIMBURSE AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF RESPONDENT OR IF AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND RESPONDENT WILL PAY ALL REASONABLE COSTS OF AGENCY'S COUNSEL.		TEX CONST Art VIII § 6	EXCEPTION: Clause only applies to solicitations and contracts involving intellectual property matters. The IP Indemnification clause is used in addition to a general indemnification clause. Legal counsel should be consulted regarding use of an IP Indemnification clause.
National Anthem Verification	If Respondent is a professional sports team as defined by Section 2004.002 of the Texas Occupations Code, Respondent will play the United States national anthem at the beginning of each team sporting event held at the Respondent's home venue or other venue controlled by Respondent for the event. Failure to comply with this obligation constitutes a default of this contract, and immediately subjects Respondent to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Respondent may be debarred from contracting with the State. The Agency or the Attorney General may strictly enforce this provision.		TEX GOVT CODE § 2274.002	EXCEPTION: Clause only applies to solicitations and contracts in which (1) there is a financial commitment by a state agency and (2) the contractor is a professional sports team as defied by Section 2004.002 of the Texas Occupations Code, including a wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of a professional sports team that exists to make a profit.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
No Conflicts of Interest	Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.	Respondent has disclosed in writing to Agency all existing or potential conflicts of interest relative to the performance of the contract.	TEX GOVT CODE §§ 2252.908, 2254.032, 2261.252(b)	Guidance relating to a former state employee's provision of subcontracting services is discussed in Ethics Advisory Opinion No. 545 (2017). Information obtained from the following sources may indicate an actual or potential conflict of interest: • Certificate of Interested Parties required by Section 2252.908 of the Texas Government Code. • Employee disclosure statement required by Section 2254.032 of the Texas Government Code. • Employee disclosure statement required by Section 2261.252 of the Texas Government Code. • Purchasing personnel disclosure statement required by 2262.004 of the Texas Government Code. Supplemental text to the required clause may include the following: If circumstances change during the course of the contract, Respondent shall promptly notify Agency.
Prior Disaster Relief Contract Violation	Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.	Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.	TEX GOVT CODE §§ 2155.006, 2261.053	Sections 2155.006 and 2261.053 of the Texas Government Code mandate the use of statutorily specified text.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Public Information Act	Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.	Respondent understands that Agency will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.	TEX GOVT CODE Chapter 552 TEX GOVT CODE § 2252.907	Supplemental text to the required clause may include the following: Specific formats acceptable to the Agency include Word, Excel, and pdf. Supplemental text to the required clause may include details of the agency's protocol for labeling confidential information and procedures for receipt and handling of public information requests.
Signature Authority	By submitting the Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response.	The undersigned certifies that I am duly authorized to submit this Response and execute a contract on my own behalf or on behalf of the Respondent listed below. Or *Other text that specifies that the Respondent signatory is authorized to act on behalf of the Respondent in submitting the Response or executing the contract.*	TEX GOVT CODE § 2155.0012	This clause ensures only individuals that are legally empowered to contractually bind the Respondent execute the contract and related documents on behalf of the Respondent.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Standard of Care for Architectural and Engineering Contractors	Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Respondent shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.		TEX GOVT CODE § 2254.0031 TEX LOCAL GOVT CODE § 271.904(a)-(e) and (g)	EXCEPTION: Clause only applies to solicitations and contracts involving architectural or engineering services. Section 2254.0031 of the Texas Government Code incorporates Sections 271.904(a)-(e) and (g) of the Texas Local Government Code for all contracts for architectural/ engineering services. Section 271.904(d) of the Texas Local Government Code states the following: A contract for engineering or architectural services to which a governmental agency is a party must require a licensed engineer or registered architect to perform services: (1) with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Section 271.904(e) of the Texas Local Government Code states that a provision establishing a different standard of care than a standard described by Subsection (d) is void and unenforceable.
State Auditor's Right to Audit	The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.	Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Respondent or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Respondent shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.	TEX GOVT CODE § 2262.154	Supplemental text to the required clause may include the following: The contract may be amended unilaterally by Agency to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Suspension and Debarment	**Respondent** certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.	**Respondent** certifies that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity. Entities ineligible for federal procurement are listed at http://www.sam.gov. Or **Respondent** certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the contract by any state or federal agency.	TEX GOVT CODE § 2155.077	
Technology Access Clause	**Respondent** expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairment. Accordingly, **Respondent** represents and warrants to **Agency** that the technology provided to **Agency** for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: • providing equivalent access for effective use by both visual and non-visual means; • presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and • being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.		TEX GOVT CODE § 2157.005	EXCEPTION: This clause only applies to contracts for Automated Information Systems entered into before September 1, 2006. In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006. This clause would be applicable to current agreements involving long term software licenses (*e.g.*, perpetual term) and equipment leases that were effective prior to September 1, 2006.

Clause	Standard Text	Alternate Text	Legal Authority in Addition to TEX GOVT CODE § 2262.051(d)(1)	Guidance
Television Equipment Recycling Program	Respondent certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.	If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.	TEX HEALTH & SAFETY CODE § 361.991(c)	EXCEPTION: Clause only applies to solicitations and contracts for the purchase or lease of covered television equipment as defined by Section 361.91(3) of the Texas Health and Safety Code. Section 361.991(c) of the Texas Health and Safety Code states the following: (c) A state agency that purchases or leases covered television equipment shall require a prospective bidder to certify the bidder's compliance with this subchapter before the agency may accept the prospective bidder's bid. Section 361.91(3) of the Texas Health and Safety Code defines "covered television equipment" to mean the following equipment marketed to and intended for consumers: (A) a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light-emitting diode, or similar technology; or (B) a display device that is peripheral to a computer that contains a television tuner.
Terms and Conditions Attached to Response	Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.		TEX GOVT CODE § 2155.0012	EXCEPTION: Clause does not apply to contracts but is an Essential Clause for solicitations. This clause ensures that Responses received by the agency are complete prior to the closing date of the solicitation.
Texas Bidder Affirmation	Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.		TEX GOVT CODE § 2155.444(c)	EXCEPTION: Clause does not apply to contracts but is an Essential Clause for solicitations. As defined by TEX GOVT CODE § 2155.444(c), the term "Texas bidder" means a business: (1) incorporated in this state; (2) that has its principal place of business in this state; or (3) that has an established physical presence in this state.

APPENDIX 25

Recommended Contract Clauses

In accordance with Section 2262.051(d)(1) of the Texas Government Code, this document identifies the recommended provisions that an agency may include in a contract. The Recommended Clauses are terms commonly found in agency solicitations and contracts. For reference, this compendium provides Sample Text for each Recommended Clause.

This compendium does not serve as a substitute for legal counsel. The determination as to the appropriateness of a particular contract term is dependent on the characteristics of the transaction. Accordingly, legal counsel should be consulted to not only ensure that the text of the Recommended Clause is suitable for the applicable transaction but also that the use of the clause is consistent with the agency's internal policies and best practices. While these clauses are recommended clauses, agency legal counsel should carefully review and determine whether to omit them from its procurement templates.

The following terms in the Recommended Clauses should be revised by the agency as appropriate for conformity with the applicable solicitation and contract documents: **Agency**, **Respondent**, **Response**, and **Solicitation**. Examples of conforming terms include, but are not limited to, the following:

- "**Agency**" to agency name, Customer, or Client
- "**Respondent**" to Bidder, Proposer, Applicant, Contractor, or Vendor
- "**Response**" to Bid, Proposal, Offer, or Application
- "**Solicitation**" to Invitation for Bids, Request for Proposals, Request for Offers, Request for Applications, Pricing Request, or Request for Qualifications

Note: This list does not include "sample" text for terms that by their nature are highly negotiable, unique to a particular type of transaction, or descriptive of an individual agency's business practice *e.g.,* confidentiality and data protection safeguards, warranties, software licensing, terms of use, and service levels. Public procurement professionals are advised to seek assistance from their agency legal counsel to ensure that solicitations and contracts include transaction-specific terms that protect the interests of the State.

Recommended Clause	Sample Text (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
Abortion Provider and Affiliate Transactions Prohibited	Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by Agency to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.
Agency's Right to Audit	Respondent will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas.
Americans With Disabilities Act	Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.
Assignment (for Goods)	Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this Section is void and without effect. Or Neither Party may assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of the other Party, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void. Notwithstanding the foregoing, upon prior written notification to the other Party, either Party may assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without such prior written consent to: (1) a successor in interest (for Agency, another state agency as designated by the Texas Legislature) or (2) a subsidiary, parent company, or other entity in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

Recommended Clause	Sample Text (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
Binding Effect	The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates. Or The contract shall be binding upon and shall inure to the benefit of Agency and Respondent and to their representatives, successors and assigns.
Change in Law and Compliance with Laws	Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation. Or Respondent shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the contract. Agency reserves the right, in its sole discretion, to unilaterally amend the contract prior to award and throughout the term of the contract to incorporate any modifications necessary for Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.
Contract Term	The initial term of the contract shall be for one (1) year from [Insert Date] to [Insert Date]. Agency may, in its sole discretion, exercise the option to extend the contract for up to three (3) additional one (1) year periods. To exercise the option to extend the term, Agency will notify Respondent; such notice may be by Purchase Order issuance.
Critical Infrastructure Subcontracts	For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commercial Code, Respondent shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Respondent will notify the Agency before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.
Damage to Government Property	Respondent shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Respondent shall notify the Agency in writing of any such damage within one (1) calendar day. Respondent is responsible for the removal of all debris resulting from work performed under the contract. Or In the event of loss, destruction or damage to any Agency or State of Texas property by Respondent or Respondent's employees, agents, subcontractors, and suppliers, Respondent shall be liable to Agency and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. Respondent will reimburse Agency and the State of Texas for such property damage within ten (10) calendar days after Respondent's receipt of Agency's notice of amount due.
Disclosure of Interested Parties	Respondent represents and warrants that if selected for award of a contract as a result of the Solicitation, Respondent will submit to Agency a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.
Discounts	If Respondent at any time during the term of the contract provides a discount on the final contract costs, Respondent will notify Agency in writing ten (10) calendar days prior to effective date of discount. Agency will generate a Purchase Order Change Notice and send a revised Purchase Order to Respondent. Or Notwithstanding any other provision to the contrary, all the benefits, pricing and any hourly rates granted by Respondent to Agency herein are at least as favorable as the benefits, pricing and hourly rates granted by Respondent to any previous client of Respondent for services and/or products similar to those provided hereunder. If Respondent enters into any subsequent agreement with any other client during the term of this contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this contract, Respondent shall notify Agency promptly of the existence of such more favorable benefits, pricing and/or hourly rates and Agency shall have the right to receive the more favorable contractual terms immediately. If requested in writing by Agency, Respondent hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.
Electrical Items	All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
Equal Employment Opportunity	Respondent represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

Recommended Clause	Sample Text (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
Federal Occupational Safety and Health Law	Respondent represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).
Force Majeure	Neither Respondent nor Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
Immigration	Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C.§ 1101 *et seq.*) and all subsequent immigration laws and amendments.
Independent Contractor	Respondent acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Respondent and its personnel are not employees of the Agency or the State of Texas. Or Respondent and Respondent's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Respondent nor Agency is an agent of the other and neither may make any commitments on the other party's behalf. Should Respondent subcontract any of the services required in the contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Respondent shall have no claim against Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Respondent and Agency.
Legal and Regulatory Actions	Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. In addition, Respondent represents and warrants that it shall notify Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.
License Grant (Simple)	Respondent hereby grants to Agency a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Respondent; and (b) to sublicense any or all such rights to third parties.
Limitation on Authority	Respondent shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expense or liability of any kind on behalf of Agency or the State of Texas.
Lobbying Prohibition	Respondent represents and warrants that Agency's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
Media Releases	Respondent shall not use Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without Agency's prior written approval. Agency does not endorse any vendor, commodity, or service. Respondent is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instructions from Agency.
No Felony Criminal Convictions	Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised Agency in writing of the facts and circumstances surrounding the convictions.

Recommended Clause	Sample Text (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
No Implied Waiver	The failure of a Party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future. Or Failure of a Party to require performance by another Party under the contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the contract will not be construed as a waiver of any continuing or successive breach. Or No provision of the contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to **Agency** as an agency of the State of Texas or otherwise available to **Agency**. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to **Agency** by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.
No Quantity Guarantees	**Agency** makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract. Or The contract is not exclusive to the **Respondent**. **Agency** may obtain products and related services from other sources during the term of the contract. **Agency** makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the contract.
No Third-Party Beneficiaries	The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise. Or Nothing contained in the contract, either expressed or implied, is intended to confer on any person other than the Parties, or their respective permitted successors, assigns, transferees or delegates, any interests, rights, remedies, obligations or liabilities pursuant to, or by reason of, this contract.
Permits, Certifications, and Licenses	**Respondent** represents and warrants that it has determined what licenses, certifications and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.
Prompt Payment	Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Or All payments to **Respondent** by **Agency**, any payments by **Respondent** to any subcontractor, and any payments by a subcontractor to any other person or entity that provides goods or services under this contract shall be made in compliance with Chapter 2251 of the Texas Government Code and 34 Texas Administrative Code § 20.487.

Recommended Clause	Sample Text (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
Property Rights	For purposes of the contract, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract. **Agency** and **Respondent** intend this agreement to be a contract for the services and each considers the Work and any and all documentation or other products and results of the services to be rendered by **Respondent** to be a work made for hire. **Respondent** and **Respondent**'s employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of **Agency**. **Respondent** acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of **Agency**. If for any reason the Work would not be considered a work-for-hire under applicable law, **Respondent** does hereby sell, assign, and transfer to **Agency**, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. **Respondent** agrees to execute all papers and to perform such other property rights, as **Agency** may deem necessary to secure for **Agency** or its designee the rights herein assigned. In the event that **Respondent** has any rights in and to the Work that cannot be assigned to **Agency**, **Respondent** hereby grants to **Agency** an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon **Agency**'s request, **Respondent** shall deliver to **Agency** all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the contract. **Respondent** will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of **Agency**. Or For purposes of the contract, the term "Work Product" is defined as all work papers, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property and/or results of the services that are developed, produced, generated or provided to **Agency** in connection with, or as a result of, the services provided under the contract. **Agency** and **Respondent** intend this agreement to be a contract for the services and each considers and expressly intends and agrees that the Work Product to be rendered by **Respondent** shall be a work-made-for-hire. **Respondent** and **Respondent**'s employees will have no rights in or ownership of the Work Product or any other property of **Agency**. **Respondent** acknowledges and agrees that the Work Product (and all rights therein, including without limitation all intellectual property rights) belongs to and shall be the sole and exclusive property of **Agency**. If for any reason the Work Product would not be considered a work-made-for-hire under applicable law, **Respondent** does hereby irrevocably sell, assign, and transfer to **Agency**, its successors and assigns, the entire right, title and interest in and to the Work Product and any and all intellectual property rights embedded therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. **Respondent** agrees to execute all papers and to perform such other property rights, as **Agency** may deem necessary to secure for **Agency** or its designee the rights herein assigned. In the event that **Respondent** has any rights in and to the Work Product that cannot be assigned to **Agency**, **Respondent** hereby grants to **Agency** an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon **Agency**'s request, **Respondent** shall deliver to **Agency** all completed, or partially completed, Work Product and any and all versions thereof. Failure to timely deliver such Work Product will be considered a material breach of the contract. **Respondent** will not make or retain any copies of the Work Product or any and all documentation or other products and results of the services without the prior written consent of **Agency**.
Records Retention	**Respondent** shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by **Respondent** for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.
Refund	**Respondent** will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by **Agency** which are not expressly authorized under the contract.
Restricted Employment for Certain State Personnel	Pursuant to Section 572.069 of the Texas Government Code, **Respondent** certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for **Agency** involving **Respondent** within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
Secure Erasure of Hard Disk Capability	All equipment provided to **Agency** by **Respondent** that is equipped with hard disk drives (*i.e.,* computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.

Recommended Clause	Sample Text (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
Severability	If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect. Or If any provision of the contract is construed to be illegal, invalid or unenforceable, such construction will not affect the legality, validity or enforceability of any of its other provisions. It is the intent and agreement of the parties to this contract that this contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this contract will continue in full force and effect.
Sovereign Immunity	The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the Agency or the State of Texas of any immunities from suit or from liability that the Agency or the State of Texas may have by operation of law. Or Nothing in the contract shall be construed as a waiver of the Agency's or the State's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the Agency or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to Agency or the State of Texas under the contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Agency does not waive any privileges, rights, defenses, or immunities available to Agency by entering into the contract or by its conduct prior to or subsequent to entering into the contract.
Subcontractors	Respondent may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the Agency. Subcontracts, if any, entered into by the Respondent shall be in writing and be subject to the requirements of the contract. Should Respondent subcontract any of the services required in the contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.
Survival	Expiration or termination of the contract for any reason does not release Respondent from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.
Taxes	Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Agency will furnish Tax Exemption Certificates upon request. Respondent represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Respondent or its employees. Agency shall not be liable for any taxes resulting from the contract.
Termination for Convenience	Agency reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if Agency determines that such termination is in the best interest of the state. In the event of such a termination, Respondent must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Agency shall be liable for payments limited only to the portion of work Agency authorized in writing and which Respondent has completed, delivered to Agency, and which has been accepted by Agency. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. Agency shall have no other liability, including no liability for any costs associated with the termination. Or Agency may terminate the contract for convenience on thirty (30) calendar days' written notice. There is no buy out or other amounts due if Agency terminates early. Upon termination under this provision, Respondent shall refund to Agency any amounts attributable to the terminated months within thirty (30) days of the termination.

Recommended Clause	Sample Text (It is expected that the actual wording of a Recommended Clause may vary by agency and legal counsel will be consulted prior to use.)
Trademark License	**Agency** hereby grants to **Respondent**, for the term of the contract, a limited non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce **Agency**'s trademarks (as depicted in Exhibit __) on published materials in the United States related to the performance of the contract, provided that such license is expressly conditional upon, and subject to, the following: (1) **Respondent** is in compliance with all provisions of the contract; (2) **Respondent**'s use of the trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in Exhibit __ or as otherwise communicated by **Agency**; (3) **Respondent** takes no action to damage the goodwill associated with the trademarks, and refrains from any attempt to contest, attack, dispute, challenge, cancel and/or oppose **Agency**'s right, title and interest in the trademarks or their validity; (4) **Respondent** makes no attempt to sublicense any rights under this trademark license; and (5) **Respondent** complies with any marking requests **Agency** may make in relation to the trademarks, including without limitation to use the phrase "Registered Trademark", the symbol "™", the registered trademark symbol "®" and/or any equivalent thereof.
Trademark Ownership	**Respondent** hereby acknowledges and agrees that the trademarks remain the exclusive property of **Agency**, that all right, title and interest in and to the trademarks is exclusively held by **Agency**, and all goodwill associated with such trademarks inures solely to **Agency**.
Unfair Business Practices	**Respondent** represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that **Respondent** has not been found to be liable for such practices in such proceedings. **Respondent** certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.
Use of State Property	**Respondent** is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, **Agency**'s office space, identification badges, **Agency** information technology equipment and networks (*e.g.,* laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any **Agency**-issued software, and the **Agency** Virtual Private Network (VPN client)), and any other resources of **Agency**. **Respondent** shall not remove State Property from the continental United States. In addition, **Respondent** may not use any computing device to access **Agency**'s network or e-mail while outside of the continental United States. **Respondent** shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of **Respondent**, **Respondent** shall be responsible for (i) all repair and replacement charges incurred by **Agency** that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to **Respondent**'s use of State Property that exceeds the contract scope. **Respondent** shall fully reimburse such charges to **Agency** within ten (10) calendar days of **Respondent**'s receipt of **Agency**'s notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to **Agency** under contract, at law, or in equity.

APPENDIX 26

Sample Quality Assessment Plan (QAP) Tools

Contract Monitoring Schedule

Contract Name/ID:

Date of Original Contract Monitoring Schedule:

Revision No. ____; Date:

Row	Deliverables by Agency	Deliverables by Contractor	Deliverable Due Dates	Specific Monitoring Activities to be Performed	Performance Method Including Information Sources to be Used	Responsible Individual for Each Monitoring Activity	Monitoring Activity Frequency	Monitoring Activity Documentation Method	Results of Monitoring Activity Communicated to	Results of Monitoring Used to (include follow up requirements)
1		*Status Report (Section 1.7)*	*Weekly*	*Review Report*	*Compare report provided by Contractor against contract requirements for content and timeliness.*	*Contract Manager, Mary Smith*	*Weekly*	*E-mail findings*	*Division Manager, Jane Doe*	*Provide periodic reports to Exec. Management.* *Provide notice to Contractor of agency approval/rejection of deliverable.* *If deliverable not accepted, provide written notice to Contractor documenting noncompliance with contract requirements and monitor the corrective actions taken by Contractor.*
2	*Provide meeting room for contractor provided training sessions (Section 1.15)*		*Once per Fiscal Year*	*Site visit*	*Compare facilities provided by Agency against contract requirements for location and size.*	*Contract Manager, Mary Smith*	*Once for each scheduled training session*	*E-mail findings*	*Division Manager, Jane Doe*	*If Agency obligations are not being fulfilled, escalate matter internally to proactively and promptly correct deficiencies.*
3		*Traffic Signal turns green every 55 seconds (Section 2.1)*	*Ongoing throughout contract term*	*Site visit*	*Visually inspect traffic signal for compliance with performance standard of 8 out of 10 consecutive cycles*	*Contract Manager, Mary Smith*	*Monthly*	*Findings Report*	*Division Manager, Jane Doe*	*Approve/Dispute* *Invoice depending on findings.* *If warranted, pursue monetary remedy available under contract.*

Findings Report

Contract Name/ID:
Date of Original Findings Report:

	Deliverable Description and Location of Requirement in Contract	Monitor	Monitoring Methodology and Frequency	Performance Measures	Available Remedies	[Date of Monitoring Activity e.g., 05/18/2018] Findings	[Date of Monitoring Activity e.g., 06/10/2018] Findings
1	*Traffic Signal turns green every 55 seconds (Section 2.1)*	*Contract Manager, Mary Smith*	*Site Visit / Monthly*	*8 out of 10 consecutive cycles*	*$5,000 credit on next monthly invoice each time site visit doesn't meet performance standard*	*9 out of 10 tests meet performance standard*	*10 out of 10 tests meet performance standard*
2	*Five (5) miles of pavement laid every 10 days (Section 7.7)*	*Contract Manager, Mary Smith*	*Progress Report/ Quarterly*	*100% on schedule*	*Liquidated damages assessed at $1,000 per day late on completion of laid pavement*	*100% completion*	*N/A*
3							
4							
5							

APPENDIX 27

Sample Post Award Conference Agenda

It should be clearly communicated at the beginning of the conference that the purpose of the meeting is to explain or clarify contract requirements and not to make changes to the contract or re-negotiate the contract terms. The post award conference agenda should cover the following:

- **Introduction**. Introduce all participants and identify agency and contractor key personnel.
- **Scope**. Discuss the scope of the contract (*i.e.,* what the agency is buying). Although this may seem overly simplistic, a thorough discussion by both parties of the agreed contract scope prior to the commencement of services reduces the likelihood of either party having unrealistic expectations during the course of the contract.
- **Terms**. Summarize contract terms and conditions, particularly any transaction-specific contract provisions. This can avoid any misunderstandings later on and allows the both parties to gain a better understanding of the terms prior to beginning work.
- **Requirements**. Discuss the technical and reporting requirements of the contract. The technical requirements may be discussed as part of the Scope. It is vital that the contractor and the agency understand their respective responsibilities under the contract regarding technical requirements. For instance, the contractor must understand the importance of any reports required under the contract and the importance of submitting them in accordance with contract requirements.
- **Administration**. Applicable contract administration procedures, including contract monitoring and progress measurement, should be discussed.
- **Rights**. The rights and obligations of both parties and the contractor performance evaluation procedures should be summarized, including that vendor performance will be reported to the Vendor Performance Tracking System. The agency should explain that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts.
- **Potential Problems**. Potential contract problem areas and possible solutions should be addressed.
- **Payment**. Invoicing requirements and payment procedures should be discussed, especially if the payment will be made according to milestones achieved by the contractor.
- **Authority**. The roles and responsibilities of the parties' contract managers, contract administrators, project managers, key personnel lead(s), and any other key staff should be identified. Agency personnel should explain the limits of their authority and obtain the same information regarding contractor personnel.

After the conference, the Contract Manager should prepare a summary of the meeting for the contract file which details the topics covered. The summary should include areas requiring resolution, a list of participants, and, in particular, those individuals assigned responsibilities for further action and the due dates for those actions. Copies of the meeting summary should be distributed to all conference participants.

APPENDIX 28

Sample Master Contract File Checklist

MASTER CONTRACT FILE CHECKLIST	
☐	A copy of the entire contract, including all amendments and POs
☐	A copy of the Acquisition Plan
☐	A copy of the Procurement File Checklist and a list identifying the location of each document (if the contract documents are not all maintained in a central repository)
☐	A copy of the Quality Assessment Plan *e.g.,* a schedule of compliance review (Contract Monitoring Schedule) and documentation of monitoring activities (Finding Reports), and Vendor Performance Tracking System entries and periodic reviews
☐	A reference list or a list of prior contracts with this specific vendor (if they offer valuable historical data)
☐	The records/minutes of all meetings, both internal and external (Including sign-in sheets and/or agendas)
☐	A copy of all reports and written deliverables required by the contract such certificates of insurance, cyber security training documentation, sales reports, approval requests, and inspection reports
☐	A copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective key personnel, and work schedules
☐	A copy of all notices to proceed, to stop work, to correct deficiencies or change orders
☐	A copy of all contractor invoices, information related to discount provisions for prompt payment, letters pertaining to contract deductions or fee adjustments
☐	A copy of all general correspondence (internal and external) related to the contract
☐	A copy of the Contract Close-Out Checklist

APPENDIX 29

Sample Novation Assignment Agreement

Note: *Contract documents should be reviewed by agency legal counsel prior to use.*

This Assignment Agreement ("**Assignment**") is entered into by and between the [name of agency] ("**Agency**"); _____[name of current contractor], having offices located _____("**Assignor**"); and _____[name of new contractor], having offices located at _____ ("**Assignee**").

WHEREAS, on _____, 2018, Agency and Assignor entered into a _____ ("Contract");

WHEREAS, Assignor wishes to assign all of its rights, duties and obligations under the Contract to Assignee; and

WHEREAS, Agency, subject to the limitations and conditions set forth herein, agrees to this Assignment.

NOW, THEREFORE, the parties hereto agree as follows:

1. Assignor hereby assigns all its rights, title, and interest, and delegates all its obligations, responsibilities and duties, in and to the Contract, to Assignee effective immediately.
2. Assignee hereby accepts the assignment of all of Assignor's obligations, responsibilities and duties under the Contract and all of Assignor's rights, title, and interest in and to the Contract to Assignee.
3. Notwithstanding the foregoing, Assignor agrees to defend and indemnify Agency from any and all claims, actions, judgments, liabilities, proceedings, and costs, including reasonable attorneys' fees, resulting from Assignor's performance prior to the assignment of the Contract.
4. Assignee agrees to indemnify Agency from any and all claims, actions, judgments, liabilities, proceedings and costs, including reasonable attorneys' fees and other costs of defense and damages, resulting from Assignee's performance after the assignment of the Contract.
5. [Assignee agrees that _____ shall continue to be the lead effective with this Assignment. Assignee shall notify Agency in writing immediately of any proposed changes in the lead or other key personnel assigned to the Contract. Agency shall retain the right of review and approval of any such proposed changes.] [Assignee shall submit all proposed key personnel under the Contract for Agency review and approval.]
6. Agency, in executing its consent to this Assignment, does not release Assignor from any claims or remedies it may have against Assignor under the Contract.
7. Agency shall not be charged for any costs incurred by either Assignor or Assignee in connection with the transition.
8. Except as otherwise provided herein, all terms and conditions of the Contract, including payment provisions, shall remain in effect and insofar as rights and obligations under the Contract from the date of execution of this Agreement are concerned, references to Assignor therein shall be deemed replaced with references to Assignee.

9. Assignee has reviewed all representations and certifications in the Contract relating to eligibility for state contract. By signature hereon, Assignee adopts those representations and certifications. Assignee will notify Agency of any representations or certifications in the Contract that are not true or become untrue with respect to Assignee.
10. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit brought for any breach of this Assignment is fixed in any court of competent jurisdiction in Travis County, Texas.
11. This Assignment shall become effective as of the date of the signature of Agency after having first been signed by Assignor and Assignee.

IN WITNESS WHEREOF, the parties have signed and executed this Assignment.

Assignor:

[company name]

By:_____

Name: _____

Title: _____

Date: _____

Assignee:

[company name]

By:_____

Name: _____

Title: _____

Date: _____

Agreed and Accepted by:

[name of Agency]

By:_____

Name: _____

Title: _____

Date: _____

APPENDIX 30

Sample Notices of Termination and Cure Notice

Note: *Contract documents should be reviewed by agency legal counsel prior to use.*

NOTICE OF TERMINATION FOR CONVENIENCE

Date

Contractor Name
Contractor Address
Re: Contract Title; Notice of Termination for Convenience

Dear _____:

Pursuant to Section ___ (Termination) of the contract, this contract is hereby terminated effective [date]. [Contractor Name] is directed to immediately stop all work, terminate subcontracts, and place no further orders.

In accordance with this Notice of Termination, you shall:

1. Keep adequate records of your compliance with this notice, including the extent of completion on the date of termination.
2. Immediately notify all subcontractors and suppliers, if any, of this Notice of Termination.
3. Notify the agency Contract Administrator [name], of any and all matters that may be adversely affected by this termination; and
4. Take any other action required by [Agency Name] to expedite this termination.

By this correspondence, the [Agency Name] expressly does not waive any rights, remedies, privileges or immunities available to it as an agency of the State of Texas or otherwise available to it under the referenced contract and under applicable law.

Sincerely,

Note: *Contract documents should be reviewed by agency legal counsel prior to use.*

NOTICE OF TERMINATION FOR CAUSE

Date

Contractor Name
Contractor Address
RE: Contract Title; Notice of Termination for Cause

Dear _____:

Pursuant to Section _____ (Termination) of the contract, this contract is hereby terminated effective [date] for failure by [Contractor Name] to [describe contractor's non-performance].

[Contractor Name] is directed to immediately stop all work, terminate subcontracts, and place no further orders.

In accordance with this Notice of Termination, you shall:

1. Keep adequate records of your compliance with this notice, including the extent of completion on the date of termination.
2. Immediately notify all subcontractors and suppliers, if any, of this Notice of Termination.
3. Notify the agency Contract Manager [name], of any and all matters that may be adversely affected by this termination; and
4. Take any other action required by [Agency Name] to expedite this termination.

By this correspondence, the [Agency Name] expressly does not waive any rights, remedies, privileges or immunities available to it as an agency of the State of Texas or otherwise available to it under the referenced contract and under applicable law. Among other things, [Agency Name] reserves the right to refer this matter to the Office of the Attorney General of the State of Texas for handling.

Note: *Contract documents should be reviewed by agency legal counsel prior to use.*

NOTICE OF CURE

Date

Contractor Name
Contractor Address
RE: Contract Title; Notice of Cure

Dear _____:

Pursuant to Section ____ (Termination) of the contract, [Contractor Name] is notified that the [Agency Name] considers [specify failures] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within ten (10) business days from the date of this letter, the [Agency Name] may terminate for cause under the terms and conditions of the termination clause of this contract.

Or

Since [Contractor Name] has failed to perform the above referenced contract within the time required by its terms, the agency is considering terminating the contract under the provisions for cause. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are the given the opportunity to present, in writing, any facts bearing on the questions to [agency point of contact] within ten (10) business days from the date of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist.

Any assistance given to you on this contract or any acceptance by [Agency Name] of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of [Agency Name] to condone any delinquency or to waive any rights the [Agency Name] has under the contract.

APPENDIX 31

Purchase Category Code List

The following Purchase Category Codes (PCC) are for use with purchase Document Type 2. Document Type 2 refers to purchase vouchers that are subject to SPD procurement rules. PCCs are codes used to document the purchase method, commodity type and dollar category of purchases.

Document Type 9 purchases should have a blank or "0" PCC field because they are not within SPD purchasing authority, exempt from competitive bidding requirements, or required by statute to be procured through a specific purchasing method. Document Types 2 and 9 are audited after payment.

PCC List:

A - Purchases of items from SPD term contracts using Texas SmartBuy. See 34 Texas Administrative Code § 20.220 – Term Contracts.

B - Purchases made with a State of Texas Retail Fuel Card.

C - Purchases from SPD Managed term contracts using the agency's internal requisition/purchase order forms. See 34 Texas Administrative Code § 20.220 – Term Contracts.

D - Purchases of information technology commodities (products or services) not available through DIR contracts. See 34 Texas Administrative Code § 20.391 – Request for Offer Purchase Method.

E - Purchases of goods and services when the total purchase is estimated to be $0 to $10,000.00, spot purchases. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

F - Purchases of goods (not services) in the total estimated amount of $10,000.01 or more but not more than $25,000.00 for the total contract value. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

G - Purchases for non-delegated goods or services from a contract awarded by SPD on behalf of a particular agency. Items are not on SPD term contract. See 34 Texas Administrative Code § 20.184 – Requisitions and Specifications.

H - Purchases in any category, except PCC B, paid for with a payment card.

I - Purchases of commodity items from DIR Contracts that are not coordinated bulk purchases. See Texas Government Code § 2157.068 – Purchase of Automated Information Systems (products or services).

K - Purchases of publications directly from the publisher or professional memberships with no dollar limits. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

L - Purchases of perishable goods, *e.g.*, fresh fruit, eggs, ice, etc. with no dollar limits. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

M - Purchases of distributor items, *e.g.*, repair parts for a unit of major equipment that is needed immediately, or maintenance contracts for laboratory/medical equipment with no dollar limits. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

N - Purchases of commodity items from DIR Contracts that are coordinated bulk purchases. See Texas Government Code § 2157 .068(e-3).

P - Purchases of fuel, oil, and grease - (class 405) with no dollar limits. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

Q - Purchases of services (not goods) in the amounts estimated to be $10,000.01 or more but not more than $25,000.00 for the total contract value. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

S - Purchases of services or goods in an amount estimated to exceed $25,000.00 for the total contract value. See 34 Texas Administrative Code § 20.82 – Delegated Purchases.

T - Emergency purchases of goods and services exceeding $25,000.00. See 34 Texas Administrative Code § 20.210 – Emergency Purchases.

X - Purchases of items from SPD TXMAS Contracts. As of 9-1-2007, PCC X does not include TXMAS Schedule 70 (Information Technology) contracts. See 34 Texas Administrative Code §§ 20.231-.233 – Multiple Award Schedule.

J, O, R, U, V, W, Y, Z - Not used.

APPENDIX 32

Post-Payment & Procurement Review Agency Document Checklist

Overview:

- Supporting documentation must be provided for each Purchase Category Code (PCC), including the blank or "0" PCC used for Document Type 9 purchases.
- If "printout" is noted, hard copy or electronic copy documentation must be placed in the procurement file.
- This checklist is a non-exhaustive list of documentation to be included in the procurement file. Refer to the Texas Procurement and Contract Management Guide for additional information *e.g.*, requirements pertaining to CAT Reviews, QAT Reviews, State Use Program Exception Reports, SAO Nepotism Disclosure Statement for Purchasing Personnel, TEC Disclosure of Interested Parties Form 1295, Procurement and Contract Management Conflict of Interest Disclosure, LBB reporting, and VPTS reporting.

PCC A **TEXAS SMARTBUY TERM CONTRACT PURCHASE**	☐ Texas SmartBuy Term Contract PO with authorized signature ☐ Invoice must match PO ☐ Waiver from TCI or filed State Use Exception Report included in the documentation indicating that the product or service may be otherwise procured (if applicable) ☐ At the time of PO issuance, file must contain printout of Warrant Hold check for purchases using local funds; printout dated no more than 7 days prior to contract award **NOTE:** Set aside program purchases through Texas SmartBuy require the use of Document Type 9, with a blank PCC field
PCC B **STATE OF TEXAS RETAIL FUEL CARD PURCHASE**	☐ PO with authorized signature and/or Internal Log • NIGP Class-Item Codes Listed ☐ List on the PO the item purchased ☐ All sales receipts or invoices must be included and signed by authorized user ☐ Prior to purchase, file must contain printout of Warrant Hold check for purchases of $500 or more or purchases using local funds; printout dated no more than 7 days prior to contract award **NOTE:** State of Texas Retail Fuel Cards can only be used for fuel, authorized maintenance, and roadside assistance purchases
PCC C **SPD MANAGED TERM CONTRACT PURCHASE**	☐ Internal Agency Purchase Order with authorized signature issued against SPD Managed Term Contract • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Invoice must match PO ☐ Waiver from TCI or filed State Use Exception Report included in the documentation indicating that the product or service may be otherwise procured (if applicable) ☐ At the time of PO issuance, file must contain printout of Warrant Hold check for purchases using local funds; printout dated no more than 7 days prior to contract award **NOTE:** Set aside program purchases through Texas SmartBuy require the use of Document Type 9, with a blank PCC field

PCC D **PURCHASE OF INFORMATION TECHNOLOGY COMMODITIES AND IT MAINTENANCE SERVICE CONTRACTS NOT AVAILABLE THROUGH DIR CONTRACTS**	*If using the 34 Texas Administrative Code § 20.391 (Rule for Request for Offers) procedures:* ☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ All Essential Provisions (including Texas Required Contract Clauses) ☐ DIR exemption must be included in the documentation indicating that the product or service may be otherwise procured; an exemption provided by Legislative Budget Board; or other exemption such as an express statutory exemption may be accepted ☐ If the purchase does not exceed the $10,000 spot purchase limit, documentation must be included in the file ☐ If greater than $10,000 but does not exceed $25,000, file must demonstrate compliance with informal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of at least three (3) vendors that were solicited, two (2) of which must be certified HUBs (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ If greater than $25,000, file must demonstrate compliance with formal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of each eligible vendor within the agency's geographic region (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ For purchases of $100,000 or more, Historically Underutilized Business Subcontracting Plan must be documented ☐ Electronic State Business Daily (ESBD) posting (solicitation and notice of award) printout if purchase is over $25,000 ☐ Waiver from TCI or filed State Use Exception Report included in the documentation indicating that the product or service may be otherwise procured (if applicable) ☐ Emergency justification letter signed by the agency's purchasing director or an authorized representative (if applicable) ☐ Proprietary Purchase Justification signed by the Agency Head or designee (if applicable) ☐ Response documents (signed) for each awarded vendor (if applicable) ☐ At the time of award, file must contain printouts of vendor compliance checks: • Debarment check • SAM.gov check; printout dated no more than 7 days prior to contract award • Iran, Sudan & Foreign Terrorist Organization check • Boycott Israel check • Energy Company Boycott check • Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award *If using an approved alternate method of procurement per 34 Texas Administrative Code § 20.391, report as PCC D but follow relevant procurement procedures. For example, the IFB procedure for IT commodities $10,000.01 to $25,000 would be coded PCC D, but follow the PCC F pattern.*

PCC E **PURCHASE $10,000.00 OR LESS**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ All Essential Provisions (including Texas Required Contract Clauses) ☐ Waiver from TCI or filed State Use Exception Report included in the documentation indicating that the product or service may be otherwise procured (if applicable) ☐ If the item is on Term Contract, file documentation shows the quantity is less than the minimum order required for Term Contract ☐ At the time of award, file must contain printouts of vendor compliance checks: • Debarment check • SAM.gov check; printout dated no more than 7 days prior to contract award • Iran, Sudan & Foreign Terrorist Organization check • Boycott Israel check • Energy Company Boycott check • Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award

PCC F **GOODS PURCHASE $10,000.01 to $25,000.00**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ All Essential Provisions (including Texas Required Contract Clauses) ☐ File must demonstrate compliance with informal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of at least three (3) vendors that were solicited, two (2) of which must be certified HUBs (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ Waiver from TCI or filed State Use Exception Report included in the documentation indicating that the product or service may be otherwise procured (if applicable) ☐ Emergency justification letter signed by the agency's purchasing director or an authorized representative (if applicable) ☐ Proprietary Purchase Justification signed by the Agency Head or designee (if applicable) ☐ Response documents (signed) for each awarded vendor ☐ At the time of award, file must contain printouts of vendor compliance checks: • Debarment check • SAM.gov check; printout dated no more than 7 days prior to contract award • Iran, Sudan & Foreign Terrorist Organization check • Boycott Israel check • Energy Company Boycott check • Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award
PCC G **SPD-ADMINISTERED AGENCY-SPECIFIC PURCHASE (solicited by SPD)**	☐ Agency-specific procurements issued by SPD *e.g.,* goods exceeding $50,000 and services exceeding $100,000 ☐ Notice of Award issued by SPD with contract documentation ☐ Internal Agency Purchase Order with authorized signature • Delivery terms and/or contract term defined • Reference to SPD contract number on purchase order ☐ Invoice must match SPD PO ☐ At the time of PO issuance, file must contain printout of Warrant Hold check for purchases using local funds; printout dated no more than 7 days prior to contract award

PCC H **PAYMENT CARD PURCHASE**	☐ PO with authorized signature and/or Internal Log • NIGP Class-Item Codes listed ☐ List on the PO the item purchased ☐ Waiver from TCI or filed State Use Exception Report included in the documentation indicating that the product or service may be otherwise procured (if applicable) ☐ All sales receipts or invoices must be included and signed by authorized user ☐ Prior to purchase, file must contain printouts of Warrant Hold check for purchases of $500 or more or purchases using local funds; printout dated no more than 7 days prior to contract award **NOTE:** Payment card cannot be used for Term Contracts or Managed Team Contracts. Use PCC B for purchases made with a State of Texas Retail Fuel Card.
PCC I **PURCHASE, INCLUDING IT MAINTENANCE SERVICE CONTRACTS FROM DIR CONTRACTS** **(Not Coordinated Bulk Purchase)**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed • State DIR Contract number on PO ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ Waiver from TCI or filed State Use Exception Report included in the documentation indicating that the product or service may be otherwise procured (if applicable) ☐ At the time of PO issuance, file must contain printout of Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award <u>Purchases of commodity items on DIR contracts</u>. • If the contract amount is $50,000 or less, the agency may choose any DIR contracted vendor. • If the contract amount is over $50,000.00 but does not exceed $1M, the agency must request bids from three DIR contract vendors offering the items. • If the contract amount is more than $1M but not more than $10M, the agency must request bids from six DIR contract vendors offering the items or all vendors on the schedule if the category has less than six vendors. • For a contract with a value of more than $5 million but not more than $10 million, an agency may opt to utilize DIR contracts or may make the purchase using the RFO purchasing method, as designated by the Comptroller under Section 2157.006(a)(2) of the Texas Government Code, in which case PCC D would apply. An agency may not enter into a contract for IT commodity items of more than $10M. TEX. GOV'T CODE § 2157.068 (e-1) – (e-2). <u>Purchases of services requiring a statement of work on DIR contracts greater than $50,000</u>. An agency must consult with DIR before submitting the statement of work to a vendor. A statement of work is not valid and money may not be paid to the vendor unless DIR first signs the statement of work. TEX. GOV'T CODE § 2157.0685.

PCC K **DIRECT PUBLICATION/ PROFESSIONAL MEMBERSHIP PURCHASE**	PO with authorized signature ☐ Delivery terms and/or contract term defined ☐ NIGP Class-Item Codes listed ☐ "Direct Publication/Professional Membership - Not available from any other source" declaration placed on PO Invoice must match PO. • Invoice must match PO • Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) • All Essential Provisions (including Texas Required Contract Clauses) • If greater than $25,000, file must demonstrate compliance with formal bidding requirements and bid tabulation/committee evaluation is required ☐ CMBL printout of each eligible vendor within the agency's geographic region (CMBL printout must be dated on or before solicitation) ☐ Written approval from agency head or designee authorizing supplementation with non-CMBL vendors • Electronic State Business Daily (ESBD) posting (solicitation and notice of award) printout if purchase is over $25,000 • Waiver from TCI or filed State Use Exception Report included in the documentation indicating that the product or service may be otherwise procured (if applicable) • Emergency justification letter signed by the agency's purchasing director or an authorized representative (if applicable) • Proprietary Purchase Justification signed by the Agency Head or designee (if applicable) • Response documents (signed) for each awarded vendor (if applicable) ☐ At the time of award, file must contain printouts of vendor compliance checks: • Debarment check • SAM.gov check; printout dated no more than 7 days prior to contract award • Iran, Sudan & Foreign Terrorist Organization check • Boycott Israel check • Energy Company Boycott check • Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award.

PCC L **PERISHABLE GOODS PURCHASE**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ All Essential Provisions (including Texas Required Contract Clauses) ☐ If greater than $10,000 but does not exceed $25,000, file must demonstrate compliance with informal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of at least three (3) vendors that were solicited, two (2) of which must be certified HUBs (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ If greater than $25,000, file must demonstrate compliance with formal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of each eligible vendor within the agency's geographic region (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ For purchases of $100,000 or more, Historically Underutilized Business Subcontracting Plan must be documented ☐ Electronic State Business Daily (ESBD) posting (solicitation and notice of award) printout if purchase is over $25,000 ☐ Emergency justification letter signed by the agency's purchasing director or an authorized representative (if applicable) ☐ Proprietary Purchase Justification signed by the Agency Head or designee (if applicable) ☐ Response documents (signed) for each awarded vendor (if applicable) ☐ At the time of award, file must contain printouts of vendor compliance checks: • Debarment check • SAM.gov check; printout dated no more than 7 days prior to contract award • Iran, Sudan & Foreign Terrorist Organization check • Boycott Israel check • Energy Company Boycott check • Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award

PCC M **DISTRIBUTOR PURCHASE**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ All Essential Provisions (including Texas Required Contract Clauses) ☐ If greater than $10,000 but does not exceed $25,000, file must demonstrate compliance with informal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of at least three (3) vendors that were solicited, two (2) of which must be certified HUBs (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ If greater than $25,000, file must demonstrate compliance with formal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of each eligible vendor within the agency's geographic region (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ For purchases of $100,000 or more, Historically Underutilized Business Subcontracting Plan must be documented ☐ Electronic State Business Daily (ESBD) posting (solicitation and notice of award) printout if purchase is over $25,000 ☐ Emergency justification letter signed by the agency's purchasing director or an authorized representative (if applicable) ☐ Proprietary Purchase Justification signed by the Agency Head or designee (if applicable) ☐ Response documents (signed) for each awarded vendor (if applicable) ☐ At the time of award, file must contain printouts of vendor compliance checks: • Debarment check • SAM.gov check; printout dated no more than 7 days prior to contract award • Iran, Sudan & Foreign Terrorist Organization check • Boycott Israel check • Energy Company Boycott check • Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award
PCC N **COORDINATED BULK PURCHASE FROM DIR CONTRACT**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed • State DIR Contract number on PO ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ Waiver from TCI or filed State Use Program Exception Report included in the file indicating that the product or service may be otherwise procured (if applicable) ☐ At the time of PO issuance, file must contain printout of Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award

PCC P **FUEL, OIL, OR GREASE PURCHASE**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ All Essential Provisions (including Texas Required Contract Clauses) ☐ If greater than $10,000 but does not exceed $25,000, file must demonstrate compliance with informal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of at least three (3) vendors that were solicited, two (2) of which must be certified HUBs (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ If greater than $25,000, file must demonstrate compliance with formal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of each eligible vendor within the agency's geographic region (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ For purchases of $100,000 or more, Historically Underutilized Business Subcontracting Plan must be documented ☐ Electronic State Business Daily (ESBD) posting (solicitation and notice of award) printout if purchase is over $25,000 ☐ Emergency justification letter signed by the agency's purchasing director or an authorized representative (if applicable) ☐ Proprietary Purchase Justification signed by the Agency Head or designee (if applicable) ☐ Response documents (signed) for each awarded vendor (if applicable) ☐ At the time of award, file must contain printouts of vendor compliance checks: • Debarment check • SAM.gov check; printout dated no more than 7 days prior to contract award • Iran, Sudan & Foreign Terrorist Organization check • Boycott Israel check • Energy Company Boycott check • Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award

PCC Q **SERVICE PURCHASE $10,000.01 to $25,000.00**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ All Essential Provisions (including Texas Required Contract Clauses) ☐ File must demonstrate compliance with informal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of at least three (3) vendors that were solicited, two (2) of which must be certified HUBs (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ Waiver from TCI or filed State Use Program Exception Report included in the file indicating that the product or service may be otherwise procured (if applicable) ☐ Emergency justification letter signed by the agency's purchasing director or an authorized representative (if applicable) ☐ Proprietary Purchase Justification signed by the Agency Head or designee (if applicable) ☐ Response documents (signed) for each awarded vendor (if applicable) ☐ At the time of award, file must contain printouts of vendor compliance checks: • Debarment check • SAM.gov check; printout dated no more than 7 days prior to contract award • Iran, Sudan & Foreign Terrorist Organization check • Boycott Israel check • Energy Company Boycott check • Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award

PCC S **GOOD OR SERVICE PURCHASE EXCEEDING $25,000.00**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ All Essential Provisions (including Texas Required Contract Clauses) ☐ SPD Delegation required for purchases of goods over $50,000 ☐ SPD Delegation required for purchases of services over $100,000 ☐ File must demonstrate compliance with formal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of each eligible vendor within the agency's geographic region (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ For purchases of $100,000 or more, Historically Underutilized Business Subcontracting Plan must be documented ☐ Electronic State Business Daily (ESBD) posting (solicitation and notice of award) printout if purchase is over $25,000 ☐ Waiver from TCI or filed State Use Program Exception Report included in the file indicating that the product or service may be otherwise procured (if applicable) ☐ Emergency justification letter signed by the agency's purchasing director or an authorized representative (if applicable) ☐ Proprietary Purchase Justification signed by the Agency Head or designee (if applicable) ☐ Response documents (signed) for each awarded vendor (if applicable) ☐ At the time of award, file must contain printouts of vendor compliance checks: • Debarment check • SAM.gov check; printout dated no more than 7 days prior to contract award • Iran, Sudan & Foreign Terrorist Organization check • Boycott Israel check • Energy Company Boycott check • Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award

PCC T **EMERGENCY PURCHASE OF GOODS AND SERVICES EXCEEDING $25,000.00**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ All Essential Provisions (including Texas Required Contract Clauses) ☐ File must demonstrate compliance with formal bidding requirements and bid tabulation/committee evaluation is required • CMBL printout of each eligible vendor within the agency's geographic region (CMBL printout must be dated on or before solicitation) • Written approval from agency head or designee authorizing supplementation with non-CMBL vendors ☐ For purchases of $100,000 or more, Historically Underutilized Business Subcontracting Plan must be documented ☐ Electronic State Business Daily (ESBD) posting (solicitation and notice of award) printout if purchase is over $25,000 ☐ Waiver from TCI or filed State Use Program Exception Report included in the file indicating that the product or service may be otherwise procured (if applicable) ☐ Emergency justification letter signed by the agency's purchasing director or an authorized representative ☐ Proprietary Purchase Justification signed by the Agency Head or designee (if applicable) ☐ Response documents (signed) for each awarded vendor (if applicable) ☐ At the time of award, file must contain printouts of vendor compliance checks: • Debarment check • SAM.gov check; printout dated no more than 7 days prior to contract award • Iran, Sudan & Foreign Terrorist Organization check • Boycott Israel check • Energy Company Boycott check • Warrant Hold check for purchases by written contract or purchases using local funds; printout dated no more than 7 days prior to contract award

PCC X **SPD TEXAS MULTIPLE AWARD SCHEDULE (TXMAS) PURCHASE**	☐ Texas SmartBuy TXMAS PO with authorized signature ☐ Invoice must match PO ☐ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable) ☐ Waiver from TCI or filed State Use Exception Report included in the documentation indicating that the product or service may be otherwise procured (if applicable) ☐ Proprietary Purchase Justification signed by Agency Head or designee (if applicable) ☐ Best value statement must be documented on the PO (if applicable) ☐ Electronic State Business Daily (ESBD) award posting printout if purchase is over $25,000 ☐ At the time of PO issuance, file must contain printout of Warrant Hold check for purchases using local funds; printout dated no more than 7 days prior to contract award
EXEMPT PURCHASES **Document Type 9**	☐ PO with authorized signature • Delivery terms and/or contract term defined • NIGP Class-Item Codes listed ☐ Legal citation applicable to the purchase must be listed on the purchase documentation • Example: Texas Government Code Section 2254.001 ☐ Invoice must match PO ☐ Other file documentation applicable to the procurement method. Refer to the Post Payment Audit section of the Guide. If SAM.gov and Warrant Hold compliance checks are required, the printouts must be dated no more than 7 days prior to contract award. **NOTE:** Utility payments made using a payment instrument OTHER THAN a purchase order need not contain a PO number.

APPENDIX 33

Exemptions List (Document Type 9)

Document Type 9 purchases refer to purchases of certain goods and services that are not within SPD purchasing authority, exempt from competitive bidding requirements, or required by statute to be procured through a specific purchasing method. Agency legal counsel should be consulted to determine whether there are agency-specific exemptions which qualify as "Document 9" purchases in addition to the purchases listed below. Document Type 9 purchases should have a blank or "0" PCC field depending on whether the entry is to USAS or CAPPS.

If not exempt by the General Appropriations Act, Texas Government Code § 2151 et seq., or other statute, the purchase must be competitively bid or the purchase should satisfy the requirements of a proprietary sole source purchase and a proprietary purchase justification should be placed in the procurement file.

NOTE: Document Type 9 purchases are subject to Post-Payment Audit to verify whether the purchases are indeed exempt and that the agency used the correct Document Type and Comptroller Object Codes.

Item or Nature of Service	Texas Government Code Section
Auxiliary enterprises.	2155.141
Goods or services made or provided by blind or visually impaired persons and offered for sale to state agencies.	2155.138
Care/treatment/education services for wards and clients of the state by Texas Juvenile Justice Department.	2155.143
Construction projects by or under the supervision of any public authorities created by the laws of this state; or state-aided local government projects of any character whatsoever.	2166.004
Construction projects undertaken by Texas Department of Criminal Justice.	2166.003(b)
Consulting services or services of a Consultant as defined in Texas Government Code § 2254.021 et seq. Must use 7239, 7240, or 7242 comptroller object codes to process expenditures.	2155.001
Group purchasing program: purchases by state-owned hospital or clinics through a group purchasing program comprised of two or more hospital or clinic facilities.	2155.139(b)
Health care purchases.	2155.144
Health & Human Service agency purchases and all agencies under its statutory umbrella.	2155.144
Items required by statute to be purchased from a particular source.	2155.132(f)(2)
Lease payments for district office space for certain agencies and programs.	2167.002

Item or Nature of Service	Texas Government Code Section
Legislative agency purchases for the following agencies: 101-Senate, 102 House of Representatives, 103-Texas Legislative Council, 104-Legislative Budget Board, 105-Legislative Reference Library, 116-Sunset Advisory Commission, 308-State Auditor, 362-Texas Lottery Commission.	2155.203
Library materials & services within a university or institutions of higher learning, state-owned hospitals or clinics (including Amigos Library services) for certain limited purchases.	2155.139(a)
Organized activities relating to instructional departments of institutions of higher learning & similar activities of other state agencies.	2155.141
Texas Department of Criminal Justice made goods.	2155.065
Professional services & fees: services listed in Texas Government Code § 2254.001 et seq. must use 7253 or 7356 comptroller object codes to process expenditures.	2155.001
Purchases made from gifts or grants, including industrial grants or contracts in support of research or federal grants or contracts in support of research in aid payments (HEAF).	2155.140
Purchases of products and services of workshops, organizations, or corporations whose primary purpose is training and employing individuals having mental retardation or a physical disability (WorkQuest set-aside contracts) if the agency performs the purchase at the WorkQuest store personally.	2155.441
Repairs & renovations to buildings excluded by SPD: letter of exclusion from TFC's Facility Construction and Space Management Division should be attached.	2166.003(a)(7)
Repairs & renovations to buildings & projects by agencies listed.	2166.003 2166.004
Residential space for Mental Health and Mental Retardation & Texas Juvenile Justice Department.	2167.001(b)(2) 2167.001(b)(3)
Services of an employee of a state agency.	2155.001
Utilities (services of public utilities): natural gas, electric, water, sewage & garbage services, other services & charges for utility services, and local telephone service. Does not include cell phone or cable services.	2155.001
Vehicle maintenance & repair: any contract for repair of vehicles made by the Office of Vehicle Fleet Management of SPD.	2171.102(c)
Veterans Land Board purchases in connection with improvements, repairs, or maintenance of land or other activities undertaken by Veterans Land Board with respect to land.	2155.149



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Texas Comptroller of Public Accounts
Publication #96-1809
May 2022

Localized Policy Manual Update 119

116906 Lone Oak ISD

Update 119 contains (LOCAL) policies that require board action and adoption notification before we can incorporate the revisions into your district's Policy Online™ manual.

What should I do to prepare for board adoption?

1. In Local Manual Updates[1] *(myTASB login required)*, download and save the numbered update resource material.
2. Present the (LOCAL) policies to your board for adoption.
3. Following board action, notify Policy Service of adoption so we can incorporate the adopted policies into your district's Policy Online manual.
4. If there are additional changes, submit the annotated changes with your Adoption Notification Form.

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

1. Go to Local Manual Updates and click the "notify TASB" link.
2. Fill out and submit the electronic Adoption Notification Form for TASB-Initiated Updates.

Questions?

- If you have questions regarding Policy Online, contact pol-support@tasb.org.
- If you have questions regarding policy text, contact your district's assigned policy consultant.[2]

[1] Local Manual Updates: https://www.tasb.org/apps/policyUpdates/GetUpdates.aspx
[2] Contact a Policy Service Consultant: https://www.tasb.org/services/policy-service/consultant-contact-information.aspx

Localized Policy Manual Update 119

Lone Oak ISD

You can download a PDF of this update packet, annotated copies of the (LOCAL) policies, editable (LOCAL) text, and more under Local Manual Updates[1] in the myTASB Policy Service Resource Library.

Other materials, including an overview video of the (LOCAL) policy changes, are available under Policy Manual Update Resources.[2]

Need help? Please call your policy consultant at 800-580-7529 or email policy.service@tasb.org.

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Overview

Update 119 includes policy recommendations to address the remainder of the legislative changes from the 87th Legislature, Regular Session; other revisions resulting from legislation enacted during the special sessions; and revisions based on updates to the Texas Administrative Code. Recommended changes to local policies address the following topics:

- Records management
- Required staff development
- Required instruction
- Gifted and talent students
- Graduation
- Trauma-informed care
- Freedom from discrimination, harassment, and retaliation

Your Localized Update 119 packet also contains:

- **Explanatory Notes** describing the changes to each policy. Please note that, where appropriate, the Explanatory Notes ask you to verify that a particular policy reflects current district practice and to advise us of any changes needed so that our records and the district's policy manual accurately track the district's practice. Explanatory notes may also provide important information about policies not included in the update packet.
- **Instructions** for incorporating this update into each of the district's Localized Policy Manuals after board adoption. Use the enclosed Instruction Sheet as a guide to which policies should be added, replaced, and removed from your manual.

Local Policy Overview for Update 119

The *Local Policy Overview* provides a general, high-level overview of the changes to the (LOCAL) policies included in TASB updates. Presented in both video and written document formats, the *Local Policy Overview* is available on myTASB in Policy Manual Update Resources.[3] From there, you may forward it electronically or print the written document for distribution to staff and board members.

Legal Services Update Memo

TASB Legal Services' Legal Issues in Update 119 memo[4] (available in the myTASB Policy Service Resource Library under Policy Manual Update Resources) describes common legal concerns specific to the local policies recommended in this update for your consideration prior to board adoption of any local policies. Local policies will not be sent for a separate review by Legal Services as part of the update process. If after reviewing the memo you have questions about any specific provisions in your local policies, please contact TASB Legal Services at 800-580-5345.

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

(LEGAL) policies:

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

(LOCAL) policies:

- Require close attention by both the administration and the board
- Must reflect the practices of the district and the intentions of the board
- May only be changed by board action (adopt, revise, or repeal)

If your board adopts changes to the (LOCAL) policies contained in this packet, please notify your policy consultant.

How to Place Policy Changes on the Agenda for Board Action

TASB recommends that the district address this update on the agenda as follows:

"*Policy Update 119:*

- *(LEGAL) policies*
- *(LOCAL) policies (see attached list of codes)"*

(LEGAL) policies: Although the board should not adopt (LEGAL) policies, TASB recommends that the board review them. Since review of the (LEGAL) policies may result in discussion, the agenda should, at a minimum, reference "(LEGAL) policies." If board members plan on discussing specific (LEGAL) policy changes, the relevant policy codes, titles, and subtitles should be listed on the agenda.

(LOCAL) policies: Board action on the (LOCAL) policies included in the update must occur within a properly posted, open meeting of the board.

- Include the "Agenda Posting" list, provided online in Local Manual Updates, on the agenda.
- A suggested motion for board action on the (LOCAL) policies included in the update:

  "I move that the board add, revise, or delete (LOCAL) policies as recommended by TASB Policy Service and according to the Instruction Sheet for TASB Localized Policy Manual Update 119 [with the following changes:]"

How to Notify Policy Service of Board Action

Notify Policy Service of the board's action on Update 119 so our records remain accurate. Go to Local Manual Updates[5] in myTASB and click the "notify TASB" link. Then fill out and submit the electronic Adoption Notification Form for TASB-Initiated Updates.

How to Keep Minutes

The board's action on Localized Update 119 must be reflected in board minutes. Your minutes should include:

- The list of proposed (LOCAL) policy actions, such as the Instruction Sheet—annotated to reflect any changes made by the board
- The Explanatory Notes for the update (filed as an attachment to the minutes)
- Copies of new, replaced, or rescinded (LOCAL) policies

How to Maintain Your Historical Record

To construct a separate historical record of the manual, you must track the history of individual (LOCAL) policies. You should maintain a permanent historical record of every (LOCAL) policy adopted, revised, or rescinded by the board.

At a minimum, this record should include the following key pieces of information:

- Policy code
- Date of board action
- Text of policy

For more guidance on maintaining this record, please refer to *The Administrator's Guide to Policy Management*,[6] available in the myTASB Policy Service Resource Library.

How to Keep Your Administrative Regulations Current

Regulations Resource Manual[7] Update 65, which includes revisions to model regulations and forms corresponding with Update 119, is now available on myTASB.

Inspect your district's administrative procedures and documents—including (EXHIBIT)s, (REGULATION)s, handbooks, and guides—that may be affected by Update 119 policy changes.

If you must make changes to the (REGULATION)s or (EXHIBIT)s contained in your board policy manual, please notify your policy consultant.

Disclaimer and Copyright

This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or

other professional adviser. Consult with your attorney or professional adviser to apply these principles to specific fact situations.

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[1] Local Manual Updates: https://www.tasb.org/apps/policyUpdates/GetUpdates.aspx
[2] Policy Manual Update Resources: https://www.tasb.org/services/policy-service/mytasb/policy-manual-update-resources.aspx
[3] Policy Manual Update Resources: https://www.tasb.org/services/policy-service/mytasb/policy-manual-update-resources.aspx
[4] Legal Issues memo: https://www.tasb.org/services/policy-service/mytasb/policy-manual-update-resources/documents/u119_legal_issues.pdf
[5] Local Manual Updates: https://www.tasb.org/apps/policyUpdates/GetUpdates.aspx
[6] Administrator's Guide to Policy Management: https://www.tasb.org/services/policy-service/mytasb/guidance-for-policy-administrators.aspx
[7] *TASB Regulations Resource Manual*: https://www.tasb.org/services/policy-service/mytasb/regulations-resource-manual.aspx

Instruction Sheet

TASB Localized Policy Manual Update 119

Lone Oak ISD

Code	Type	Action To Be Taken	Note
ATTN	(NOTE)	No policy enclosed	See explanatory note
AIB	(LEGAL)	Replace policy	Revised policy
BBB	(LEGAL)	Replace policy	Revised policy
BBBA	(LEGAL)	Replace policy	Revised policy
BBE	(LEGAL)	Replace policy	Revised policy
BBG	(LEGAL)	Replace policy	Revised policy
BBI	(LEGAL)	Replace policy	Revised policy
BDAA	(LEGAL)	Replace policy	Revised policy
BDB	(LEGAL)	Replace policy	Revised policy
BE	(LEGAL)	Replace policy	Revised policy
BQ	(LEGAL)	Replace policy	Revised policy
CCGA	(LEGAL)	Replace policy	Revised policy
CDB	(LEGAL)	Replace policy	Revised policy
CDC	(LEGAL)	Replace policy	Revised policy
CH	(LEGAL)	Replace policy	Revised policy
CI	(LEGAL)	Replace policy	Revised policy
CPC	(LEGAL)	Replace policy	Revised policy
CPC	(LOCAL)	Replace policy	Revised policy
CQA	(LEGAL)	Replace policy	Revised policy
CRD	(LEGAL)	Replace policy	Revised policy
CS	(LEGAL)	Replace policy	Revised policy
CV	(LEGAL)	Replace policy	Revised policy
DC	(LEGAL)	Replace policy	Revised policy
DEAA	(LEGAL)	Replace policy	Revised policy
DECB	(LEGAL)	Replace policy	Revised policy
DFE	(LEGAL)	Replace policy	Revised policy
DG	(LEGAL)	Replace policy	Revised policy
DHC	(LEGAL)	Replace policy	Revised policy
DMA	(LEGAL)	Replace policy	Revised policy
DMA	(LOCAL)	Replace policy	Revised policy
DP	(LEGAL)	Replace policy	Revised policy
E	(LEGAL)	Replace table of contents	Revised table of contents
EF	(LEGAL)	Replace policy	Revised policy
EHAA	(LEGAL)	Replace policy	Revised policy

Lone Oak ISD

Code	Type	Action To Be Taken	Note
EHAA	(LOCAL)	Replace policy	Revised policy
EHB	(LOCAL)	ADD policy	See explanatory note
EHBAA	(LEGAL)	Replace policy	Revised policy
EHBAA	(LOCAL)	ADD policy	See explanatory note
EHBAB	(LEGAL)	Replace policy	Revised policy
EHBAC	(LEGAL)	Replace policy	Revised policy
EHBB	(LOCAL)	Replace policy	Revised policy
EHBC	(LEGAL)	Replace policy	Revised policy
EHDE	(LEGAL)	Replace policy	Revised policy
EHDF	(LEGAL)	ADD policy	See explanatory note
EIF	(LEGAL)	Replace policy	Revised policy
EIF	(LOCAL)	Replace policy	Revised policy
EKB	(LEGAL)	Replace policy	Revised policy
EMB	(LEGAL)	Replace policy	Revised policy
FEC	(LEGAL)	Replace policy	Revised policy
FFBA	(LOCAL)	Replace policy	Revised policy
FFG	(LEGAL)	Replace policy	Revised policy
FFH	(LEGAL)	Replace policy	Revised policy
FFH	(LOCAL)	Replace policy	Revised policy
FM	(LEGAL)	Replace policy	Revised policy
FNA	(LEGAL)	Replace policy	Revised policy
FOC	(LEGAL)	Replace policy	Revised policy
FOCA	(LEGAL)	Replace policy	Revised policy
FOF	(LEGAL)	Replace policy	Revised policy
GKA	(LEGAL)	Replace policy	Revised policy
GKD	(LEGAL)	Replace policy	Revised policy
GKG	(LEGAL)	Replace policy	Revised policy

Explanatory Notes
TASB Localized Policy Manual Update 119

Lone Oak ISD

ATTN(NOTE) GENERAL INFORMATION ABOUT THIS UPDATE

Please note: Unless otherwise noted, references to legislative bills throughout these explanatory notes refer to Senate Bills (SB) or House Bills (HB) from the 87th Legislature Regular and Special Sessions.

AIB(LEGAL) ACCOUNTABILITY: PERFORMANCE REPORTING

Quality of learning indicators for remote instruction performance reporting have been added from SB 15 (Second Called Session). (See page 6.)

BBB(LEGAL) BOARD MEMBERS: ELECTIONS

Provisions have been added to this legally referenced policy on elections for a more complete presentation of applicable legal content.

BBBA(LEGAL) ELECTIONS: CONDUCTING ELECTIONS

Upon the board's receipt of certification that a candidate is unopposed in an election, SB 1 (Second Called Session) requires the board to cancel the election and declare each unopposed candidate elected to office.

SB 1 also changed the definition for *eligible county polling place*. Other revisions are to better match legal sources.

BBE(LEGAL) BOARD MEMBERS: AUTHORITY

Provisions on board authority that are addressed at other codes have been removed to eliminate duplication.

BBG(LEGAL) BOARD MEMBERS: COMPENSATION AND EXPENSES

A revision clarifies that an officer *or employee* may participate in the comptroller's contract for travel services when traveling for official business. The comptroller can no longer charge fees for these services.

BBI(LEGAL) BOARD MEMBERS: TECHNOLOGY RESOURCES AND ELECTRONIC COMMUNICATIONS

Revisions are to update citations and better reflect legal sources.

BDAA(LEGAL) OFFICERS AND OFFICIALS: DUTIES AND REQUIREMENTS OF BOARD OFFICERS

Revisions are to better reflect legal sources.

BDB(LEGAL) BOARD INTERNAL ORGANIZATION: INTERNAL COMMITTEES

Provisions on board committees have been revised based on current legal authority.

BE(LEGAL) BOARD MEETINGS

This legally referenced policy on board meetings has been revised to reorder and add some existing legal provisions, delete nonessential provisions, and better reflect legal sources.

BQ(LEGAL) PLANNING AND DECISION-MAKING PROCESS

Revised Administrative Code rules resulted in changes to shared services arrangements for DAEP services.

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CCGA(LEGAL) AD VALOREM TAXES: EXEMPTIONS AND PAYMENTS

As provided by SB 611 (Regular Session) and Senate Joint Resolution 35 and approved by voters in November 2021, the surviving spouse of a member of the U.S. armed forces who is fatally injured in the line of duty is entitled to the residence homestead property tax exemption as long as the surviving spouse remains unmarried. (See page 5.)

CDB(LEGAL) OTHER REVENUES: SALE, LEASE, OR EXCHANGE OF SCHOOL-OWNED PROPERTY

Revisions are to better reflect statutory sources.

CDC(LEGAL) OTHER REVENUES: GIFTS AND SOLICITATIONS

SB 3 (Second Called Session) revised the provisions on prohibited use of private funding for certain curriculum and professional development purposes.

CH(LEGAL) PURCHASING AND ACQUISITION

We have added a reference on page 12 to amended rules from the Texas Department of Information Resources on purchasing information technology commodity items.

CI(LEGAL) SCHOOL PROPERTIES DISPOSAL

Revisions are to better reflect statutory sources.

CPC(LEGAL) OFFICE MANAGEMENT: RECORDS MANAGEMENT

Revisions to this legally referenced policy are based on revised Administrative Code rules from the Texas State Library and Archives Commission (TSLAC) published in Bulletin B: Electronic Records Standards and Procedures. An overview of Bulletin B is available on the TSLAC website.

CPC(LOCAL) OFFICE MANAGEMENT: RECORDS MANAGEMENT

Recent updates by the Texas State Library and Archives Commission (TSLAC) to Bulletin B: Electronic Records Standards and Procedures prompted recommended revisions to this local policy on records management. The new rules add local policy requirements for district management of electronic records.

To meet these requirements, new policy provisions delegate to the records management officer the responsibility to develop procedures for the management of electronic records that comply with the district's records control schedules and meet minimum components required by law.

The *Regulations Resource Manual* includes updated sample procedures on this topic, and the *Legal Issues in Update 119* memo describes common legal concerns and best practices specific to this policy topic.

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

Based on HB 1525 (Regular Session) and SB 9 (Second Called Session), we have added the requirement to post curriculum materials on human sexuality instruction and instruction related to the prevention of child abuse, family violence, dating violence, and sex trafficking to the extent the materials are in the public domain. (See item 42.)

Lone Oak ISD

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

Revisions to TRS-ActiveCare provisions are based on amended Administrative Code rules. New text addresses prohibitions on offering alternative group health coverage (see page 2) and highlights the information that must be submitted with written elections to participate in TRS-ActiveCare (see page 3).

CS(LEGAL) FACILITY STANDARDS

Changes throughout this legally referenced policy on facility standards are from new Administrative Code rules that add extensive standards for capital improvement projects on or after November 1, 2021, and revised Administrative Code rules on the standards applicable to these projects before November 1, 2021.

CV(LEGAL) FACILITIES CONSTRUCTION

Changes to this legally referenced policy on facilities construction are from new Administrative Code rules that add extensive facility standards for construction of capital improvement projects on or after November 1, 2021.

An existing provision has been added on page 3 regarding the board's notice of delegation.

DC(LEGAL) EMPLOYMENT PRACTICES

We have added on page 4 new Administrative Code rules addressing the monthly certified statement of employment the district must submit to TRS for retirees employed by the district.

DEAA(LEGAL) COMPENSATION PLAN: INCENTIVES AND STIPENDS

Changes reflect revised Administrative Code rules on the local optional teacher designation system and mentor teacher programs.

DECB(LEGAL) LEAVES AND ABSENCES: MILITARY LEAVE

This legally referenced policy on military leave has been updated based on revisions to the Uniformed Services Employment and Reemployment Rights Act (USERRA).

DFE(LEGAL) TERMINATION OF EMPLOYMENT: RESIGNATION

Provisions on contract abandonment are revised based on amended rules from the State Board for Educator Certification. The reasons an educator may abandon a contract for good cause now include the educator's reasonable belief that the educator had written permission from the district to resign. Several new mitigating factors have also been added.

DG(LEGAL) EMPLOYEE RIGHTS AND PRIVILEGES

SB 3 (Second Called Session) broadened a provision from HB 3979 (Regular Session) so that a teacher may not be compelled to discuss a widely debated and controversial issue of public policy or social affairs for any course or subject. The provision is no longer limited to social studies courses in the required curriculum. (See page 5.)

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

Amended Administrative Code rules revise terminology from *solicitation of sexual conduct* to *solicitation of sexual contact* to better align with statute.

Lone Oak ISD

DMA(LEGAL) PROFESSIONAL DEVELOPMENT: REQUIRED STAFF DEVELOPMENT

Revisions are to update citations and better reflect statutory wording.

DMA(LOCAL) PROFESSIONAL DEVELOPMENT: REQUIRED STAFF DEVELOPMENT

SB 1267 (Regular Session) requires the board to annually review the State Board for Educator Certification (SBEC) clearinghouse regarding best practices and industry recommendations for professional development and adopt a professional development policy based on the training recommendations in the clearinghouse.

To meet the policy requirements, the recommended local policy text reflects that the board shall annually approve the district's professional development plan, which must be guided by the clearinghouse; note any differences from the clearinghouse recommendations; and include a schedule of required professional development. Because this requirement applies to open enrollment charter schools, it is not eligible for exemption under an innovation plan. To the extent a district has lawfully exempted itself from training requirements in its DOI plan (i.e., training requirements that are not applicable to open enrollment charter schools), such exemptions should be noted in the district's professional development plan as a difference between the plan and the clearinghouse recommendation.

Please note: SB 1267 requires SBEC to publish the clearinghouse by June 1, 2022, and districts to adopt a professional development policy by August 1, 2022. TASB Policy and Legal Services recommend that the board adopt DMA(LOCAL) and approve the district professional development plan by August 1, or as soon as possible thereafter, to ensure compliance with the bill.

DP(LEGAL) PERSONNEL POSITIONS

Provisions on school psychological services have been updated based on revised Administrative Code rules.

E(LEGAL) INSTRUCTION

The E section table of contents has been updated to add the new code EHDF, which includes provisions on local remote learning programs, and to update the subtitle for EFB, Library Materials.

EF(LEGAL) INSTRUCTIONAL RESOURCES

SB 3 (Second Called Session) requires a district to provide login credentials to parents to access learning management or online learning portals used for student instructional materials.

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

Effective with the 2022–23 school year, SB 9 (Second Called Session) provides that the SHAC must recommend the appropriate grade levels and curriculum for instruction on child abuse, family violence, dating violence, and sex trafficking.

The bill also imposes several requirements regarding curriculum materials on those topics, including:

- Revised parental notification and new parental consent provisions;
- Posting of proposed and adopted curriculum materials and options for a parent to purchase copyrighted materials from the publisher; and
- New board policy on adopting curriculum materials [see EHAA(LOCAL), below].

The *Regulations Resource Manual* includes a sample board resolution for convening the SHAC and a sample parental consent form.

Lone Oak ISD

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

New provisions are recommended based on SB 9 (Second Called Session), which imposes several requirements for instruction on the prevention of child abuse, family violence, dating violence, and sex trafficking, including a board policy on adopting curriculum materials. The policy follows the steps required by law, including board adoption of a resolution to convene the school health advisory council (SHAC) to hold meetings and make recommendations to the board at a public meeting, as well as board confirmation that the recommendations meet the requirements in law before taking action by a record vote.

The *Regulations Resource Manual* includes a sample board resolution for convening the SHAC and a sample parental consent form.

EHB(LOCAL) CURRICULUM DESIGN: SPECIAL PROGRAMS

This policy requiring the district to provide regular training opportunities for teachers of students with dyslexia is recommended to meet TEA policy requirements for the ongoing TEA special education cyclical monitoring reviews.

Please note: This policy will need to be adopted by the board and linked to the Legal Framework by the August 31, 2022, deadline. See TEA's FAQ on Special Education Operating Procedures.

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

Amended Administrative Code rules now refer to a student with an *auditory impairment as* a student who is *deaf or hard of hearing* to match statute. (See page 5.)

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

This policy requiring the district to ensure that a student who is transitioning from early childhood intervention (ECI) has an individualized education program (IEP) developed and implemented by the child's third birthday is recommended to meet TEA policy requirements for the ongoing TEA special education cyclical monitoring reviews.

Please note: This policy will need to be adopted by the board and linked to the Legal Framework by the August 31, 2022, deadline. See TEA's FAQ on Special Education Operating Procedures.

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

Amended Administrative Code rules revise the list of individuals who must be included in ARD committee meetings for students with deaf-blindness and revise terminology addressing students who are deaf or hard of hearing. Participating special education teachers or providers must be appropriately certified or licensed as required by federal law. The rules also address, as reflected on page 5, IEP implementation for students who enroll in a new district during the summer.

A new Administrative Code rule prohibits consideration of eligibility for supplemental special education services when developing or revising a student's IEP, determining the appropriate educational setting, or in the provision of a free appropriate public education. (See page 8.)

EHBAC(LEGAL) SPECIAL EDUCATION: STUDENTS IN NONDISTRICT PLACEMENT

We have removed a repealed Administrative Code provision on out-of-state placement.

Lone Oak ISD

EHBB(LOCAL) SPECIAL PROGRAMS: GIFTED AND TALENTED STUDENTS

HB 1525 (Regular Session) removed the statutory requirement for a district to annually certify to the commissioner of education that the district's gifted and talented program is consistent with the Texas State Plan for the Education of Gifted/Talented Students. We recommend deletion of the corresponding local policy provision.

EHBC(LEGAL) SPECIAL PROGRAMS: COMPENSATORY/ACCELERATED SERVICES

Reporting provisions on expenditure of the state compensatory education allotment have been added from the Administrative Code.

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

A new provision from SB 15 (Second Called Session) explains how off-campus electronic courses or programs are counted for purposes of average daily attendance. (See page 12.)

EHDF(LEGAL) ALTERNATIVE METHODS FOR EARNING CREDIT: LOCAL REMOTE LEARNING PROGRAM

Provisions on local remote learning programs from SB 15 (Second Called Session) are reflected in this new legally referenced policy. All provisions in the bill expire on September 1, 2023.

EIF(LEGAL) ACADEMIC ACHIEVEMENT: GRADUATION

Revised Administrative Code rules provide additional detail on the requirement for a student to complete a financial aid application to meet graduation requirements. The rules, beginning on page 3 of this policy, require the board to adopt the TEA-provided form a student may submit to opt out of the financial aid application requirement and require adoption of a board policy to address the methods by which a student can confirm submission of a financial aid application. See EIF(LOCAL), below.

EIF(LOCAL) ACADEMIC ACHIEVEMENT: GRADUATION

Revised Administrative Code rules require a board policy to address the methods by which a student can confirm completion and submission of a financial aid application to meet graduation requirements. The recommended text aligns with TEA guidance and addresses methods for both the free application for federal financial aid (FAFSA) and the Texas application for state financial aid (TASFA). Please contact your policy consultant if you have questions or need additional edits to this policy.

Additional TEA guidance on this topic is available.

The *Regulations Resource Manual* includes sample procedures on this topic, and the *Legal Issues in Update 119* memo describes common legal concerns and best practices specific to this policy topic.

EKB(LEGAL) TESTING PROGRAMS: STATE ASSESSMENT

HB 3261 (Regular Session) allows a district to administer a state assessment instrument on the first instructional day of the week upon authorization by the commissioner of education.

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

SB 3 (Second Called Session) revised provisions on instructional requirements and prohibitions, including prohibited concepts and activities.

Lone Oak ISD

FEC(LEGAL) ATTENDANCE: ATTENDANCE FOR CREDIT

From SB 15 (Second Called Session) we have added a provision permitting a district to exempt students from the 90 percent attendance requirement for courses that are offered under a local remote learning program.

FFBA(LOCAL) CRISIS INTERVENTION: TRAUMA-INFORMED CARE

SB 1267 (Regular Session) requires training in trauma-informed care to be provided in accordance with the board's professional development policy. Therefore, at Training, a reference has been added to the district's professional development plan. See DMA(LOCAL), above, for more information.

SB 1267 also repealed the requirement for a district to annually report to TEA the number of employees who participated in trauma-informed care training. We recommend deleting the local policy provision.

FFG(LEGAL) STUDENT WELFARE: CHILD ABUSE AND NEGLECT

Revisions are to update citations and better reflect legal sources.

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

From SB 9 (Second Called Session) we have added the following on page 2:

- New policy requirements on dating violence, including parental notification upon a report of dating violence [see FFH(LOCAL), below]; and
- A provision requiring districts to make available to students age-appropriate materials on the dangers of dating violence and resources for students seeking help.

Other revisions are to better reflect legal sources.

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

To meet new board policy requirements from SB 9 (Second Called Session), we recommend text at Notice to Parents, which requires the district, upon receipt of a report of dating violence, to immediately notify the parent of the student identified as the alleged victim or perpetrator.

District policy must also include reporting procedures and guidelines for students who are victims of dating violence and include a clear statement that dating violence is not tolerated at school. No changes to your district's policy are recommended regarding these elements based on the district's existing policy provisions, which include reporting procedures and a statement of nondiscrimination that specifically prohibits dating violence.

Additional revisions are recommended to clarify the definition of prohibited conduct and the district’s response to such conduct.

FM(LEGAL) STUDENT ACTIVITIES

Provisions from HB 25 (Third Called Session) address transgender students in athletic activities sponsored or authorized by a district and prohibit a student from participating in an athletic competition that is designated for a biological sex that differs from the biological sex stated on the student's official birth certificate. (See page 8.)

Lone Oak ISD

FNA(LEGAL) STUDENT RIGHTS AND RESPONSIBILITIES: STUDENT EXPRESSION

We have added the recent U.S. Supreme Court case on student speech, *Mahanoy Area School District v B.L.* The case holds that public schools may have a special interest in regulating some off-campus student speech where the district's interest is sufficient to overcome the student's interest in free expression, such as in situations of serious or severe bullying or harassment, threats, or breaches of school security devices.

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

Revisions are to better reflect legal sources.

FOCA(LEGAL) PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING: DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM OPERATIONS

Amended Administrative Code rules resulted in revisions to shared services arrangements for DAEP services and to provisions regarding transitions for students in DAEP.

FOF(LEGAL) STUDENT DISCIPLINE: STUDENTS WITH DISABILITIES

From HB 785 (Regular Session) we have added a provision requiring the commissioner of education to adopt rules regarding the use of restraint and time-out with a student who is receiving special education services. (See page 8.)

GKA(LEGAL) COMMUNITY RELATIONS: CONDUCT ON SCHOOL PREMISES

An existing statutory provision has been added to clarify the effect of failing to post signs at each entrance to the premises or other property indicating that firearms and other weapons are prohibited. (See page 8.)

GKD(LEGAL) COMMUNITY RELATIONS: NONSCHOOL USE OF SCHOOL FACILITIES

We have added existing statutory provisions regarding the use of district facilities by places of worship.

GKG(LEGAL) COMMUNITY RELATIONS: SCHOOL VOLUNTEER PROGRAM

We have updated for clarification the provisions on obtaining criminal history record information.

District Annual Report

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

Texas Academic Performance Report (TAPR)

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

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

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

Other Annual Report Information

The annual report must also include:

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

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

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

Education Code 39.306(a)

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

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

The report may include the following information:

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

2. Financial information, including revenues and expenditures;

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

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

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

Education Code 39.306(e)

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

Public Hearing

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

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

Publication

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

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

Report Uses

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

Campus Performance Report

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

Distribution

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

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

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

Education Code 39.305; 19 TAC 61.1021

Website Notices

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

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

Education Code 39.362

Student Performance Report

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

Notice to Parents

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

Notice to Teachers and Students

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

1. Each teacher for all students, including incoming students, who took a state assessment; and
2. All students who were provided instruction by that teacher in the subject for which the assessment instrument was administered.

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

Education Code 39.304

Quality of Learning Indicators

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

The quality of learning indicators must include:

1. The percentage of graduating students who meet the course requirements for the foundation high school program, the distinguished level of achievement under the foundation high school program, and each endorsement described by Education Code 28.025(c-1) [see EIF];
2. The results of the SAT, ACT, and certified workforce training programs;
3. For students who have failed to satisfy the state standard on an assessment, the performance of those students on subsequent assessments, aggregated by grade level and subject area;
4. For each campus, the number of students, disaggregated by major student subpopulations, who take courses under the foundation high school program and take additional courses to earn an endorsement, disaggregated by type of endorsement;
5. The percentage of students, aggregated by grade level, provided accelerated instruction under Education Code 28.0211 [see EHBC] after unsatisfactory performance on a state assessment; the results of assessment instruments administered under the accelerated instruction program; the subject of the assessment instrument on which each student failed to perform satisfactorily under each performance standard; and the performance of those students in the subsequent school year on the state assessments;
6. The percentage of students of limited English proficiency exempted from the administration of an assessment;
7. The percentage of students in a special education program assessed through alternative assessment instruments;
8. The percentage of students who satisfy the college readiness measure;
9. The measure of progress toward dual language proficiency for students of limited English proficiency;

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

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

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

Education Code 39.301(a)–(c)

Remote Instruction

In addition to the indicators described above, the indicators for reporting purposes must include, for each district and campus, the performance of students who spend at least half of the students' instructional time:

1. In virtual courses offered under a local remote learning program under Education Code 29.9091 [see EHDF]; or

2. Receiving remote instruction, regardless of whether the student is enrolled in a remote learning program offered under Education Code 29.9091, and including students receiving remote instruction who are:

    a. Medically fragile;

    b. Placed in a virtual setting by an admission, review, and dismissal (ARD) committee; or

    c. Receiving accommodations under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

Education Code 39.301(c-1)

Results Driven Accountability (RDA)

In accordance with Education Code 7.028(a), the purpose of the Results Driven Accountability (RDA) framework is to evaluate and report annually on the performance of districts for certain populations of students included in selected program areas. The performance of a district is included on the RDA report through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner. *19 TAC 97.1005; Education Code 7.028(a)*

Federal Report Card

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

Implementation

The federal report card shall be concise; presented in an understandable and uniform format, and to the extent practicable, in a

language that parents can understand; and accessible to the public, which shall include placing the report card on the district's website. If the district does not operate a website, the information in the report card must be provided to the public in another manner determined by the district.

Minimum Requirements

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

1. In the case of the district, information that shows how students served by the district achieved on state academic assessments compared to students in the state as a whole;
2. In the case of a school, information that shows how the school's students' achievement on state academic assessments compared to students served by the district and the state as a whole; and
3. Any other information that the district determines is appropriate and will best provide parents, students, and other members of the public with information regarding the progress of each public school served by the district, whether or not such information is included in the annual state report card.

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

District Data on Academic Achievement

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

The website must:

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

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

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

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

Education Code 11.1516

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Membership

The board consists of the number of members that the district had on September 1, 1995. *Education Code 11.051(b)*

Increase in Membership

A board that has three or five members may by resolution increase the membership to seven. A board that votes to increase its membership must consider whether the district would benefit from also adopting a single-member election system under Education Code 11.052. [See Single-Member Districts, below.]

A resolution increasing the number of trustees takes effect with the second regular election of trustees that occurs after the adoption of the resolution. The resolution must provide for a transition in the number of trustees so that when the transition is complete, trustees are elected as provided by Education Code 11.059 (terms).

Education Code 11.051(c)

Terms

A trustee of a district serves a term of three or four years.

Elections for trustees with three-year terms shall be held annually. The terms of one-third of the trustees, or as near to one-third as possible, expire each year.

Elections for trustees with four-year terms shall be held biennially. The terms of one-half of the trustees, or as near to one-half as possible, expire every two years.

Board policy must state the schedule on which specific terms expire.

Education Code 11.059

Note: For website posting requirements regarding trustee information, see CQA.

Uniform Election Dates

Each general or special election of board members shall be on one of the following dates:

1. The first Saturday in May.

2. The first Tuesday after the first Monday in November.

Election Code 41.001(a)

Joint Elections

Required

A district trustee election shall be held on the same date as:

1. The election for the members of the governing body of a municipality located in the district;
2. The general election for state and county officers, which is held on the first Tuesday after the first Monday in November in even-numbered years under Election Code 41.002;
3. The election for the members of the governing body of a hospital district, if the school district:
    a. Is wholly or partly located in a county with a population of less than 40,000 that is adjacent to a county with a population of more than three million; and
    b. Held its election for board members jointly with the election for the members of the governing body of the hospital district before May 2007; or
4. The election for the members of the governing board of a public junior college district in which the school district is wholly or partly located.

Elections held on the same date as provided above shall be held as a joint election under Election Code Chapter 271, and the voters shall be served by common polling places consistent with Election Code 271.003(b).

Education Code 11.0581(a)–(c)

A board may enter into an agreement with another political subdivision holding an election on the same day in all or part of the same county to hold the elections jointly. The terms of a joint election agreement must be stated in an order, resolution, or other official action adopted by the board. *Election Code 271.002*

Methods of Election—Options

In a district in which the positions of trustees are not designated by number or in which the trustees are not elected from single-member trustee districts, the candidates receiving the highest number of votes shall fill the positions the terms of which are normally expiring. *Education Code 11.057(b)*

At Large

Position or Place

The positions on the board shall be designated by number in any district in which the board by resolution orders that all candidates for trustee be voted on and elected separately for positions on the board and that all candidates be designated on the official ballot

according to the number of the positions for which they seek election.

Not later than the 60th day before the date of an election, the board must make the resolution and number the positions on the board in the order in which the terms of office expire. Once a board has ordered the election of trustees by numbered positions, neither the board nor their successors may rescind the action.

Education Code 11.058(c)–(f)

Single-Member Districts

On Board's Motion

Except as provided below, the board, on its own motion, may order that trustees of the district are to be elected from single-member districts or that not fewer than 70 percent of the members of the board are to be elected from single-member districts with the remaining board members to be elected from the district at large.

If a majority of the area of a district is located in a county with a population of less than 10,000, a board, on its own motion, may order that trustees of the district are to be elected from single-member districts or that not fewer than 50 percent of the members of the board are to be elected from single-member districts with the remaining board members to be elected from the district at large.

Before adopting an order, a board must:

1. Hold a public hearing at which registered voters of a district are given an opportunity to comment on whether or not they favor the election of trustees in the manner proposed by the board; and

2. Publish notice of the hearing in a newspaper that has general circulation in the district, not later than the seventh day before the date of the hearing.

An order adopted by the board must be entered not later than the 120th day before the date of the first election at which all or some of the trustees are elected from single-member districts authorized by the order.

Education Code 11.052(a)–(d)

By Voter Petition

If at least 15 percent or 15,000 of the registered voters of the district, whichever is less, sign and present to the board a petition requesting submission to the voters of the proposition that trustees be elected in a specific manner, which must be generally described on the petition and which must be a manner of election the board could have ordered on its own motion, the board shall order that the appropriate proposition be placed on the ballot at the first regular election of trustees held after the 120th day after the date the

petition is submitted to the board. The proposition must specify the number of trustees to be elected from single-member districts. Beginning with the first regular election of trustees held after an election at which a majority of the registered voters voting approve the proposition, trustees shall be elected in the manner prescribed by the approved proposition. *Education Code 11.052(e)*

Board Member Districts

If single-member districts are adopted or approved by either method described above, the board shall divide the district into the appropriate number of trustee districts, based on the number of members that are to be elected from single-member districts, and shall number each trustee district. The trustee districts must be compact and contiguous and must be as nearly as practicable of equal population. In a district with 150,000 or more students in average daily attendance, the boundary of a trustee district shall not cross a county election precinct boundary except at a point at which the district boundary crosses the county election precinct boundary. Trustee districts must be drawn not later than the 90th day before the date of the first election of trustees from those districts. *Education Code 11.052(f)*

Residency for First Election

Residents of each trustee district are entitled to elect one trustee to the board. A trustee elected to represent a trustee district at the first election of members must be a resident of the district the trustee represents not later than the 90th day after the date election returns are canvassed, or the 60th day after the date of a final judgment in an election contest filed concerning that trustee district. A trustee vacates the office if the trustee fails to move into the district the trustee represents within the time provided. [For more information on residency, see BBA and BBC.] *Education Code 11.052(g)*

Number and Term

At the first election at which some or all of the trustees are elected from single-member trustee districts and after each redistricting, all positions on a board shall be filled. The trustees then elected shall draw lots for staggered terms as provided by Education Code 11.059 (terms). *Education Code 11.052(h)*

Redistricting

Not later than the 90th day before the date of the first regular board election at which trustees may officially recognize and act on the last preceding federal census, a board shall redivide a district into the appropriate number of trustee districts if the census data indicates that the population of the most populous district exceeds the population of the least populous district by more than ten percent. Redivision of a district shall be in the manner provided above at Board Member Districts. *Education Code 11.052(i)*

Phase-in Option

The board of a district that adopts a redistricting plan may provide for the trustees in office when the plan is adopted or the district is

redistricted to serve for the remainder of their terms in accordance with this provision. The trustee district and any at-large positions provided by the district's plan shall be filled as the staggered terms of trustees then in office expire. Not later than the 90th day before the date of the first election from trustee districts and after each redistricting, a board shall determine the order in which the positions will be filled. *Education Code 11.053*

Boundary Change Notice

A district that changes its boundaries or the boundaries of districts used to elect members to the board shall not later than the 30th day after the date the change is adopted:

1. Notify the voter registrar of the county in which the area subject to the boundary change is located of the adopted boundary change; and
2. Provide the voter registrar with a map of an adopted boundary change in a format that is compatible with the mapping format used by the registrar's office.

Election Code 42.0615

Methods of Voting—Options

Plurality

Except as otherwise provided at Majority, below, to be elected to a public office, a candidate elected at large, at large by position, or by single-member districts must receive more votes than any other candidate for the office. *Education Code 11.057(a), (b); Election Code 2.001*

Cumulative

The board of a district that elects its trustees at large or at large by position may order that elections for trustees be held using the cumulative voting procedure.

If a board adopts an order requiring the use of cumulative voting, only the board member positions that were scheduled to be filled at the election are filled through the use of cumulative voting.

At an election at which more than one board member position is to be filled, all of the positions that are to be filled at the election shall be voted on as one race by all the voters of a district. Each voter is entitled to cast a number of votes equal to the number of positions to be filled at the election.

A voter may cast one or more of the specified number of votes for any one or more candidates in any combination. Only whole votes may be cast and counted. If a voter casts more than the number of votes to which the voter is entitled in the election, none of the voter's votes may be counted in that election. If a voter casts fewer votes than entitled, all of the voter's votes are counted in that election.

The candidates who are elected are those, in the number to be elected, receiving the highest number of votes.

A district that adopts an order requiring the use of cumulative voting may not elect its members by position as provided by Education Code 11.058.

Education Code 11.054

Majority

The board of a district in which the positions of trustees are designated by number or in which the trustees are elected from single-member districts may provide by resolution, not later than the 180th day before the date of an election, that a candidate must receive a majority of the votes cast for a position or in a trustee district, as applicable, to be elected.

The resolution is effective until rescinded by a subsequent resolution adopted not later than the 180th day before the date of the first election to which the rescission applies.

Education Code 11.057(c)

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Notice of Polling Place

Any written notice of a polling place location must state the building name, if any, and the street address, including the suite or room number, if any, of the polling place. *Election Code 1.021*

Election Order

The board shall order an election. An election to be held on a uniform election date shall be ordered not later than the 78th day before election day. *Election Code 3.004, .005*

Each election order must state:

1. The date of the election;
2. The offices or measures to be voted on;
3. The early voting clerk's official mailing address or street address at which the clerk may receive delivery by common or contract carrier, if different, phone number, email address, and internet website, if the early voting clerk has an internet website;
4. The location of the main early voting polling place;
5. The dates and hours for early voting; and
6. The dates and hours of any Saturday and Sunday early voting.

Election Code 3.006, 83.010, 85.004, .007

A board shall preserve the election order for the period for preserving the precinct election records. The date and nature of each election shall be entered in the official records of the board. For an election on a measure, the entry must include a description of the measure. *Election Code 3.008*

Failure to Order an Election

Failure to order a general election does not affect the validity of the election. *Election Code 3.007*

Election Notice

Contents

Notice of the election must state:

1. The nature and date of the election;
2. The location of each polling place;

3. The hours the polls will be open;

4. The internet website of the authority conducting the election;

5. The early voting clerk's official mailing address or street address at which the clerk may receive delivery by common or contract carrier, if different, phone number, email address, and internet website, if the early voting clerk has an internet website;

6. The location of the main early voting polling place; and

7. The dates and hours for early voting, including the dates and hours of any Saturday and Sunday early voting.

Election Code 4.004(a), 83.010, 85.004, .007

Notice of Special Election

The notice of a special election must also state each office to be filled or the proposition stating each measure to be voted on. *Election Code 4.004(b)*

Publication

Notice of the election shall be published at least once, not earlier than the 30th day or later than the tenth day before election day, in a newspaper published within the district's boundaries or in a newspaper of general circulation in the district if none is published within the district's boundaries. The board shall retain a copy of the published notice that contains the name of the newspaper and the date of publication. *Election Code 4.003(a)(1), (c), .005(a)*

Posting

In addition to the notice described above, not later than the 21st day before election day, a county shall post a copy of a notice of election provided to the county [see Notice to County Clerk and Voter Registrar, below], which must include the location of each polling place, on the county's internet website, if the county maintains a website. A district may post a copy of the notice on the bulletin board used for posting notices of the meetings of the board. If a county does not maintain a website, the district shall post a copy of the notice of the election on the bulletin board used for posting notice of meetings of the board. The notice must remain posted continuously through election day. The person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the board after the last posting is made. *Election Code 4.003(b), .005(b)*

A district that maintains a website must post the notice described above on the internet website of the district. *Election Code 85.007(d)*

Note: For additional website posting requirements regarding the date and location of the next election, see CQA.

Notice to County Clerk and Voter Registrar

The board shall deliver notice of the election, including the location of each polling place, to the county clerk and voter registrar of each county in which the district is located not later than the 60th day before election day. The county clerk shall post notice of the election, including the location of each polling place, on the county's internet website, if the county maintains a website, as provided by Election Code 4.003(b). *Election Code 4.008(a)* [See Posting, above]

Notice to Election Judge

Not later than the 15th day before election day or the seventh day after the date the election is ordered, whichever is later, the board shall deliver to the presiding judge of each election precinct in which the election is to be held in the district a written notice of:

1. The nature and date of the election;
2. The location of the polling place for the precinct served by the judge;
3. The hours that the polls will be open;
4. The judge's duty to hold the election in the precinct specified by the notice; and
5. The maximum number of clerks that the judge may appoint for the election.

Election Code 4.007

Failure to Give Notice of Election

Failure to give notice of a general election does not affect the validity of the election. *Election Code 4.006*

Internet Posting

Not later than the 21st day before election day, a district that holds an election and maintains an internet website shall post on the public internet website for the district:

1. The date of the next election;
2. The location of each polling place;
3. Each candidate for an elected office on the ballot; and
4. Each measure on the ballot.

Election Code 4.009(b)

Filing Information

Notice to Candidates

A district shall post notice of the dates of the filing period in a public place in a building in which the district has an office not later than the 30th day before the first day on which a candidate may file an application for a place on the ballot. A district shall designate an email address in the notice for the purpose of filing an application for a place on the ballot under Election Code 143.004, below. *Election Code 141.040*

Note: For additional website posting requirements regarding the requirements and deadline for filing for candidacy of board member, see CQA.

Application

To be entitled to a place on the ballot, a candidate must make an application for a place on the ballot. An application, other than an application required to be accompanied by fee, may be filed through email transmission of the completed application in a scanned format to the email address designated by the filing authority in the notice required under Election Code 141.040, above. *Election Code 143.004*

A candidate application for a place on the ballot must:

1. Be in writing;
2. Be signed and sworn to before a person authorized to administer an oath in this state by the candidate and indicate the date that the candidate swears to the application;
3. Be timely filed with the appropriate authority; and
4. Include all statutorily required information.

Election Code 141.031, .039

Deadline

An application for a place on the ballot may not be filed earlier than the 30th day before the date of the filing deadline.

An application must be filed not later than 5:00 p.m. of the 78th day before the date of the election for an election to be held on a uniform election date.

Education Code 11.055(a); Election Code 144.005(a), (d)

Death of Candidate

If a candidate dies on or before the deadline for filing an application for a place on the ballot:

1. The authority responsible for preparing the ballots may choose to omit the candidate from the ballot; and
2. If the authority omits the candidate's name under item 1, the filing deadline for an application for a place on the ballot for

the office sought by the candidate is extended until the fifth day after the filing deadline.

Election Code 145.098(b)

Write-in Candidate

A declaration of write-in candidacy must be filed not later than 5:00 p.m. of the 74th day before election day for an election to be held on a uniform election date. *Education Code 11.056(b); Election Code 146.054*

Special Election

An application for a place on a special election ballot may not be filed before the election is ordered.

An application must be filed not later than:

1. 5:00 p.m. of the 62nd day before election day if election day is on or after the 70th day after the election is ordered; or
2. 5:00 p.m. of the 40th day before election day if election day is on or after the 46th day and before the 70th day after the date the election is ordered.

Exception

For a special election to be held on the date of the general election for state and county officers (the first Tuesday after the first Monday in November in even-numbered years under Election Code 41.002), the day of the filing deadline is 6:00 p.m. of the 75th day before election day.

Write-in Candidate

A declaration of write-in candidacy for a special election must be filed not later than the filing deadline.

Election Code 201.054

Delivery or Submission of Documents

When the Election Code provides for the delivery, submission, or filing of an application, notice, report, or other document or paper with an authority having administrative responsibility under that code, a delivery, submission, or filing with an employee of the district at the district's usual place for conducting official business constitutes filing with the district. The district may accept the document or paper at a place other than the district's usual place for conducting official business.

A delivery, submission, or filing of a document or paper under the Election Code may be made by personal delivery, mail, telephonic facsimile machine, email, or any other method of transmission.

Election Code 1.007

Election of Unopposed Candidate

Certification of Unopposed Status

The authority responsible for having the official ballot prepared shall certify in writing that a candidate is unopposed for election to an office if, were the election held, only the votes cast for that candidate in the election for that office may be counted. The certification shall be delivered to the board as soon as possible after the filing deadlines for placement on the ballot and list of write-in candidates.

A certification may be made following the filing of a withdrawal request by a candidate after the deadline prescribed by Election Code 145.092 if:

1. The withdrawal request is valid except for the untimely filing;
2. Ballots have not been prepared; and
3. The other conditions for certification are met.

A certification under these circumstances shall be delivered to the board as soon as possible.

Election Code 2.052

Special Election

For purposes of these provisions, a special election of a district is considered to be a separate election with a separate ballot from a general election for board members or another special election of the district held at the same time. *Election Code 2.051(a)*

Single-Member Districts

In the case of an election in which any members of the board are elected from single-member districts, these provisions apply to the election in a particular single-member district if each candidate for an office that is to appear on the ballot in that single-member district is unopposed and no opposed at-large race is to appear on the ballot. These provisions apply to an unopposed at-large race in such an election regardless of whether an opposed race is to appear on the ballot in a particular territorial unit. *Election Code 2.051(b)*

Action on Certification

On receipt of the certification, the board by order or ordinance shall declare each unopposed candidate elected to office. If a declaration is made, the election is not held.

If no election is to be held on election day by the district, a copy of the order or ordinance shall be posted on election day at each polling place used or that would have been used in the election.

The ballots used at a separate election held at the same time as an election that would have been held if the candidates were not declared elected shall include the offices and names of the candidates declared elected listed separately after the measures or contested races in the separate election under the heading

"Unopposed Candidates Declared Elected." The candidates shall be grouped in the same relative order prescribed for the ballot generally. No votes are cast in connection with the unopposed candidates.

Election Code 2.053

[See BBBB regarding issuance of a certificate of election to an unopposed candidate declared elected and qualification for office.]

Ballot

The ballot shall be prepared in accordance with Election Code Chapter 52.

Drawing

The district shall conduct a drawing to determine the order of the candidates' names in an election at which the names of more than one candidate for the same office are to appear on the ballot. The district shall post in the district's office a notice of the date, hour, and place of the drawing. The notice must remain posted continuously for 72 hours immediately preceding the scheduled time of the drawing. The district shall provide notice of the date, hour, and place of the drawing to each candidate by:

1. Written notice:
    a. Mailed to the address stated on the candidate's application for a place on the ballot, not later than the fourth day before the date of the drawing; or
    b. Provided at the time the candidate files an application with the district;
2. Telephone, if a telephone number is provided on the candidate's application for a place on the ballot; or
3. Email, if an email address is provided on the candidate's application for a place on the ballot.

Each candidate affected by a drawing is entitled to be present or have a representative present at the drawing.

Election Code 52.093–.094 [See BBBB regarding ballot order in a runoff election or election to resolve a tie.]

Ballots for an election by position must clearly show the position for which each person is a candidate. A board shall arrange by lot the names of the candidates for each position. *Education Code 11.058(g)*

Election Services Contract

The county election officer, as defined by Election Code 31.091(1), may contract with the board of a district situated wholly or partly in the county served by the officer to perform election services, as

provided by Election Code Chapter 31, Subchapter D, in any one or more elections ordered by the board.

If requested to do so by a district, the county elections administrator, as defined under Election Code Chapter 31, Subchapter B, shall enter into a contract to furnish the election services requested in accordance with a cost schedule agreed on by the contracting parties. A county elections administrator is not required to enter into a contract to furnish elections services for an election held on the first Saturday in May in an even-numbered year.

Election Code 31.092, .093, 41.001(d)

Election Judges and Clerks

By written order, a board shall appoint a presiding election judge and an alternate presiding judge for each election precinct in which an election is held. A board shall prescribe the maximum number of clerks that each presiding judge may appoint for each election. The judges and clerks shall be selected and serve in accordance with Election Code Chapter 32. *Election Code 32.001(a), .008, .033*

Polling Places

A board shall designate polling places for election day and early voting. Each polling place shall be accessible to and usable by the elderly and persons with physical disabilities. *Election Code 43.004, .034, Ch. 85 (early voting by personal appearance)*

In an election held on the November uniform election date, a district shall use the regular county election precincts. The district shall designate as the polling places for the election the regular county polling places in the county election precincts that contain territory from the district. *Election Code 42.002(a)(5), .0621, 43.004(b)*

Electioneering

A person commits an offense if, during the voting period and within 100 feet of an outside door through which a voter may enter the building in which a polling place is located, the person loiters or electioneers for or against any candidate, measure, or political party.

A district that owns or controls a public building being used as a polling place or early voting polling place may not, at any time during the voting period or early voting period, as applicable, prohibit electioneering on the building's premises outside of the area described above, but may enact reasonable regulations concerning the time, place, and manner of electioneering.

Definitions

"Electioneering" includes the posting, use, or distribution of political signs or literature. The term does not include the distribution of a notice of a party convention authorized under Election Code 172.1114.

"Voting period" means the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later.

"Early voting period" means the period prescribed by Election Code 85.001.

Election Code 61.003, 85.036

Early Voting

In each election, early voting shall be conducted by personal appearance at an early voting polling place and by mail, in accordance with Election Code Title 7, Chapters 81–114. *Election Code 81.001*

November Early Voting Polling Places

In an election on the November uniform election date in which the district is not holding a joint election with a county and has not executed a contract with a county elections officer under which the district and the county share early voting polling places, the district:

1. Shall designate as an early voting polling place for the election an eligible county polling place located in the district; and
2. May not designate as an early voting polling place a location other than an eligible county polling place unless each eligible county polling place located in the district is designated as an early voting polling place by the district.

"Eligible county polling place" means an early voting polling place established by a county.

Election Code 85.010(a), (a-1), (b)

Temporary Branch Days and Hours

County with 100,000 or More

Election Code 85.064 applies only to an election in which the territory served by the early voting clerk is situated in a county with a population of 100,000 or more. In an election in which the territory served by the clerk is situated in more than one county, that section applies if the sum of the populations of the counties is 100,000 or more.

Early voting by personal appearance at each temporary branch polling place shall be conducted on the days that voting is required to be conducted at the main early voting polling place under Election Code 85.005 and remain open for at least:

1. Eight hours each day; or
2. Three hours each day if the city or county clerk does not serve as the early voting clerk for the territory holding the election and the territory has fewer than 1,000 registered voters.

The authority authorized under Election Code 85.006 to order early voting on a Saturday or Sunday may also order, in the manner prescribed by that section, early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places.

Election Code 85.064

County with Less than 100,000

Election Code 85.065 applies only to an election in which the territory served by the early voting clerk is situated in a county with a population under 100,000. In an election in which the territory served by the clerk is situated in more than one county, this section applies if the sum of the populations of the counties is under 100,000.

Except as provided below, voting at a temporary branch polling place may be conducted on any days and during any hours of the period for early voting by personal appearance, as determined by the authority establishing the branch. The authority authorized under Election Code 85.006 to order early voting on a Saturday or Sunday may also order, in the manner prescribed by that section, early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places.

Voting at a temporary branch polling place must be conducted on at least two consecutive business days and for at least eight consecutive hours on each of those days.

The schedules for conducting voting are not required to be uniform among the temporary branch polling places.

Election Code 85.065

Records

Branch Daily Register

The early voting clerk shall provide, in a downloadable database format, a current copy of the register for posting on the internet website of the district, if the district maintains a website, each day early voting is conducted. At a minimum, the voter registration number for each voter listed in the register must be posted. *Election Code 85.072*

Early Voting Rosters

The early voting clerk shall maintain for each election a roster listing each person who votes an early voting ballot by personal appearance and a roster listing each person to whom an early voting ballot to be voted by mail is sent. Information on the roster for a person who votes an early voting ballot by personal appearance shall be made available for public inspection as provided below not later than 11 a.m. on the day after the date the information is entered on the roster. Information on the roster for a person who votes an early voting ballot by mail shall be made available for public inspection as provided below not later than 11 a.m. on the day

following the day the early voting clerk receives any ballot voted by mail.

The information must be made available:

1. For an election in which the county clerk is the early voting clerk:
    a. On the publicly accessible internet website of the county; or
    b. If the county does not maintain a website, on the bulletin board used for posting notice of meetings of the commissioners court; or
2. For an election not described by item 1:
    a. On the publicly accessible internet website of the district; or
    b. If the district does not maintain a website, on the bulletin board used for posting notice of board meetings.

Election Code 87.121(a), (g)–(i)

Conducting Elections

Elections shall be conducted in accordance with Election Code Title 6, Chapters 61–68.

Bilingual Materials

Spanish

Bilingual election materials shall be used in each election precinct situated wholly or partly in a county in which five percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census that may be officially recognized or acted upon by the state or political subdivisions. *Election Code 272.002*

Other Languages

If the director of the census determines that a district must provide election materials in a language other than English or Spanish, the district shall provide election materials in that language in the same manner in which the district would be required to provide materials in Spanish, to the extent applicable. *Election Code 272.011; 52 U.S.C. 10503*

Voting Systems

A voting system shall be adopted and utilized in accordance with Election Code Title 8.

Accessible Voting Stations

Except as provided below, each polling place must provide at least one voting station that complies with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments, Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments, and the requirements for accessibility under 52 U.S.C. Section

21081(a)(3) [formerly 42 U.S.C. Section 15481(a)(3)] and its subsequent amendments, and that provides a practical and effective means for voters with physical disabilities to cast a secret ballot. *Election Code 61.012*

Electronic Voting System Exceptions

For an election other than an election of a district that is held jointly with another election in which a federal office appears on the ballot, a district is not required to meet the requirements for accessibility under Election Code 61.012(a)(1)(C) if the district is located in a county that meets certain population and other requirements set forth in Election Code 61.013(a). A district that intends to use this provision to provide fewer voting stations that meet the requirements for accessibility than required must provide notice under Election Code 61.013(d). *Election Code 61.013*

Unless authorized by the board, a member of the board may not, individually, act on behalf of the board. *Education Code 11.051(a-1)* [See BE regarding action by a majority of the board]

Access to Information

When acting in the member's official capacity, a board member has an inherent right of access to information, documents, and records maintained by the district.

"Official capacity" means all duties of office and includes administrative decisions or actions.

The district shall provide the information, documents, and records to the board member without requiring the board member to submit a public information request under Government Code Chapter 552 (Public Information Act) and without regard to whether the requested items are the subject of or relate to an item listed on an agenda for an upcoming meeting.

A district shall provide a board member with information, documents, and records requested not later than the 20th business day after the date the district receives the request. The district may take a reasonable additional period of time, not to exceed the 30th business day after the date the district receives the request, to respond to a request if compliance by the 20th business day would be unduly burdensome given the amount, age, or location of the requested information. The district shall inform the board member of the reason for the delay and the date by which the information will be provided.

If a district does not provide requested information to a board member in the time required, the member may bring suit against the district for appropriate injunctive relief. A member who prevails in a suit is entitled to recover court costs and reasonable attorney's fees. The district shall pay the costs and fees from the budget of the superintendent's office.

Confidential Information

The district may withhold or redact information, a document, or a record requested by a board member to the extent that the item is excepted from disclosure or is confidential under the Public Information Act or other law [see GBA].

A board member shall maintain the confidentiality of information, documents, and records received from the district as required by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g) and any other applicable privacy laws. [See FL]

Report of Requests

A district shall post, in a place convenient to the public, the cost of responding to one or more requests submitted by a board member under Education Code 11.1512(c) if the requests are for 200 or more pages of material in a 90-day period.

A district shall report annually to the Texas Education Agency not later than September 1 of each year:

1. The number of requests submitted by a board member under Education Code 11.1512(c) during the preceding school year; and
2. The total cost to the district for that school year of responding to the requests.

Education Code 11.1512(c)–(f)

Access to Student Records

Personally identifiable information in education records may be released, without the written consent of the student's parents, only to a school official who has a legitimate educational interest in the education records. *34 C.F.R. 99.31* [See FL]

Offenses Regarding Records and Information

A person commits an offense if the person:

1. Willfully destroys, mutilates, removes without permission as provided by Government Code Chapter 552 (Public Information Act), or alters public information; or
2. Distributes information considered confidential under the terms of Government Code Chapter 552.

Gov't Code 552.351, .352

[For information regarding the offenses of destruction or alienation of record and tampering with governmental record, see CPC(LEGAL). For information regarding misuse of official information, see BBFB(LEGAL).]

Visits to District Facility

A district shall create a policy on visits to a district campus or facility by a member of the board. *Education Code 11.1512(g)*

Protections for Legislative Activity

A local officer, including a school board member, may not be subject to disciplinary action or a sanction, penalty, disability, or liability for:

1. An action permitted by law that the officer takes in the officer's official capacity regarding a legislative measure;
2. Proposing, endorsing, or expressing support for or opposition to a legislative measure or taking any action permitted by law to support or oppose a legislative measure;
3. The effect of a legislative measure or of a change in law proposed by a legislative measure on any person; or
4. A breach of duty, in connection with the board member's practice of or employment in a licensed or regulated profession or

occupation, to disclose to any person information, or to obtain a waiver or consent from any person, regarding the officer's actions relating to a legislative measure; or the substance, effects, or potential effects of a legislative measure.

Gov't Code 572.059

Board Member Immunities

The statutory immunity detailed below is in addition to and does not preempt the common law doctrine of official and governmental immunity. *Education Code 22.051(b)*

State Law Immunities

A board member is not personally liable for any act that is incident to or within the scope of the duties of the board member's position and that involves the exercise of judgment or discretion. *Education Code 22.0511(a)*

Federal Law Immunities

Except as provided in 20 U.S.C. Section 7946(b), no board member shall be liable for harm caused by an act or omission of the board member on behalf of a district if the conditions of the Paul D. Coverdell Teacher Protection Act of 2001 are met. *20 U.S.C. 7943, 7946(a)* [See also DGC]

Board members serve without compensation. *Education Code 11.061(d)*

Members' Expenses

Local funds and state funds not designated for a specific purpose may be used for purposes necessary in the conduct of the public schools determined by the board. Reimbursement of travel expenses for school board members is not illegal if the reimbursement is determined to be necessary in the conduct of the school and to serve a proper public purpose. *Education Code 45.105(c); Atty. Gen. Op. H-133 (1973)*

Nonmembers' Expenses

A board may not pay the travel expenses of spouses and other persons who have no responsibilities or duties to perform for the board when they accompany board members to board-related activities. *Atty. Gen. Op. MW-93 (1979)*

Travel Services

An officer or employee of a district who is engaged in official business may participate in the comptroller's contract for travel services. *Gov't Code 2171.055(f); 34 TAC 20.406(b)(2)(F)*

Note: For guidance regarding board member expense reimbursement and income tax issues, see the *TEA Financial Accountability System Resource Guide*, Section 1.7.4.7 Employee or Board Member Travel and Business Expenses.

Note: For employee and student use of district technology resources, see CQ.

Public Information on Private Device

A current or former board member or employee of a district who maintains public information on a privately owned device shall:

1. Forward or transfer the public information to the district or a district server to be preserved as provided by Government Code 552.004(a); or
2. Preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under Government Code 552.004(a).

Gov't Code 552.004(b) [See GB]

Online Message Board

A communication or exchange of information between board members about public business or public policy over which the board has supervision or control does not constitute a meeting or deliberation for purposes of Government Code Chapter 551 (Open Meetings Act) if:

1. The communication is in writing;
2. The writing is posted to an online message board or similar internet application that is viewable and searchable by the public; and
3. The communication is displayed in real time and displayed on the online message board or similar internet application for no less than 30 days after the communication is first posted.

A board may have no more than one online message board or similar internet application to be used for the purposes described above. The online message board or similar internet application must be owned or controlled by the board, prominently displayed on the district's primary internet web page, and no more than one click away from the district's primary internet web page.

The online message board or similar internet application may only be used by members of the board or district staff members who have received specific authorization from a member of the board. In the event that a staff member posts a communication to the online message board or similar internet application, the name and title of the staff member must be posted along with the communication.

If a 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 Government Code Chapter 552 (Public Information Act).

The board may not vote or take any action that is required to be taken at a meeting under the Open Meetings Act by posting a communication to the online message board or similar internet application. In no event shall a communication or posting to the online message board or similar internet application be construed to be an action of the board.

Gov't Code 551.006

Selection of Officers

At the first meeting after each election and qualification of trustees, the members shall organize by selecting:

1. A president, who must be a member of the board.
2. A secretary, who may or may not be a member of the board.
3. Other officers and committees the board considers necessary.

Education Code 11.061(c)

Reorganization

In addition to the required post-election organization, a board may also organize at other times. *Atty. Gen. Op. MW-531 (1982)*

Duties/Powers of Board President

The duties and powers of the president of a board include, but are not limited to, the following:

1. Call a meeting of the board for the purpose of adopting a budget and provide for the publication of notice of the budget and proposed tax rate meeting under Education Code 44.004. [See CE and CCG]
2. Submit the annual financial statement to a newspaper for publication under Local Government Code 140.006. [See CFA]
3. Execute a mineral deed or lease under Education Code 11.153. [See CDB]
4. Execute the deed for the sale of property, other than minerals, held in trust for public school purposes under Education Code 11.154(b). [See CDB]

Government Code Chapter 551 (Open Meetings Act) applies to board committee meetings if:

1. At least a quorum of the board is on the committee;
2. A quorum of the board is present at the committee meeting, even though less than a quorum is actually on the committee; or
3. Less than a quorum of the board is on the committee, but the committee is authorized to make final decisions or control or supervise public business.

A committee that includes less than a quorum of board members is not subject to the Open Meetings Act if it serves a purely advisory function, with no power to supervise or control public business.

Atty. Gen. Op. Nos. GA-0957 (2012), JC-0060 (1999), JH-0994 (1977); Willmann v. City of San Antonio, 123 S.W.3d 469 (Tex. App.—San Antonio 2003, pet. denied) [See BE]

Majority Vote

The board may act only by majority vote of the members present at a meeting held in compliance with Government Code Chapter 551 (Open Meetings Act), at which a quorum of the board is present and voting. A majority vote is generally determined from a majority of those present and voting, excluding abstentions, assuming a quorum is present. *Education Code 11.051(a-1); Atty. Gen. Op. GA-689 (2009)*

No Secret Ballot

No vote shall be taken by secret ballot. *Atty. Gen. Op. JH-1163 (1978)*

Definitions

Deliberation

"Deliberation" means a verbal or written exchange between a quorum of a board, or between a quorum of a board and another person, concerning an issue within the jurisdiction of the board. *Gov't Code 551.001(2)*

Meeting

"Meeting" means:

1. A deliberation between a quorum of a board, or between a quorum of the board and another person, during which public business or public policy over which the board has supervision or control is discussed or considered, or during which the board takes formal action; or
2. Except as otherwise provided below, a gathering:
    a. That is conducted by the board or for which the board is responsible;
    b. At which a quorum of members of the board is present;
    c. That has been called by the board; and
    d. At which board members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the district, about the public business or public policy over which the board has supervision or control.

Gov't Code 551.001(4)

Exceptions to Meeting

Social Function, Convention, or Candidate Event

The term does not include the gathering of a quorum of a board at a social function unrelated to the public business that is conducted by the board, the attendance by a quorum of a board at a regional, state, or national convention or workshop, ceremonial event, or press conference, or the attendance by a quorum of a board at a candidate forum, appearance, or debate to inform the electorate, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, press conference, forum, appearance, or debate. *Gov't Code 551.001(4)*

Legislative Committee or Agency Meeting

The attendance by a quorum of a board at a meeting of a committee or agency of the legislature is not considered to be a meeting of the board if the deliberations at the meeting by the board members consist only of publicly testifying, publicly commenting, and publicly responding to a question asked by a member of the legislative committee or agency. *Gov't Code 551.0035(b)*

Online Message Board

For information on communications posted to an online message board, see BBI.

Quorum

"Quorum" means a majority of the number of members fixed by statute. *Gov't Code 551.001(6); 311.013(b)*

Disaster Exception

Notwithstanding any other law, a quorum is not required for the board to act if:

1. The district's jurisdiction is wholly or partly located in the area of a disaster declared by the president of the United States or the governor; and
2. A majority of the members of the board are unable to be present at a board meeting as a result of the disaster.

Gov't Code 418.1102

Recording

"Recording" means a tangible medium on which audio or a combination of audio and video is recorded, including a disc, tape, wire, film, electronic storage drive, or other medium now existing or later developed. *Gov't Code 551.001(7)*

Videoconference Call

"Videoconference call" means a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through duplex audio and video signals transmitted over a telephone network, a data network, or the internet. *Gov't Code 551.001(8)*

Prohibited Series of Communications

A board member commits an offense if the member:

1. Knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by Government Code Chapter 551 and that concern an issue within the jurisdiction of the board in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and
2. Knew at the time the member engaged in the communication that the series of communications:
    a. Involved or would involve a quorum; and

b. Would constitute a deliberation once a quorum of members engaged in the series of communications.

Gov't Code 551.143

Superintendent Participation

The board shall provide the superintendent an opportunity to present at a meeting an oral or written recommendation to the board on any item that is voted on by the board at the meeting. *Education Code 11.051(a-1)*

Access to Board Meetings

Open to Public

Every regular, special, or called meeting of a board shall be open to the public, except as provided by Government Code Chapter 551. *Gov't Code 551.002* [See BEC for exceptions for closed meetings.]

Parental Access

A parent is entitled to complete access to any meeting of the board, other than a closed meeting held in compliance with Government Code Chapter 551, Subchapters D and E. *Education Code 26.007(a)*

Exclusion of Witnesses

A board that is investigating a matter may exclude a witness from a hearing during the examination of another witness in the investigation. *Gov't Code 551.084*

Location

A board must hold each public meeting within the boundaries of the district, except:

1. As required by law; or
2. To hold a joint meeting with another district or with another governmental entity, as defined by Government Code 2051.041, if the boundaries of the governmental entity are in whole or in part within the boundaries of the district.

Education Code 26.007(b)

Required Meeting Records

Minutes or Recording

A board shall prepare and keep minutes or make a recording of each open meeting. The minutes must state the subject matter of each deliberation and indicate each vote, order, decision, or other action taken. *Gov't Code 551.021*

Board Member Attendance

The minutes, certified agenda, or recording, as applicable, of a regular or special meeting of the board must reflect each member's attendance at or absence from the meeting. *Education Code 11.0621*

Availability

The minutes and recordings of an open meeting are public records and shall be available for public inspection and copying on request to the superintendent or designee. *Gov't Code 551.022; Education Code 11.0621*

Note: For website posting requirements regarding the record of a board meeting, see CQA.

Notice Required

A board shall give written notice of the date, hour, place, and subject of each meeting held by the board. *Gov't Code 551.041*

Continued Meeting

Government Code 551.041, above, does not require a board that recesses an open meeting to the following regular business day to post notice of the continued meeting if the action is taken in good faith and not to circumvent Government Code Chapter 551. If an open meeting is continued to the following regular business day and, on that following day, the board continues the meeting to another day, the board must give the required written notice of the meeting continued to that other day. *Gov't Code 551.0411(a)*

Inquiry During Meeting

If, at a meeting of a board, a member of the public or of the board inquires about a subject for which notice has not been given, the notice provisions do not apply to a statement of specific factual information given in response to the inquiry or a recitation of existing policy in response to the inquiry. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting. *Gov't Code 551.042*

Time and Accessibility of Notice

The notice of a meeting of a board must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting, except as provided at Emergency Meeting or Emergency Addition to Agenda, below. A district shall post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the district. *Gov't Code 551.043(a), .051*

If a district is required to post notice of a meeting on the internet:

1. The district satisfies the requirement that the notice must be posted in a place readily accessible to the general public at all times by making a good-faith attempt to continuously post the notice on the internet during the prescribed period;
2. The district must still comply with any duty imposed by Government Code Chapter 551 to physically post the notice at a particular location; and
3. If the district makes a good-faith attempt to continuously post the notice on the internet during the prescribed period, the notice physically posted must be readily accessible to the general public during normal business hours.

Gov't Code 551.043(b)

Internet Posting—Notice

If a district maintains an internet website, in addition to the other place at which notice is required to be posted, a board must also concurrently post notice of a meeting on the internet website.

A district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more must also concurrently post the agenda for the board meeting on the district's internet website.

The validity of a posted notice of a meeting or an agenda by a board subject to these provisions that made a good-faith attempt to comply with these requirements is not affected by a failure to comply that is due to a technical problem beyond the control of the district.

Gov't Code 551.056

[See CQA for other website posting requirements.]

Specificity of Agenda/Notice

Agendas for all meetings must be sufficiently specific to inform the public of the subjects to be discussed at the meeting, setting out any special matters to be considered or any matter in which the public has a particular interest. *Cox Enterprises, Inc. v. Austin Indep. Sch. Dist., 706 S.W.2d 956 (Tex. 1986); Point Isabel Indep. Sch. Dist. v. Hinojosa, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied); Atty. Gen. Op. JH-1045 (1977)*

Emergency Meeting or Emergency Addition to Agenda

In an emergency or when there is an urgent public necessity, the notice of a meeting to deliberate or take action on the emergency or urgent public necessity, or the supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda for a meeting for which notice has been posted in accordance with Government Code Chapter 551, Subchapter C, is sufficient if the notice or supplemental notice is posted for at least one hour before the meeting is convened.

A board may not deliberate or take action on a matter at a meeting for which notice or supplemental notice is posted as described above other than:

1. A matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting; or
2. An agenda item listed on a notice of the meeting before the supplemental notice was posted.

An emergency or urgent public necessity exists only if immediate action is required of a board because of:

1. An imminent threat to public health and safety, including a threat described in item 2, below, if imminent; or
2. A reasonably unforeseeable situation, including:
    a. Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
    b. Power failure, transportation failure, or interruption of communication facilities;
    c. Epidemic; or
    d. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

The board shall clearly identify the emergency or urgent public necessity in the notice of an emergency meeting or supplemental notice.

The sudden relocation of a large number of residents from the area of a declared disaster to a district's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation.

Gov't Code 551.045

Catastrophe

A board that is prevented from convening an open meeting that was otherwise properly posted under Government Code 551.041 because of a catastrophe may convene the meeting in a convenient location within 72 hours pursuant to Government Code 551.045 if the action is taken in good faith and not to circumvent Government Code Chapter 551. If the board is unable to convene the open meeting within those 72 hours, the board may subsequently convene the meeting only if the board gives the required written notice of the meeting.

"Catastrophe" means a condition or occurrence that interferes physically with the ability of a board to conduct a meeting, including:

1. Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
2. Power failure, transportation failure, or interruption of communication facilities;
3. Epidemic; or

4. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

Gov't Code 551.0411(b), (c)

Special Notice to News Media

A district shall provide special notice of each meeting to any news media that has requested special notice and agreed to reimburse the district for the cost of providing the special notice. The notice shall be by telephone, facsimile transmission, or electronic mail. *Gov't Code 551.052*

The board president or board member who calls an emergency meeting or adds an emergency item to the agenda of a board meeting shall notify the news media of the emergency meeting or emergency item. The president or member is required to notify only those members of the news media that have previously filed a request containing all pertinent information for the special notice and agreed to reimburse the board for the cost of providing the special notice. The president or member shall give the notice by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened. *Gov't Code 551.047*

Meeting by Telephone Conference Call

A board may hold a meeting by telephone conference call only if an emergency or public necessity exists within the meaning of Government Code 551.045 and the convening at one location of a quorum of the board is difficult or impossible, or if the meeting is held by an advisory board.

Technical Requirements and Recording

Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be recorded. The recording shall be made available to the public.

The location designated in the notice as the location of the meeting shall provide two-way communication during the entire telephone conference call meeting and the identification of each party to the telephone conference shall be clearly stated prior to speaking.

Notice of Location

The telephone conference call meeting is subject to the notice requirements applicable to other meetings. The notice must specify as the location of the meeting the location where meetings of the board are usually held.

Gov't Code 551.125

Meeting by Videoconference Call

A board member or district employee may participate remotely in a board meeting by means of a videoconference call if the video and audio feed of the board member's or employee's participation, as applicable, is broadcast live at the meeting and complies with the

provisions below. A board member who participates by videoconference call shall be counted as present at the meeting for all purposes. A board member who participates in a meeting by video conference call shall be considered absent from any portion of the meeting during which audio or video communication with the member is lost or disconnected. The board may continue the meeting only if a quorum remains present at the meeting location or, if applicable, continues to participate in a meeting conducted as specified at Multiple Counties, below. *Gov't Code 551.127(a-1)–(a-3)*

Quorum in One Location

A meeting may be held by videoconference call only if a quorum of the board is physically present at one location of the meeting, except as provided at Multiple Counties, below.

Multiple Counties

A meeting of a board of a district that extends into three or more counties may be held by videoconference call only if the board member presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.

Additional Notice Requirements

A meeting held by videoconference call is subject to the notice requirements applicable to other meetings in addition to the notice requirements applicable to meetings by videoconference call.

The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum of the board will be physically present and specify the intent to have a quorum present at that location, except that the notice of a meeting held by videoconference call described above at Multiple Counties must specify as a location of the meeting the location where the board member presiding over the meeting will be physically present and specify the intent to have that member present at that location.

Gov't Code 551.127(b)–(e)

Quality of Audio and Video Signals

Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at the location specified in the notice. If a problem occurs that causes a meeting to no longer be visible and audible to the public at that location, the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

The location specified in the notice, and each remote location from which a member of the board participates, shall have two-way audio and video communication with each other location during the entire meeting. The face of each participant in the videoconference call, while that participant is speaking, shall be clearly visible, and

the voice audible, to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the physical location described by the notice and at any other location of the meeting that is open to the public.

The quality of the audio and video signals perceptible at each location of the meeting must meet or exceed standards specified by the Department of Information Resources. The audio and video signals perceptible by members of the public at the location of the meeting described by the notice and at each remote location from which a member participates must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

Gov't Code 551.127(f), (h)–(j); 1 TAC 209.10–.11

Recording

The board shall make at least an audio recording of the meeting. The recording shall be made available to the public.

Remote Participation by the Public

Without regard to whether a member of the board is participating in a meeting from a remote location by videoconference call, a board may allow a member of the public to testify at a meeting from a remote location by videoconference call.

Gov't Code 551.127(g), (k)

Internet Broadcast

Except as provided by Government Code 551.128(b-1), below, and subject to the requirements at Video and Audio Recording of Meeting, below, a board may broadcast an open meeting over the internet.

Except as provided by Government Code 551.128(b-2) [see Existing Website, below], a board that broadcasts a meeting over the internet shall establish an internet site and provide access to the broadcast from that site. The board shall provide on the internet site the same notice of the meeting that the board is required to post under Government Code Chapter 551, Subchapter C. The notice on the internet must be posted within the time required for posting notice under Subchapter C.

Gov't Code 551.128(b), (c)

Note: The provisions at Video and Audio Recording of Meeting apply to a board for a district that has a student enrollment of 10,000 or more.

Video and Audio Recording of Meeting

A board shall:

Required Recording

1. Make a video and audio recording of reasonable quality of each:
   a. Regularly scheduled open meeting that is not a work session or a special called meeting; and
   b. Open meeting that is a work session or special called meeting at which the board votes on any matter or allows public comment or testimony [see BED for requirements regarding public testimony]; and
2. Make available an archived copy of the video and audio recording of each meeting described in item 1.

Internet Posting—Recordings

A board shall:

1. Make the archived recording of each meeting to which these provisions apply available on the internet not later than seven days after the date the recording was made; and
2. Maintain the archived recording on the internet for not less than two years after the date the recording was first made available.

Existing Website

A board may make available the required archived recording on an existing internet site, including a publicly accessible video-sharing or social networking site. The board is not required to establish a separate internet site and provide access to archived recordings of meetings from that site.

District Website

A district that maintains an internet site shall make available on that site, in a conspicuous manner, the archived recording of each meeting or an accessible link to the archived recording of each such meeting.

Exemption

A board is exempt from the internet posting requirements if the board's failure to make the required recording of a meeting available is the result of a catastrophe, as defined by Government Code 551.0411 [see Catastrophe, above], or a technical breakdown. Following a catastrophe or breakdown, a board must make all reasonable efforts to make the required recording available in a timely manner.

Television Broadcast

A board may broadcast a regularly scheduled open meeting on television.

Gov't Code 551.128(b-1)–(b-6)

Recording by Attendee

A person in attendance may record all or any part of an open meeting of a board by means of a recorder, video camera, or other means of aural or visual reproduction. A board may adopt reasonable rules to maintain order at a meeting, including rules relating to the location of recording equipment and the manner in which the recording is conducted. A rule adopted under this provision may not prevent or unreasonably impair a person from exercising a right granted under this provision. *Gov't Code 551.023*

Attorney Consultation

A board may use a telephone conference call, videoconference call, or communications over the internet to conduct a public consultation with its attorney in an open meeting of the board or a private consultation with its attorney in a closed meeting of the board. [See BEC]

Each part of a public consultation by a board with its attorney in an open meeting must be audible to the public at the location specified in the notice of the meeting as the location of the meeting.

These provisions do not authorize the members of a board to conduct a meeting of the board by telephone conference call, video conference call, or communications over the internet; or create an exception to the application of Government Code Chapter 551, Subchapter F (meetings using telephone, videoconference, or internet).

Exception

These provisions do not apply to a consultation with an attorney who is an employee of a district. An attorney who receives compensation for legal services performed, from which employment taxes are deducted by the district, is an employee of the district.

Gov't Code 551.129

Persons with Hearing Impairments

In a proceeding before a board in which the legal rights, duties, or privileges of a party are to be determined by the board after an adjudicative hearing, the board shall supply for a party who is deaf or hearing impaired an interpreter who has qualifications approved by the Texas Commission for the Deaf and Hard of Hearing.

"Deaf or hearing impaired" means having a hearing impairment, regardless of the existence of a speech impairment, that inhibits comprehension of an examination or proceeding, or communication with others.

Gov't Code 558.001, .003

Planning and Decision-Making Process

A board shall adopt a policy to establish a district- and campus-level planning and decision-making process that will involve the professional staff of a district, parents of students enrolled in a district, business representatives, and community members in establishing and reviewing the district's and campuses' educational plans, goals, performance objectives, and major classroom instructional programs. *Education Code 11.251(b)*

The planning and decision-making requirements do not:

1. Prohibit a board from conducting meetings with teachers or groups of teachers other than the district-level committee meetings.
2. Prohibit a board from establishing policies providing avenues for input from others, including students or paraprofessional staff, in district- or campus-level planning and decision making.
3. Limit or affect the power of a board to govern the public schools.
4. Create a new cause of action or require collective bargaining.

Education Code 11.251(g)

Evaluation

At least every two years, a district shall evaluate the effectiveness of the district's decision-making and planning policies, procedures, and staff development activities related to district- and campus-level decision making and planning to ensure that they are effectively structured to positively impact student performance. *Education Code 11.252(d)*

Administrative Procedure

A board shall ensure that an administrative procedure is provided to clearly define the respective roles and responsibilities of the superintendent, central office staff, principals, teachers, district-level committee members, and campus-level committee members in the areas of planning, budgeting, curriculum, staffing patterns, staff development, and school organization.

A board shall ensure that the district-level planning and decision-making committee will be actively involved in establishing the administrative procedure that defines the respective roles and responsibilities pertaining to planning and decision making at the district and campus levels.

Education Code 11.251(d)

Federal Requirements

The district policy must provide that all pertinent federal planning requirements are addressed through the district- and campus-level planning process. *Education Code 11.251(f)*

Required Plans

A board shall ensure that a district improvement plan and improvement plans for each campus are developed, reviewed, and revised annually for the purpose of improving the performance of all students. A board shall annually approve district and campus performance objectives and shall ensure that the district and campus plans:

1. Are mutually supportive to accomplish the identified objectives; and
2. At a minimum, support the state goals and objectives under Education Code Chapter 4.

Education Code 11.251(a)

Shared Services Arrangement for DAEP Services

Each district participating in a shared services arrangement for disciplinary alternative education program (DAEP) services shall be responsible for ensuring that the board-approved district improvement plan and the improvement plans for each campus include the performance of the DAEP student group for the respective district. The identified objectives for the improvement plans shall include:

1. Student groups served, including overrepresentation of students from economically disadvantaged families, with ethnic and racial representations, with a disability who receive special education services, or receiving limited English proficiency/English learner services;
2. Attendance rates;
3. Pre- and post-assessment results;
4. Dropout rates;
5. Graduation rates; and
6. Recidivism rates.

19 TAC 103.1201(b) [See FOCA]

District Improvement Plan

A district shall have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the superintendent with the assistance of the district-level committee. The purpose of the district improvement plan is to guide district and campus staff in the improvement of student performance for all student groups in order to attain state standards in respect to the achievement indicators. *Education Code 11.252(a)* [See AIA]

Availability to TEA

A district's plan for the improvement of student performance is not filed with the Texas Education Agency (TEA), but the district must make the plan available to TEA on request. *Education Code 11.252(b)*

Required Provisions

The district improvement plan must include provisions for:

1. A comprehensive needs assessment addressing performance on the achievement indicators, and other appropriate measures of performance, that are disaggregated by all student groups served by a district, including categories of ethnicity, socioeconomic status, sex, and populations served by special programs, including students in special education programs under Education Code Chapter 29, Subchapter A.
2. Measurable district performance objectives for all appropriate achievement indicators for all student populations, including students in special education programs under Education Code Chapter 29, Subchapter A, and other measures of student performance that may be identified through the comprehensive needs assessment.
3. Strategies for improvement of student performance that include:
    a. Instructional methods for addressing the needs of student groups not achieving their full potential.
    b. Evidence-based practices that address the needs of students for special programs, including:
        (1) Suicide prevention programs, in accordance with Education Code Chapter 38, Subchapter G, which include a parental or guardian notification procedure [see FFEB];
        (2) Conflict resolution programs;
        (3) Violence prevention programs; and
        (4) Dyslexia treatment programs.
    c. Dropout reduction.
    d. Integration of technology in instructional and administrative programs.
    e. Positive behavior interventions and support, including interventions and support that integrate best practices on grief-informed and trauma-informed care.
    f. Staff development for professional staff of a district.
    g. Career education to assist students in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities.

h. Accelerated education.

i. Implementation of a comprehensive school counseling program under Education Code 33.005. [See FFEA]

4. Strategies for providing to elementary school, middle school, junior high school, and high school students, those students' teachers and school counselors, and those students' parents information about:

   a. Higher education admissions and financial aid opportunities, including state financial aid opportunities such as the TEXAS grant program and the Teach for Texas grant program.

   b. The need for students to make informed curriculum choices to be prepared for success beyond high school.

   c. Sources of information on higher education admissions and financial aid.

5. Resources needed to implement identified strategies.

6. Staff responsible for ensuring the accomplishment of each strategy.

7. Timelines for ongoing monitoring of the implementation of each improvement strategy.

8. Formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of student performance.

9. The policy under Education Code 38.0041 addressing sexual abuse and other maltreatment of children. [See FFG]

10. The trauma-informed care policy required under Education Code 38.036. [See FFBA]

Education Code 11.252(a)

Law Enforcement Duties — The law enforcement duties of peace officers, school resource officers, and security personnel must be included in the district improvement plan. *Education Code 37.081(d)(1)* [See CKE]

Discipline Management — A district shall adopt and implement a discipline management program to be included in the district improvement plan. *Education Code 37.083(a)* [See FNC]

Dating Violence — A district shall adopt and implement a dating violence policy to be included in the district improvement plan. *Education Code 37.0831* [See FFH]

Mental Health, Substance Abuse, and Suicide

The practices and procedures developed under Education Code 38.351(i) or (i-1) (mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention) must be included in the district improvement plan. *Education Code 38.351(k)(2)* [See FFEB]

Campus-Level Plan

Each school year, the principal of each school campus, with the assistance of the campus-level committee, shall develop, review, and revise the campus improvement plan for the purpose of improving student performance for all student populations, including students in special education programs under Education Code Chapter 29, Subchapter A, with respect to the student achievement indicators and any other appropriate performance measures for special needs populations. *Education Code 11.253(c)*

Each campus improvement plan must:

1. Assess the academic achievement for each student in the school using the achievement indicator system.
2. Set the campus performance objectives based on the achievement indicator system, including objectives for special needs populations, including students in special education programs under Education Code Chapter 29, Subchapter A.
3. Identify how the campus goals will be met for each student.
4. Determine the resources needed to implement the plan.
5. Identify staff needed to implement the plan.
6. Set timelines for reaching the goals.
7. Measure progress toward the performance objectives periodically to ensure that the plan is resulting in academic improvement.
8. Include goals and methods for violence prevention and intervention on campus.
9. Provide for a program to encourage parental involvement at the campus.
10. If the campus is an elementary, middle, or junior high school, set goals and objectives for the coordinated health program at the campus based on:
    a. Student fitness assessment data, including any data from research-based assessments such as the school health index assessment and planning tool created by the federal Centers for Disease Control and Prevention;

b. Student academic performance data;

c. Student attendance rates;

d. The percentage of students who are educationally disadvantaged;

e. The use and success of any method to ensure that students participate in moderate to vigorous physical activity; and

f. Any other indicator recommended by the local school health advisory council.

Education Code 11.253(d)

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Note: For more information on property tax exemptions, see the Texas Comptroller's Property Tax Exemptions[1] website.

Exemptions

Homestead

Mandatory

An adult is entitled to exemption from taxation by a district of $25,000 of the appraised value of the adult's residence homestead, as defined by Tax Code 11.13(j), except that only $5,000 of the exemption applies to an entity operating under former Education Code Chapters 17, 18, 25, 26, 27, or 28, as those chapters existed on May 1, 1995, as permitted by Education Code 11.301. *Tax Code 11.13(b)*

Persons 65 or Older or Disabled

In addition to the mandatory exemption above, an adult who is disabled, as defined by Tax Code 11.13(m)(1), or 65 or older is entitled to an exemption of $10,000 of the appraised value of the individual's residence homestead. *Tax Code 11.13(c)*

Tax Limitation

A district may not increase the total annual amount of ad valorem tax it imposes on the residence homestead of an individual 65 years of age or older, or on the residence homestead of an individual who is disabled, above the amount of the tax it imposed in the first tax year in which the individual qualified that residence homestead for an applicable exemption. *Tax Code 11.26(a)*

Improvements

If an individual subject to a tax limitation makes improvements to the individual's residence homestead, other than improvements required to comply with governmental requirements or repairs, the district may increase the tax on the homestead in the first year the value of the homestead is increased on the appraisal roll because of the enhancement of value by the improvements. A limitation then applies to the increased amount of tax until more improvements, if any, are made. *Tax Code 11.26(b)*

Exception

An improvement to property that would otherwise constitute an improvement discussed above is not treated as an improvement if it is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by wind or water damage. For purposes of appraising the property in the tax year in which the structure would have constituted an improvement, the replacement structure is considered to be an improvement only if the square footage of the replacement structure exceeds that of the replaced structure as that structure existed before the casualty or damage occurred or the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure. *Tax Code 11.26(o)*

Portability of Tax Limitation

If an individual who receives a tax limitation, including a surviving spouse, discussed below, subsequently qualifies a different residence homestead for the same exemption, a district may not impose ad valorem taxes on the subsequently qualified homestead in a year in an amount that exceeds the amount of taxes calculated in accordance with Tax Code 11.26(g). *Tax Code 11.26(g)*

Surviving Spouse

If an individual who qualifies for the exemption at Persons 65 or Older or Disabled, above, dies, the surviving spouse of the individual is entitled to the limitation applicable to the residence homestead of the individual if the surviving spouse is 55 years of age or older when the individual dies, and the residence homestead of the individual is the residence homestead of the surviving spouse on the date that the individual dies and remains the residence homestead of the surviving spouse. *Tax Code 11.26(i)*

Local Options

All Taxpayers

In addition to other exemptions in Tax Code 11.13, an individual is entitled to an exemption from taxation by a district of a percentage of the appraised value of the individual's residence homestead if the exemption is adopted by the board before July 1 in the manner provided by law for official action by the board. If the percentage set by the district produces an exemption in a tax year of less than $5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of $5,000 of the appraised value. The percentage adopted by the district may not exceed 20 percent. *Tax Code 11.13(n)*

Disabled or 65 or Older

An individual who is disabled or 65 or older is entitled to an exemption from taxation by a district of a portion of the appraised value of the individual's residence homestead if the exemption is adopted either by the board or by a favorable vote of a majority of the qualified voters of the district at an election called by the board, and the board shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the district.

Amount

The amount of an exemption adopted as provided at Disabled or 65 or Older is $3,000 of the appraised value of the residence homestead unless a larger amount is specified by the board if the board authorizes the exemption or the petition for the election if the exemption is authorized through an election. Once authorized, an exemption adopted may be repealed or decreased or increased in amount by the board or by the petition and election procedure. In the case of a decrease, the amount of the exemption may not be reduced to less than $3,000 of the market value.

Tax Code 11.13(d)–(f)

Continuation of Exemption during Construction

If a qualified residential structure for which the owner receives a homestead exemption under Tax Code 11.13 is rendered uninhabitable or unusable by a casualty or by wind or water damage, the owner may continue to receive the exemption for the structure and the land and improvements used in the residential occupancy of the structure while the owner constructs a replacement qualified residential structure on the land in accordance with Tax Code 11.135. *Tax Code 11.135(a), .26(n); 34 TAC 9.416*

Surviving Spouse of First Responder

The surviving spouse of a first responder who is killed or fatally injured in the line of duty is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse is an eligible survivor for purposes of Government Code Chapter 615 as determined by the Employees Retirement System of Texas and has not remarried since the first responder's death. *Tax Code 11.134*

Veteran Exemptions

100 Percent Disabled

A disabled veteran who has been awarded by the U.S. Department of Veterans Affairs or its successor 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability is entitled to an exemption from taxation of the total appraised value of the veteran's residence homestead. *Tax Code 11.131(b)*

Partially Disabled with Donated Residence

A disabled veteran who has a disability rating of less than 100 percent is entitled to an exemption from taxation of a percentage of the appraised value of the disabled veteran's residence homestead equal to the disabled veteran's disability rating if the residence homestead was donated to the disabled veteran by a charitable organization at no cost to the disabled veteran, or at some cost to the disabled veteran in the form of a cash payment, a mortgage, or both in an aggregate amount that is not more than 50 percent of the good faith estimate of the market value of the residence homestead made by the charitable organization as of the date of the donation. *Tax Code 11.132(b)*

Surviving Spouse of Veteran

The surviving spouse of a disabled veteran, as defined by Tax Code 11.22(h)(3), is entitled to the same exemption from taxation of the same property to which the disabled veteran's exemption applied or would have applied if it had been in effect on the date of death if:

1. The surviving spouse has not remarried since the death of the disabled veteran; and

2. The property was the residence homestead of the surviving spouse when the disabled veteran died and remains the residence homestead of the surviving spouse.

Tax Code 11.131(c), .132(c)

Surviving Spouse of Individual Killed in Action

The surviving spouse of a member of the armed services of the United States who is killed or fatally injured in the line of duty is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the member of the armed services. *Tax Code 11.133(b)*

Tex. Const. Art. VIII, Sec. 1-b (Residence Homestead Tax Exemptions and Limitations)

Disabled Veteran

A disabled veteran is entitled to an exemption from taxation of a portion of the assessed value of a property the veteran owns and designates under Tax Code 11.22(f). *Tax Code 11.22*

Exemption for Subsequent Residence

The surviving spouse of a first responder, disabled veteran, or armed services member killed in action who receives an exemption for a residence homestead is entitled to receive an exemption from taxation of a different property that the surviving spouse subsequently qualifies as the surviving spouse's residence homestead in an amount equal to the dollar amount of the exemption from taxation of the first property for which the surviving spouse received the exemption in the last year in which the surviving spouse received that exemption if the surviving spouse has not remarried. *Tax Code 11.131(d), .132(d), .133(c), .134(d)*

Temporary Exemption for Property Damaged by Disaster

A person is entitled to an exemption from taxation by a district of a portion of the appraised value of qualified property, as defined by Tax Code 11.35(a), that the person owns in an amount determined by the chief appraiser under Tax Code 11.35(h). *Tax Code 11.35(b)*

A person who qualifies for an exemption under this provision must apply for the exemption not later than the 105th day after the date the governor declares the area in which the person's qualified property is located to be a disaster area. *Tax Code 11.43(s)*

"Damage" means physical damage. *Tax Code 11.35(a)(1)*

Optional Exemptions

Among others, a board may grant additional tax exemptions in accordance with applicable law for:

1. Residential property owned by the United States or an agency of the United States and used to provide transitional housing for the indigent under a program operated or directed by the

U.S. Department of Housing and Urban Development. *Tax Code 11.111*

2. Land and housing units on the land owned by a community land trust. *Tax Code 11.1827*

3. Certain historic structures or archeological sites and the land necessary to access and use the structure or archeological site. The board may not repeal or reduce the amount of an exemption for a property that otherwise qualifies for the exemption unless the property owner consents to the repeal or reduction or the district provides written notice of the repeal or reduction to the owner not later than five years before the date the board repeals or reduces the exemption. *Tax Code 11.24*

4. Property on which approved water conservation initiatives, desalination projects, or brush control initiatives have been implemented. *Tax Code 11.32*

If a district adopts, amends, or repeals an exemption that the district by law has the option to adopt or not, the district shall notify the appraisal office of its action and of the terms of the exemption within 30 days after the date of its action. *Tax Code 6.08*

Goods-in-Transit *Exemption*

A person is entitled to an exemption from taxation of the appraised value of that portion of the person's property that consists of goods-in-transit, as defined in Tax Code 11.253(a)(2). *Tax Code 11.253(b)*

[For information on the board's option in a district located in a disaster area to extend the date by which goods-in-transit must be transported, see Tax Code 11.253(l).]

Option to Tax

A board, by official action, may provide for the taxation of goods-in-transit exempt under Tax Code 11.253(b) and not exempt under other law. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the board proposes to tax goods-in-transit. Before acting to tax the exempt property, a board must conduct a public hearing as required by Texas Constitution Article VIII, Section 1-n(d). If the board provides for the taxation of the goods-in-transit as provided by this provision, the exemption stated above does not apply to that district. The goods-in-transit remain subject to taxation by the district until the board, by official action, rescinds or repeals its previous action to tax goods-in-transit, or otherwise determines that the exemption will apply to that district.

Notwithstanding official action that was taken before October 1, 2011, to tax goods-in-transit, a district may not tax such goods-in-

transit in a tax year that begins on or after January 1, 2012, unless the board takes official action on or after October 1, 2011, to provide for the taxation of the goods-in-transit.

Exception

If a board, before October 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the district, the district tax officials may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created.

Tax Code 11.253(j)–(j-2)

Payment Options

The board may adopt, by official action, one or both of the discount options below. *Tax Code 31.05(a)*

Discounts

Option 1

A district may adopt the following discounts to apply regardless of the date on which the district mails its tax bills:

1. Three percent if the tax is paid in October or earlier.
2. Two percent if the tax is paid in November.
3. One percent if the tax is paid in December.

Tax Code 31.05(b)

This discount does not apply to taxes that are calculated too late for it to be available. *Tax Code 31.04(c)*

Option 2

A district may adopt the following discounts to apply when the district mails its tax bills after September 30:

1. Three percent if the tax is paid before or during the next full calendar month following the date on which the tax bills were mailed.
2. Two percent if the tax is paid during the second full calendar month following the date on which the tax bills were mailed.
3. One percent if the tax is paid during the third full calendar month following the date on which the tax bills were mailed.

Tax Code 31.05(c)

Both Options

If a board adopts both discounts, the discounts described at Option 1 apply unless the tax bills for the district are mailed after September 30, in which case only the discounts described at Option 2 apply. *Tax Code 31.05(a)*

Rescission

The board may rescind a discount lawfully adopted by the board. The rescission of a discount takes effect in the tax year following the year in which the discount is rescinded. *Tax Code 31.05(d)*

Split Payments

The board of a district that collects its own taxes may provide, by official action, that a person who pays one-half of the district's taxes before December 1 may pay the remaining one-half of the taxes without penalty or interest at any time before July 1 of the following year.

If a board contracts with the appraisal district for collection of taxes, the split-payment option does not apply to taxes collected by the appraisal district unless approved by resolution adopted by a majority of the governing bodies of the taxing units whose taxes the appraisal district collects and filed with the secretary of the appraisal district board of directors. The split-payment option may be revoked in the same manner as provided for adoption.

Tax Code 31.03

This payment option does not apply to taxes that are calculated too late for it to be available. *Tax Code 31.04(c)*

In Certain Counties

The board of a district located in a county having a population of not less than 285,000 and not more than 300,000 that borders a county having a population of 3.3 million or more and the Gulf of Mexico that has its taxes collected by another taxing unit that has adopted the split-payment option may provide, by official action, that the split-payment option does not apply to the district's taxes collected by the other taxing unit. *Tax Code 31.03(d)*

Installment Payments

Certain Homesteads

An individual who is disabled or at least 65 years of age and qualified for a homestead exemption under Tax Code 11.13(c), or an individual who is a disabled veteran or the unmarried surviving spouse of a disabled veteran and qualified for an exemption under Tax Code 11.132 or 11.22, may pay district taxes imposed on the person's residence homestead property in four equal installments without penalty or interest if paid by the applicable dates set out in Tax Code 31.031. *Tax Code 31.031*

Disaster or Emergency Area

Property Damaged—Automatic

A person may pay district taxes imposed on certain property the person owns in four equal installments without penalty or interest if paid in accordance with Tax Code 31.032.

This provision applies to real and tangible personal property described in Tax Code 31.032(a) and taxes that are imposed on the property by a district before the first anniversary of the disaster or emergency.

Tax Code 31.032

Property Not Damaged—Board Option

The board may authorize a person to pay district taxes imposed on certain property that the person owns in installments. If the board adopts the installment-payment option under this provision, Tax Code 31.032(b), (b-1), (c), and (d) apply to the payment by a person of district taxes imposed on property that the person owns in the same manner as those subsections apply to the payment of taxes imposed on property to which Tax Code 31.032 applies.

This provision applies to real and tangible personal property described in Tax Code 31.033(b) and taxes that are imposed on the property by a district before the first anniversary of the disaster or emergency.

Tax Code 31.033

Definitions

"Disaster" has the meaning assigned by Government Code 418.004.

"Emergency" means a state of emergency proclaimed by the governor under Government Code 433.001.

Tax Code 31.032(g), .033(a)

Services in Lieu of Paying Taxes

The board by resolution may permit certain individuals or business entities to perform certain services for the district in lieu of paying the district property taxes. While performing services for a district, the individual is not an employee of the district and is not entitled to any benefit, including workers' compensation coverage, that the district provides to its employees. *Tax Code 31.035, .036, .037*

Persons 65 and Over

Subject to the requirements of Tax Code 31.035, the board by order or resolution may permit an individual who is at least 65 years of age to perform service for the district in lieu of paying taxes imposed by a district on property owned by the individual and occupied as the individual's residence homestead. Property owners performing services for a district under this provision may only supplement or complement the regular personnel of the district. A district may not reduce the number of persons the district employs or reduce the number of hours to be worked by employees of the district because the district permits property owners to perform services for the district under this provision. *Tax Code 31.035(a), (g)*

Teaching Services

An individual is qualified to perform teaching services for a district under the provisions below only if the individual holds a baccalaureate or more advanced degree in a field related to each course to be taught and:

1. Is certified as a classroom teacher under Education Code Chapter 21, Subchapter B; or

2. Obtains a school district teaching permit under Education Code 21.055.

Tax Code 31.036(h), .037(i)

By Individual

Subject to the requirements of Tax Code 31.036, the board by resolution may permit qualified individuals to perform teaching services for the district at a junior high school or high school of the district in lieu of paying taxes imposed by the district on property owned and occupied by the individual as a residence homestead. *Tax Code 31.036*

By Employee of Business Entity

Subject to the requirements of Tax Code 31.037, a board by resolution may authorize a corporation or other business entity to permit a qualified individual employed by the business entity to perform teaching services in a high school or a junior high school for the district in lieu of paying taxes imposed by the district on property owned by the business entity. *Tax Code 31.037*

Delinquent Taxes

Delinquency Date

Except as provided by Tax Code 31.02(b) (payment by certain eligible persons on active duty in the armed forces), 31.03 (split payments), and 31.04 (postponement of delinquency date based on mailing date of tax bills), taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed. *Tax Code 31.02*

Note: Delinquent taxes incur penalties and accrue interest in accordance with Tax Code 33.01, subject to any waiver by the board pursuant to Tax Code 33.011.

Delinquent Tax Collection

A board may contract with any competent attorney to represent the district to enforce the collection of delinquent taxes. The attorney's compensation is set in the contract, but the total amount of compensation provided may not exceed 20 percent of the amount of delinquent tax, penalty, and interest collected. *Tax Code 6.30(c)* [See CH(LEGAL) regarding contingent fee contracts for legal services and Government Code 2254.102(e) for additional requirements.]

Additional Penalties

The board may provide, by official action, that taxes that become delinquent at a certain time incur an additional penalty to defray costs of collection if the board has contracted with an attorney as provided above. *Tax Code 33.07, .08*

[1] Texas Comptroller Property Tax Exemptions website: https://comptroller.texas.gov/taxes/property-tax/exemptions/

Note: For legal requirements applicable to the disposition of real property acquired with federal funds, see CBB.

Sale or Exchange of Real Property

The board may, by resolution, authorize the sale of any property, other than minerals, held in trust for public school purposes. The board president shall execute a deed to the purchaser reciting the board resolution authorizing the sale. A district may employ, retain, contract with, or compensate a licensed real estate broker or salesperson for assistance in the acquisition or sale of real property. *Education Code 11.154*

Publication of Notice and Bidding Requirements

Except for the types of land and interests described at Exceptions, below, before land owned by a district may be sold or exchanged for other land, notice to the general public of the offer of the land for sale or exchange must be published in a newspaper of general circulation in either the county in which the land is located or, if there is no such newspaper, in an adjoining county. The notice must include a description of the land, including its location, and the procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted. The notice must be published on two separate dates and the sale or exchange may not be made until after the 14th day after the date of the second publication. Local Government Code 272.001 does not require the board to accept any bid or offer or to complete a sale or exchange. *Local Gov't Code 272.001(a), (d)*

Open-Enrollment Charter School Offer

The board of a district that intends to sell, lease, or allow use for a purpose other than a district purpose of an unused or underused district facility must give each open-enrollment charter school located wholly or partly within the boundaries of the district the opportunity to make an offer to purchase, lease, or use the facility, as applicable, in response to any terms established by the board, before offering the facility for sale or lease or to any other specific entity. The board is not required to accept an offer made by an open-enrollment charter school. *Education Code 11.1542*

Exceptions

Generally

The notice and bidding requirements set out above do not apply to the types of land and real property interests described below and owned by a district. The land and those interests described below may not be conveyed, sold, or exchanged for less than the fair market value of the land or interest unless the conveyance, sale, or exchange is with one or more abutting property owners who own the underlying fee simple. The fair market value is determined by an appraisal obtained by the district that owns the land or interest. The appraisal price is conclusive of the fair market value of the land or interest. This applies to:

1. Narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances;
2. Streets or alleys, owned in fee or used by easement;
3. Land or a real property interest originally acquired for streets, rights-of-way, or easements that the district chooses to exchange for other land to be used for streets, rights-of-way, easements, or other public purposes, including transactions partly for cash;
4. Land that the district wants to have developed by contract with an independent foundation;
5. A real property interest conveyed to a governmental entity that has the power of eminent domain; or
6. The land or interests described by items 1 and 2, above, may be sold to abutting property owners:
    a. In the same subdivision if the land has been subdivided; or
    b. In proportion to their abutting ownership, and the division between owners must be made in an equitable manner.

Local Gov't Code 272.001(b)–(c)

Higher Education Institutions

A district may donate, exchange, convey, sell, or lease land, improvements, or any other interest in real property to an institution of higher education for less than its fair market value and without complying with the notice and bidding requirements in order to promote a public purpose related to higher education. The district shall determine the terms and conditions of the transaction so as to effectuate and maintain the public purpose. *Local Gov't Code 272.001(j)*

Other Political Subdivisions

A district may donate or sell for less than fair market value and without complying with the notice and bidding requirements a designated parcel of land or an interest in real property to another political subdivision if:

1. The land or interest will be used by the political subdivision to which it is donated or sold in carrying out a purpose that benefits the public interest of the donating or selling district;
2. The donation or sale of the land or interest is made under terms that effect and maintain the public purpose for which the donation or sale is made; and

3. The title and right to possession of the land or interest revert to the donating or selling district if the acquiring political subdivision ceases to use the land or interest in carrying out the public purpose.

Local Gov't Code 272.001(l)

Sale of Instructional Facility Financed with State Allotment

If an instructional facility financed by bonds paid with state and local funds under Education Code Chapter 46, Subchapter A, is sold before the bonds are fully paid, a district shall send to the comptroller a percentage of the district's net proceeds as determined by Education Code 46.011(a). *Education Code 46.011* [See also CCA]

Lease of Property to a Governmental Entity

To promote a public purpose of the district, a district may:

1. Lease property owned by the district to another political subdivision or an agency of the state or federal government; or

2. Make an agreement to provide office space in property owned by the district to the other political subdivision or agency.

The district:

1. Shall determine the terms of the lease or agreement so as to promote and maintain the public purpose;

2. May provide for the lease of the property or provision of the office space at less than fair market value; and

3. Is not required to comply with any competitive purchasing procedure or any notice and publication requirement imposed by Local Government Code Chapter 272 or other law.

Local Gov't Code 272.005

Sale or Lease of Minerals

Minerals in land belonging to a district may be sold to any person. The sale must be authorized by a resolution adopted by majority vote of the board. *Education Code 11.153(a)–(b)*

After the board determines that it is advisable to lease land belonging to the district, it shall give notice of its intention to lease the land. The notice shall be published once a week for three consecutive weeks in a newspaper published in the county and with general circulation in the county, and shall:

1. Describe the land to be leased; and

2. Designate the time and place at which the board will receive and consider bids for the lease.

Natural Resources Code 71.005

After adoption of a resolution authorizing sale, the board president may execute an oil or gas lease or sell, exchange, and convey the minerals. The mineral deed or lease must recite the approval of the resolution of the board authorizing the sale. *Education Code 11.153(c)*

Donation of Former School Campus

The board may, by resolution, authorize the donation of real property and improvements formerly used as a school campus to a municipality, county, state agency, or nonprofit organization if:

1. Before adopting the resolution, the board holds a public hearing concerning the donation and, in addition to any other notice required, gives notice of the hearing by publishing the subject matter, location, date, and time of the hearing in a newspaper having general circulation in the territory of a district;
2. The board determines that:
    a. The improvements have historical significance;
    b. The transfer will further the preservation of the improvements; and
    c. At the time of the transfer, the district does not need the real property or improvements for educational purposes; and
3. The entity to whom the transfer is made has shown, to the satisfaction of the board, that the entity intends to continue to use the real property and improvements for public purposes.

The board president shall execute a deed transferring ownership of the real property and improvements to the municipality, county, state agency, or nonprofit organization. The deed must:

1. Recite the resolution of a board authorizing the donation; and
2. Provide that ownership of the real property and improvements revert to a district if the municipality, county, state agency, or nonprofit organization:
    a. Discontinues use of the real property and improvements for public purposes; or
    b. Executes a document that purports to convey the property.

Education Code 11.1541(a)–(b)

Note: Regarding disposal of school buses, see CNB.

Regarding disposal of school-owned personal property, see CI.

Regarding geospatial data products, see CQA.

Use of Donations

General Rule

A conveyance, devise, or bequest of property for the benefit of the public schools, if not otherwise directed by the donor, vests the property in the board or their successors as trustees for those to be benefited by the donation. Funds or other property donated or the income from the property may be spent by the trustees:

1. For any purpose designated by the donor that is in keeping with the lawful purposes of the schools for the benefit of which the donation was made; or
2. For any legal purpose if a specific purpose is not designated by the donor.

Funds for Staff Positions

A district shall accept from a parent-teacher organization or association recognized by the district a donation designated to fund supplemental educational staff positions at a school campus and spend the donation accepted for the designated purpose at the direction of and within the time period specified by the campus for which the donation was designated. This provision expires September 1, 2025. [See DC]

Education Code 11.156

Prohibited Use

A district may not accept private funding for the purpose of developing a curriculum, purchasing or selecting curriculum materials, or providing teacher training or professional development related to a concept listed in Education Code 28.0022(a)(4)(A). *Education Code 28.0022(c)* [See EMB]

Charitable Raffles

A district is not a "qualified nonprofit organization" for purposes of the Charitable Raffle Enabling Act (Occupations Code 2002.001 et seq.). *Atty. Gen. Op. JM-1176 (1990)*

"Raffle" means the award 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)* [See also GKB]

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For information on procuring school buses, see CNB.

For legal requirements applicable to school nutrition procurement, including produce, with federal funds, see COA.

For information regarding construction of school facilities, see CV series.

Board Authority

The board may adopt rules and procedures for the acquisition of goods and services. *Education Code 44.031(d)*

Delegation of Authority

The board may, as appropriate, delegate its authority regarding an action authorized or required by Education Code Chapter 44, Subchapter B, to be taken by a district to a designated person, representative, or committee.

The board may not delegate the authority to act regarding an action authorized or required to be taken by the board by Education Code Chapter 44, Subchapter B.

Disaster Delegation

Notwithstanding any other provision of the Education Code, in the event of a catastrophe, emergency, or natural disaster affecting a district, the board may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under Education Code Chapter 44, Subchapter B if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.

Education Code 44.0312

Purchases Valued at or Above $50,000

Methods

Except as provided by Education Code Chapter 44, Subchapter B, all district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at $50,000 or more in the aggregate for each 12-month period, shall be made by the method, of the following methods, that provides the best value for a district:

1. Competitive bidding for services other than construction services.
2. Competitive sealed proposals for services other than construction services.
3. A request for proposals for services other than construction services.
4. An interlocal contract.
5. A method provided by Government Code Chapter 2269 for construction services [see CV series];
6. The reverse auction procedure as defined by Government Code 2155.062(d).
7. The formation of a political subdivision corporation under Local Government Code 304.001 (purchase of electricity).

Education Code 44.031(a)

Exceptions

Emergency Damage or Destruction

If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. *Education Code 44.031(h)*

Sole Source

Without complying with Education Code 44.031(a) above, a district may purchase an item that is available from only one source, including:

1. An item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly.
2. A film, manuscript, or book.
3. A utility service, including electricity, gas, or water.
4. A captive replacement part or component for equipment.

The exceptions above do not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of $15,000.

Education Code 44.031(j)–(k)

Competitive Bidding

Except to the extent prohibited by other law and to the extent consistent with Education Code Chapter 44, Subchapter B, a district may use competitive bidding to select a vendor as authorized by Education Code 44.031(a)(1).

A district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Education Code 44.031(b) [see Contract Selection Factors, below].

Except as provided below, Local Government Code Chapter 271, Subchapter B (Competitive Bidding on Certain Public Works Contracts) does not apply to a competitive bidding process under this policy.

Local Government Code Sections 271.026 (Opening of Bids), 271.027(a) (Award of Contract), and 271.0275 (Safety Record of Bidder Considered) apply to a competitive bidding process under Education Code Chapter 44, Subchapter B. [See CVA for these requirements.]

Education Code 44.0351

[For information on additional competitive procedures under the Public Property Finance Act, see CHH.]

Competitive Sealed Proposals

In selecting a vendor through competitive sealed proposals as authorized by Education Code 44.031(a)(2), a district shall follow the procedures prescribed below.

Request for Proposals

The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

Opening Proposals

The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Selection

The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected

offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.

Education Code 44.0352

Interlocal Contracts

"Interlocal contract" means a contract or agreement made under Government Code Chapter 791 (Interlocal Cooperation Act). A district may contract or agree with another local government or a federally recognized Indian tribe, as listed by the U.S. secretary of the interior under 25 U.S.C. 479a-1, whose reservation is located within the boundaries of this state to perform governmental functions and services in accordance with Government Code Chapter 791. A district may agree with another local government and with the state or a state agency, including the comptroller, to purchase goods and services. *Gov't Code 791.003(2), .011(a), .025(a)*

An interlocal contract must:

1. Be authorized by the governing body of each party to the contract;

2. State the purpose, terms, rights, and duties of the contracting parties; and

3. Specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. An interlocal contract may be renewed. Notwithstanding item 2 above, an interlocal contract may have a specified term of years.

Gov't Code 791.011(d)–(f), (i)

A district may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and any services reasonably required for the installation, operation, or

maintenance of the goods. This provision does not apply to services provided by firefighters, police officers, or emergency medical personnel. *Gov't Code 791.025(b)*

A district that purchases goods and services under Government Code 791.025 satisfies the requirement to seek competitive bids for the purchase of the goods and services. *Gov't Code 791.025(c); Atty. Gen. Op. JC-37 (1999)*

Reverse Auction

A district that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the district and fair to vendors. *Local Gov't Code 271.906(b)*

"Reverse auction procedure" means:

1. A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or

2. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

Gov't Code 2155.062(d)

Site-Based Purchasing

If a purchase is made at the campus level in a district with a student enrollment of 180,000 or more that has formally adopted a site-based decision-making plan under Education Code Subchapter F, Chapter 11 [see BQ series], that delegates purchasing decisions to the campus level, Education Code 44.031 applies only to the campus and does not require the district to aggregate and jointly award purchasing contracts. A district that adopts site-based purchasing under this provision shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not intended or used to avoid the requirement that a district aggregate purchases under Education Code 44.031(a). *Education Code 44.031(m)*

Contract Selection Factors

Except as provided by Education Code Chapter 44, Subchapter B, in determining to whom to award a contract, the district shall consider:

1. The purchase price.

2. The reputation of the vendor and of the vendor's goods or services.

3. The quality of the vendor's goods or services.

4. The extent to which the goods or services meet the district's needs.

5. The vendor's past relationship with the district.

6. The impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses.

7. The total long-term cost to the district to acquire the vendor's goods or services.

8. For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.

9. Any other relevant factor specifically listed in the request for bids or proposals.

Education Code 44.031(b)

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code 271.9051. This provision does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153. *Education Code 44.031(b-1)*

The factors listed above are the only criteria that may be considered by a district in its decision to award a contract. *R.G.V. Vending v. Weslaco Indep. Sch. Dist., 995 S.W.2d 897 (Tex. App.—Corpus Christi 1999, no pet.)*

Preferences

Agricultural Products

A district that purchases agricultural products shall give preference to those produced, processed, or grown in Texas if the cost to the district is equal and the quality is equal. If agricultural products produced, processed, or grown in Texas are not equal in cost and quality to other products, the district shall give preference to agricultural products produced, processed, or grown in other states of the United States, if the cost and quality of the U.S. and foreign products are equal.

"Agricultural products" includes textiles and other similar products.

"Processed" means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form.

A district may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in Texas.

Vegetation for Landscaping

A district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the district is equal and the quality is equal.

Education Code 44.042

[For legal requirements applicable to school nutrition procurement, including produce and agricultural products, with federal funds, see COA.]

Recycled Products

A district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality and the average price of the product is not more than ten percent greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules. *30 TAC 328.203*

Subchapter K of 30 Administrative Code (Governmental Entity Recycling and Purchasing of Recycled Materials) does not apply to a district with a student enrollment of less than 10,000 students. *30 TAC 328.204(a)*

A district regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

1. Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;
2. Encourage the use of products made of recycled materials; and
3. Ensure to the maximum extent economically feasible that the district purchases products that may be recycled when they have served their intended use.

In developing new procedures and specifications, the district shall encourage the use of recycled products and products that may be recycled or reused.

Health and Safety Code 361.426(b)–(c)

Bidder's Place of Business

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code Section 271.9051. This provision does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. 153. *Education Code 44.031(b-1)*

Notice Publication

Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g)*

Electronic Bids or Proposals

A district may receive bids or proposals under Education Code Chapter 44 through electronic transmission if the board adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

Notwithstanding any other provision of Education Code Chapter 44, an electronic bid or proposal is not required to be sealed. A provision of Education Code Chapter 44 that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted by the board.

Education Code 44.0313

Right to Work

While a district is engaged in procuring goods and services or awarding a contract, or overseeing procurement or construction for a public work or public improvement, a district:

1. May not consider whether a vendor is a member of or has another relationship with any organization; and
2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

Education Code 44.043

Contract with Person Indebted to District

The board by resolution may establish regulations permitting the district to refuse to enter into a contract or other transaction with a person indebted to the district. It is not a violation of Education Code Chapter 44, Subchapter B (Purchases; Contracts) for a district, under regulations adopted under this provision, to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the district.

"Person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the district requiring approval by the board.

Education Code 44.044

Out-of-State Bidders

A district may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located, or the state in which a majority of the manufacturing relating to the contract will be performed. *Gov't Code 2252.002*

This requirement does not apply to a contract involving federal funds. A district shall use the information published by the comptroller under Government Code 2252.003 (Publication of Other State's Laws on Contracts) to evaluate the bid of a nonresident bidder. A district may rely on information published under Government Code 2252.003 to meet the requirements of Government Code 2252.002. *Gov't Code 2252.003–.004*

"Governmental contract" means a contract awarded by a governmental entity, including a public school district, for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.

"Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Gov't Code 2252.001

Professional Services

Education Code 44.031 does not apply to a contract for professional services rendered, including the services of an architect, attorney, certified public accountant, engineer, or fiscal agent. A district may, at its option, contract for professional services rendered

by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003 (Professional Services Procurement Act) (see below), in lieu of the methods provided by Education Code 44.031. *Education Code 44.031(f)*

Professional Services Procurement Act

Selection

A district may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.003(a)*

Definition

"Professional services" means services:

1. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, or forensic science;

2. Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, registered nurse, or a forensic analyst or forensic science expert; or

3. Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Occupations Code Chapter 1053.

Gov't Code 2254.002

[For specific information on procuring architectural or engineering services, see CV. For information on procuring services of physicians, optometrists, and registered nurses under certain circumstances, see Government Code 2254.008.]

Contingent Fee Contract for Legal Services

"Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained. The term includes an amendment to a contract for legal services described by this provision if the amendment changes the scope of representation or may result in the filing of an action or the amending of a petition in an existing action. *Gov't Code 2254.101(2)*

Government Code Chapter 2254, Subchapter C provides the manner in which and the situations under which a district may compensate a public contractor under a contingent fee for legal services. That subchapter does not apply to a contract for legal services:

1. Provided to a district under Government Code Chapter 403, Subchapter M; or

2. Entered into by a district for the collection of an obligation, as defined by Government Code 2107.001, that is delinquent [see CCGA(LEGAL) regarding delinquent tax collection] or for services under Government Code 1201.027 [see CCA(LEGAL) regarding issuance of public securities], except that Government Code sections 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract.

Gov't Code 2254.102

A district may select an attorney or law firm to award a contingent fee contract only in accordance with Government Code 2254.003(a) (Professional Services Procurement Act) [see Selection, above] and Government Code 2254.1032.

In procuring legal services under a contingent fee contract, a district shall:

1. Select a well-qualified attorney or law firm on the basis of demonstrated competence, qualifications, and experience in the requested services; and

2. Attempt to negotiate a contract with that attorney or law firm for a fair and reasonable price.

Gov't Code 2254.1032

Specific Purchases

Computers

A district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts entered into in accordance with Government Code Chapter 2054 or 2157. *Education Code 44.031(i)*

Automated Information System

A district may purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method described above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.391* [See 1 Administrative Code Chapter 212 for rules related to purchases of commodity items.]

Automated External Defibrillators

A district that purchases or leases an automated external defibrillator (AED), as defined by Health and Safety Code 779.001, shall ensure that the AED meets standards established by the federal Food and Drug Administration. *Education Code 44.047(a)*

Insurance

A contract for the purchase of insurance is not a contract for professional services. A district must award such a contract using one of the methods in Education Code 44.031. *Atty. Gen. Op. DM-418 (1996)*

Multiyear Contracts

A district may execute an insurance contract for a period longer than 12 months, if the contract complies with Local Government Code 271.903(a) [see Commitment of Current Revenue, below]. If a district executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the district will be executing a new insurance contract. *Atty. Gen. Op. DM-418 (1996)*

Other Purchasing Methods

The comptroller shall establish a program by which the comptroller performs purchasing services for local governments. The services must include:

State Purchasing Program

1. The extension of state contract prices to participating local governments when the comptroller considers it feasible.
2. Solicitation of bids on items desired by local governments if the solicitation is considered feasible by the comptroller and is desired by the local government.
3. Provision of information and technical assistance to local governments about the purchasing program.

The comptroller may charge a participating local government an amount not to exceed the actual costs incurred by the comptroller in providing purchasing services to the local government under the program.

Local Gov't Code 271.082

District Participation

A district may participate in the purchasing program, including participation in purchases that use the reverse auction procedure, by filing with the comptroller a resolution adopted by the board requesting that the district be allowed to participate on a voluntary basis, and to the extent the comptroller deems feasible, and stating that the district will:

1. Designate an official to act for the district in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the board will direct the decisions of the representative;
2. Be responsible for:
    a. Submitting requisitions to the comptroller under any contract; or

b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse auction purchase, and electronically sending to the comptroller reports on actual purchases made under this provision that provide the information and are sent at the times required by the comptroller;

3. Be responsible for making payment directly to the vendor;

4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

A district that purchases an item under a state contract or under a reverse auction procedure, sponsored by the comptroller satisfies any state law requiring the district to seek competitive bids for the purchase of the item.

Local Gov't Code 271.083

Multiple Award Contract Schedule

The comptroller shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government or any other governmental entity in any state. *Gov't Code 2155.502(a)*

A district may purchase goods or services directly from a vendor under a contract listed on a schedule developed under Government Code Chapter 2155, Subchapter I. A district contracting for the purchase of an automated information system under a contract listed on a schedule shall comply with Government Code 2157.068(e-1) (Purchase of Information Technology Commodity Items) [see Automated Information System, above]. A purchase authorized by this provision satisfies any requirement of state law relating to competitive bids or proposals.

The price listed for a good or service under a multiple award contract is a maximum price. A district may negotiate a lower price for goods or services under a contract listed on a schedule developed under Government Code Chapter 2155, Subchapter I.

Gov't Code 2155.504

Cooperative Purchasing Program

A district may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state. A district that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative organization stating that the district will:

1. Designate a person to act under the direction of, or on behalf of, the district in all matters relating to the program;

2. Make payments to another participating local government or local cooperative organization or directly to a vendor under a contract made under these provisions, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and

3. Be responsible for the vendor's compliance relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative organization.

A district that purchases goods or services under these provisions satisfies any state law requiring the district to seek competitive bids for the purchase of the goods or services.

Local Gov't Code 271.102; Atty. Gen. Op. JC-37 (1999)

Cooperative Purchasing Contract Fees

A district that enters into a purchasing contract valued at $25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Local Government Code Chapter 271, Subchapter F (cooperative purchasing program), or under any other cooperative purchasing program authorized for school districts by law shall document a contract-related fee, including a management fee, paid by or to the district and the purpose of each fee under the contract.

The amount, purpose, and disposition of any fee described above must be presented in a written report and submitted annually in an open meeting of the board. The written report must appear as an agenda item. The commissioner of education may audit the written report.

Education Code 44.0331

Commitment of Current Revenue

If a contract for the acquisition, including lease, of real or personal property retains to the board the continuing right to terminate at the expiration of each budget period during the term of the contract, is conditioned on a best efforts attempt by the board to obtain and appropriate funds for payment of the contract, or contains both the continuing right to terminate and the best efforts conditions, the contract is a commitment of a district's current revenue only. *Local Gov't Code 271.903*

Change Orders

For provisions regarding change orders, see CV.

Criminal Offenses

An officer, employee, or agent of a district commits an offense if the person with criminal negligence makes or authorizes separate, se-

quential, or component purchases to avoid the requirements of Education Code 44.031(a) or (b). An offense under this provision is a Class B misdemeanor and is an offense involving moral turpitude.

"Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be made in one purchase. "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be made in one purchase. "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be made in one purchase.

Education Code 44.032(a)–(b)

An officer, employee, or agent of a district commits an offense if the person with criminal negligence violates Education Code 44.031(a) or (b) other than by conduct described by Education Code 44.032(b). An offense under this provision is a Class B misdemeanor and is an offense involving moral turpitude. *Education Code 44.032(c)*

An officer or employee of a district commits an offense if the officer or employee knowingly violates Education Code 44.031, other than by conduct described by Education Code 44.032(b) or (c). An offense under this provision is a Class C misdemeanor. *Education Code 44.032(d)*

Removal from Office

The final conviction of a person other than a trustee of a district for an offense under Education Code 44.032(b) or (c) above results in the immediate removal from office or employment of that person. A trustee who is convicted of an offense under Education Code 44.032 is considered to have committed official misconduct for purposes of Local Government Code Chapter 87, and is subject to removal as provided by that chapter and Texas Constitution Article V, Section 24. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in Texas, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision of the state. *Education Code 44.032(e)*

Injunction

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which the district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this provision is entitled to reasonable attorney's fees as approved by the court. *Education Code 44.032(f)*

Note: For legal requirements applicable to property acquired with federal funds, see CBB.

For information on disposal of instructional materials and technological equipment, see CMD.

All rights and title to district property, whether real or personal, shall be vested in the board and its successors in office. The trustees may, in any appropriate manner, dispose of property that is no longer necessary for the operation of the district. *Education Code 11.151(c)* [See also CDB(LEGAL)]

Surplus or Salvage Property from a State Agency

A district may not lease, lend, bail, deconstruct, encumber, sell, trade, or otherwise dispose of property acquired under Government Code 2175.184 or 2175.241 before the second anniversary of the date the property was acquired. A district that violates this provision shall remit to the Texas Facilities Commission the amount the district received from the lease, loan, bailment, deconstruction, encumbrance, sale, trade, or other disposition of the property unless the commission authorizes the district's action. *Gov't Code 2175.184(b)*

Law Enforcement Vehicles

A district may not sell or transfer a marked patrol car or other law enforcement motor vehicle to:

1. The public unless the district first removes any equipment or insignia that could mislead a reasonable person to believe that the vehicle is a law enforcement motor vehicle, including any police light, siren, amber warning light, spotlight, grill light, antenna, emblem, outline of an emblem, or emergency vehicle equipment; or
2. A security services contractor who is regulated by the Department of Public Safety and licensed under Occupations Code 1702 unless each emblem or insignia that identifies the vehicle as a law enforcement motor vehicle is removed before the sale or transfer.

A district that sells or transfers a marked patrol car or other law enforcement motor vehicle to the public in violation of these provisions is liable for damages proximately caused by the use of the vehicle during the commission of a crime, and to the state for a civil penalty of $1,000. Governmental immunity to suit and from liability is waived and abolished to the extent of this liability.

Local Gov't Code 272.006

Note: For information regarding security breaches, see CQB.

For record retention requirements under specific statutes, see the applicable policy code.

Definitions

Custodian — "Custodian" means the appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records. *Local Gov't Code 201.003(2)*

Disposition — "Disposition" means final processing of local government records by archival transfer under Local Government Code 203.049 or destruction under Local Government Code 202.001 or Government Code 441.0945. *13 TAC 7.71(5)*

Electronic Record — "Electronic record" means any information that is recorded in a form for computer processing and that satisfies the definition of local government record data in Local Government Code 201.003(8), below. *13 TAC 7.71(6)*

Note: Additional definitions related to standards and procedures for management of electronic records are found in 13 Administrative Code 7.71.

Electronic Records System — "Electronic records system" means any information system that produces, manipulates, and stores local government records by using a computer. *13 TAC 7.71(7)*

Electronic Storage Media — "Electronic storage media" means all physical media capable of being read by a computer including computer hard disks, magnetic tapes, optical disks, or similar machine-readable media. *13 TAC 7.71(8)*

Essential Record — "Essential record" means any local government record necessary to the resumption or continuation of district operations in an emergency or disaster, to the re-creation of the legal and financial status of the district, or to the protection and fulfillment of obligations to the people of the state. *Local Gov't Code 201.003(5)*

Local Government Record — "Local government record" means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a district or any of its officers or employees, pursuant to law, including an ordinance, or in the transaction of public business. The term does not include:

1. Extra identical copies of documents created only for convenience of reference or research by officers or employees of the district;
2. Notes, journals, diaries, and similar documents created by an officer or employee of the district for the officer's or employee's personal convenience;
3. Blank forms, stocks of publications, or library and museum materials acquired solely for the purposes of reference or display;
4. Copies of documents in any media furnished to members of the public to which they are entitled under Government Code Chapter 552 (Public Information Act) or other state law; or
5. Any records, correspondence, notes, memoranda, or documents, other than a final written agreement described by Government Code 2009.054(c), associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a district participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

Local Gov't Code 201.003(8)

Permanent Record	"Permanent record" or "record of permanent value" means any local government record for which the retention period on a records retention schedule issued by the Texas State Library and Archives Commission (TSLAC) is given as permanent. *Local Gov't Code 201.003(10)*
Records Control Schedule	"Records control schedule" means a document prepared by or under the authority of a records management officer listing the records maintained by a district, their retention periods, and other records disposition information that the records management program in each district may require. *Local Gov't Code 201.003(12)*
Records Management	"Records management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems. *Local Gov't Code 201.003(13)*

Records Management Officer	"Records management officer" means the person designated under Local Government Code 203.025 as the records management officer. [See Designation, below] *Local Gov't Code 201.003(14)*
Records Retention Schedule	"Records retention schedule" means a document issued by TSLAC under authority of Government Code Chapter 441, Subchapter J, establishing mandatory retention periods for local government records. *Local Gov't Code 201.003(15)*
Retention Period	"Retention period" means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction. *Local Gov't Code 201.003(16)*
Third-Party Custodians	"Third-party custodians" means parties with which a district may contract for services who are temporarily responsible for the maintenance of local government records, other than an interlocal contract under Local Government Code 203.025(f). *13 TAC 7.71(16)*

Board's Responsibilities

The board shall:

1. Establish, promote, and support an active and continuing program for the efficient and economical management of all local government records;
2. Cause policies and procedures to be developed for the administration of the program under the direction of the records management officer;
3. Facilitate the creation and maintenance of local government records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the district and designed to furnish the information necessary to protect the legal and financial rights of the district, the state, and persons affected by the district's activities;
4. Facilitate the identification and preservation of local government records that are of permanent value;
5. Facilitate the identification and protection of essential local government records; and
6. Cooperate with TSLAC in its conduct of statewide records management surveys.

Local Gov't Code 203.021

District's Duties

Each district shall:

1. Submit to the director and librarian of TSLAC the name of the district's records management officer and the name of the new officer in the event of a change;
2. File a plan or an ordinance or order establishing a records management program and any amendments to the plan or ordinance or order with the director and librarian;
3. Notify TSLAC at least ten days before destroying a local government record that does not appear on a records retention schedule issued by TSLAC; and
4. File with the director and librarian a written certification as provided by Local Government Code 203.041 that the district has prepared a records control schedule that:
    a. Establishes a retention period for each local government record as required by Local Government Code Chapter 203, Subchapter C; and
    b. Complies with a local government records retention schedule distributed by the director and librarian under Government Code 441.158 and any other state and federal requirements.

Gov't Code 441.169

Minimum Requirements for Electronic Records

Each district must:

1. Manage electronic records according to the district's records management program and records retention schedule regardless of format, system, or storage location;
2. Maintain ownership and responsibility for electronic records regardless of where the record originates or resides, including, but not limited to, external electronic records systems, third-party custodians, and social media platforms;
3. Develop and maintain up-to-date documentation about electronic records systems and storage media adequate to identify, retain, read, process, or migrate electronic records and ensure the timely, authorized final disposition of electronic records;
4. Ensure that electronic records remain readily retrievable and readable for as long as they are maintained by the district through migration or by maintaining any software, hardware, and documentation required to retrieve and read the electronic records;

5. Maintain descriptive and technical metadata required for electronic records to maintain and retain reliability, including metadata necessary to adequately support the usability, authenticity, or integrity as well as the preservation of a record;
6. Preserve the authenticity, integrity, reliability, and usability of the records;
7. Ensure that electronic records are readily retrievable and readable independently of other records in the database management system, electronic records system, or electronic storage media;
8. Ensure that system backups that are required for disaster recovery are not used to satisfy records retention requirements unless indexed to ensure usability and are tested on a regular basis; and
9. Require all third-party custodians of records to provide the district with descriptions of their business continuity and/or disaster recovery plans pertaining to the protection of the district's essential records.

Any technology for electronic records developed, used, or acquired by a district must support the district's ability to meet the minimum requirements in 13 Administrative Code 7.74(a) to preserve and make readily retrievable and readable any electronic record or to extract or migrate the record in as complete a form as possible for its full retention period.

13 TAC 7.74

Security of Electronic Records

Districts must implement and maintain an electronic records security program for office and storage areas that complies with 13 Administrative Code 7.75.

Note: The district's duties regarding maintenance of electronic storage media are set out in 13 Administrative Code 7.76. The minimum requirements for all electronic records systems are found in 13 Administrative Code 7.77.

Custodians of Records

District custodians of records shall:

1. Cooperate with the records management officer in carrying out the policies and procedures established by a district for the efficient and economical management of records and in carrying out the requirements of Local Government Code Title 6, Subtitle C;

2. Adequately document the transaction of district business and the services, programs, and duties for which they and their staff are responsible; and

3. Maintain the records in their care and carry out the preservation, microfilming, destruction, or other disposition of the records only in accordance with the policies and procedures of the district's records management program and the requirements of Local Government Code Title 6, Subtitle C and rules adopted under it.

Local Gov't Code 203.022

Records Management Officer

Designation

The board shall designate a records management officer by designating an individual or designating an office or position, the holder of which shall be the records management officer.

The name, office, or position of the records management officer shall be entered on the minutes of the board. The name or the name and office or position of the records management officer shall be filed by the records management officer with the director and librarian of TSLAC within 30 days after the date of the designation.

The designation of a new individual or a new office or position shall be entered on the minutes and reported to TSLAC in the same manner as the original designation.

If the order designating a records management officer designates an office or position rather than an individual, a new holder of that office or position must file the holder's name with TSLAC within 30 days after the date of assuming the office or position.

Local Gov't Code 203.025(a)–(e)

Duties

The district's records management officer shall:

1. Assist in establishing and developing policies and procedures for a district's records management program;

2. Administer the records management program and provide assistance to custodians for the purposes of reducing costs and improving recordkeeping efficiency;

3. In cooperation with the custodians of the records:

   a. Prepare the records control schedules and amended schedules required by Local Government Code 203.041 and the list of obsolete records as provided by Local Government Code 203.044;

b. Identify and take adequate steps to preserve local government records of permanent value;

c. Identify and take adequate steps to protect essential local government records;

d. Ensure that the maintenance, preservation, microfilming, destruction, or other disposition of records is carried out in accordance with a district's records management program and the requirements of Local Government Code Title 6, Subtitle C and rules adopted under it;

4. Disseminate to the board and custodians of records information concerning state laws, administrative rules, and government policies relating to local government records; and

5. In cooperation with the custodians of records, establish procedures to ensure that the handling of records in any context of the records management program is carried out with due regard for the duties and responsibilities of custodians that may be imposed by law and the confidentiality of information in records to which access is restricted by law.

Local Gov't Code 203.023

Electronic Records Management Practices

District records management officers, in conjunction with the board, shall approve and institute written policies and procedures that communicate the district's approach for electronic records management practices that ensure electronic records maintain and retain reliability, usability, integrity, and authenticity.

A district's policies and procedures must:

1. Establish a component of the district's active and continuing records management program to address the management of electronic records created, received, retained, used, transmitted, or disposed of electronically, including electronic records maintained or managed by third-party custodians or other external entities;

2. Integrate the management of electronic records into existing records and information resources management programs;

3. Incorporate electronic records management objectives, responsibilities, and authorities;

4. Address electronic records management requirements, including retention requirements and final disposition;

5. Address the use of new technologies through regular media and format conversion, recopying, reformatting, and other

necessary maintenance to ensure the retention and usability of electronic records until the expiration of their retention periods and final disposition; and

6. Ensure transparency by documenting, in an open and verifiable manner, the processes and activities carried out in the management of electronic records.

A district's policies and procedures must ensure information that must be protected from unauthorized use or disclosure is appropriately protected as required by applicable law, regulation, or other applicable requirement

13 TAC 7.73

Records Management Program

A board by ordinance or order shall establish a records management program to be administered by the records management officer. The ordinance or order must provide methods and procedures to enable the board, custodians, and the records management officer to fulfill the statutory duties and responsibilities concerning management and preservation of records. The ordinance or order may prescribe any policies or procedures for the operation of the records management program that are consistent with the requirements of Local Government Code Title 6, Subtitle C rules adopted under it. A copy of the ordinance or order must be filed by the records management officer with TSLAC within 30 days after the date of its adoption. *Local Gov't Code 203.026(a)–(c)*

Electronic Records Management

The board and its records management officer, in cooperation with other employees of the district, must:

1. Administer a program for the management of records created, received, maintained, used, or stored on electronic media;

2. Integrate the management of electronic records with other records and information resources management programs;

3. Incorporate electronic records management objectives, responsibilities, and authorities in pertinent directives;

4. Establish procedures for addressing records management requirements, including recordkeeping requirements and disposition;

5. Make training available for users of electronic records systems that addresses:

    a. The operation, care, and handling of the equipment, software, media, and information contained in the system; and

b. Records management concepts and applicable requirements, including any records management issues as they relate to item 5a;

6. Develop and maintain up-to-date documentation about all electronic records systems that is adequate to specify all technical characteristics necessary for reading or processing the records and the timely, authorized disposition of records; and

7. Specify the location and media on which electronic records are maintained to meet retention requirements and maintain inventories of electronic records systems to facilitate disposition.

13 TAC 7.72(c)

Records Control Schedules

The records management officer shall:

1. Prepare a records control schedule listing the following records and establishing a retention period for each:

   a. All records created or received by the district;

   b. Any record no longer created or received by the district that is still in its possession and for which the retention period on a records retention schedule issued by TSLAC has not expired; and

   c. Any record no longer created or received by the district that is still in its possession and for which the retention period on a records retention schedule issued by TSLAC has expired but which will not be destroyed; and

2. File with the director and librarian a written certification of compliance that the district has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by TSLAC.

Amendment of Schedules

The records management officer shall review the district's records control schedules and prepare amendments to the schedules as needed to reflect new records created or received by the district or revisions to retention periods established in a records retention schedule issued by TSLAC. The records management officer shall file with the director and librarian a written certification of compliance that the district has amended the records control schedules to comply with the minimum requirements established on records retention schedules issued by TSLAC.

The board shall require in the ordinance or order establishing the records management program the review or approval of a records

control schedule or amended schedule by the officers of the district as it considers necessary.

Local Gov't Code 203.041

Retention Periods

A retention period for each record on the records control schedule shall be determined by the board or under its direction. A retention period may not be less than a retention period prescribed by state or federal law, regulation, or rule of court; or a retention period for the record established on a records retention schedule issued by TSLAC. *Local Gov't Code 203.042*

TSLAC Retention Schedules

TSLAC has adopted the following retention schedules, among others: Local Schedule GR—Records Common to All Governments, Local Schedule EL—Records of Elections and Voter Registration, Local Schedule TX—Records of Property Taxation, and Local Schedule SD—Records for Public School Districts. These schedules establish mandatory minimum retention periods for the records listed. *13 TAC 7.125*

Note: Local government records retention schedules[1] are available on the TSLAC website.

Destruction of Records

A local government record may be destroyed if:

1. The record is listed on a valid records control schedule and either its retention period has expired or it has been microfilmed or electronically stored in accordance with legal requirements;
2. The record appears on a list of obsolete records as provided by Local Government Code 203.044;
3. The record is not listed on a records retention schedule issued by TSLAC and the district provides notice to TSLAC at least ten days before destroying the record as required by Government Code 441.169;
4. A court issues an expunction order for the destruction or obliteration of the records, pursuant to state law; and
5. The records are defined as exempt from scheduling or filing requirements or listed as exempt in a records retention schedule issued by TSLAC.

Local Gov't Code 202.001; 13 TAC 7.123(c)

Electronic Records Destruction

Electronic records may be destroyed only in accordance with Local Government Code 202.001, above.

Each district must ensure that:

1. Electronic records eligible for destruction are disposed of in a manner that ensures protection of any confidential information; and
2. Electronic storage media used for electronic records containing confidential information is not reused if the previously recorded information can be compromised in any way through reuse.

13 TAC 7.78(a), (b)

Exceptions

A local government record the subject matter of which is known by the custodian to be the subject of litigation may not be destroyed until the litigation is settled. A local government record that is subject to a request under Government Code Chapter 552 (Public Information Act) may not be destroyed until the request is resolved. *Local Gov't Code 202.002*

[See FL regarding student records.]

Recordkeeping

As a board may require, the records management officer shall keep accurate lists of records destroyed, their volume, and other information of records management activities. *Local Gov't Code 203.046*

Preservation of Records

Permanent records shall be stored under conditions that meet the requirements of 13 Administrative Code 7.164.

Permanent Records

Microfilm

Any local government record may be maintained on microfilm in addition to or instead of paper or other media, subject to the requirements of Local Government Code Chapter 204 and rules adopted under it. *Local Gov't Code 204.002*

Electronic Storage

Any local government record data may be stored electronically in addition to or instead of source documents in paper or other media, subject to the requirements of Local Government Code Chapter 205 and rules adopted under it. *Local Gov't Code 205.002*

Records Offenses

Destruction or Alienation of Record

A board member or district employee commits an offense if the board member or employee knowingly or intentionally violates Local Government Code Title 6, Subtitle C (local government records) or rules adopted under it by destroying or alienating a local government record in contravention of Local Government Code Subtitle C or by intentionally failing to deliver records to a successor in office as provided by Local Government Code 201.006(a). *Local Gov't Code 202.008*

Tampering with Governmental Record

A person commits an offense if the person:

1. Knowingly makes a false entry in, or false alteration of, a governmental record;
2. Makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
3. Intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
4. Possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;
5. Makes, presents, or uses a governmental record with knowledge of its falsity; or
6. Possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

It is an exception to the application of item 3, above, that the governmental record is destroyed pursuant to legal authorization or transferred under Government Code 441.204. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Local Government Code Title 6, Subtitle C.

Penal Code 37.10

Federal Investigations

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any bankruptcy case, or in relation to or contemplation of any such matter or case, shall be fined, imprisoned not more than 20 years, or both. *18 U.S.C. 1519*

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[1] Local Government Retention Schedules: https://www.tsl.texas.gov/slrm/recordspubs/localretention.html

The Superintendent shall oversee the performance of records management functions prescribed by state and federal law:

- Records administrator, as prescribed by Local Government Code 176.001 and 176.0065. [See BBFA]
- Officer for public information, as prescribed by Government Code 552.201–.205. [See GBAA]
- Public information coordinator, as prescribed by Government Code 552.012. [See BBD]

Local Government Records Act

The term "local government record" shall pertain to all items identified as such by the Local Government Records Act.

"Local Government Record"

Records Management Officer

The Superintendent shall serve as and perform the duties of the District's records management officer as prescribed by Local Government Code 203.023 and shall administer the District's records management program pertaining to local government records in compliance with the Local Government Records Act.

Notification

The records management officer shall file his or her name with the Texas State Library and Archives Commission (TSLAC) within 30 days of assuming the position.

Electronic Records

The records management officer shall develop procedures for the management of electronic records that comply with the District's records control schedules and meet the minimum components required by law.

The procedures shall:

1. Specify the objectives of the electronic records management program;
2. Identify the responsibilities of employees who create, receive, or maintain electronic records;
3. Ensure the maintenance of electronic records until the expiration of the applicable retention period and final disposition; and
4. Ensure that electronic records that must be protected from unauthorized use or disclosure are appropriately protected as required by law, regulation, or other applicable requirements.

Records Control Schedules

The records management officer shall file with the TSLAC a written declaration that the District has adopted records control schedules that comply with records retention schedules issued by the TSLAC as provided by law.

Website Postings

The District's records management program shall address the length of time records will be posted on the District's website when the law does not specify a posting period.

Records Destruction Practices

All local government records shall be considered District property and any unauthorized destruction or removal shall be prohibited. The District shall follow its records control schedules, records management program, and all applicable laws regarding records destruction. However, the District shall preserve records, including electronically stored information, and suspend routine record destruction practices where appropriate and in accordance with procedures developed by the records management officer. Such procedures shall describe the circumstances under which local government records scheduled for destruction must be retained. Notification shall be given to appropriate staff when routine record destruction practices must be suspended and when they may be resumed.

Training

The records management officer shall receive appropriate training regarding the Local Government Records Act and shall ensure that custodians of records, as defined by law, and other applicable District staff are trained on the District's records management program, including this policy and corresponding procedures.

Information Required on Website

A district that at any time on or after January 1, 2019, maintained a publicly accessible internet website shall post on a publicly accessible website the following information:

1. The district's contact information, including a mailing address, telephone number, and email address;
2. Each member of the board;
3. The date and location of the next election for board members [see BB series];
4. The requirements and deadline for filing for candidacy of board member, which shall be continuously posted for at least one year before the election day for the office [see BB series];
5. Each notice of a meeting of the board under Government Code Chapter 551, Subchapter C [see BE]; and
6. Each record of a meeting of the board under Government Code 551.021 [see BE].

Items 5 and 6 above do not apply to a district with a population of less than 5,000 in the district's boundaries and located in a county with a population of less than 25,000.

Gov't Code 2051.201

Note: See GBA regarding the confidentiality of certain board member information.

Trustee Information

Each district that maintains an internet website shall post on the website the name, email address, and term of office, including the date the term began and the date the term expires, of each member of the district's board of trustees. If a district does not maintain an internet website, the district shall submit the information required above to the Texas Education Agency (TEA). On receipt of the district's information, TEA shall post the information on TEA's internet website.

Each time there is a change in the membership of a district's board, the district shall update the information required above and, as applicable post the updated information on the district's internet website or submit the updated information to TEA for posting on TEA's internet website.

Education Code 11.1518

Note: The following is an index of website posting requirements that are addressed in the legal reference material of the policy manual. The list is not all-inclusive. The list does not address postings that are required in response to a specific incident or postings required under special circumstances.

Other Required Internet Postings

The following posting requirements apply to a district that maintains an internet website:

1. A board may not vote on adoption of a proposed local innovation plan unless the final version of the proposed plan has been available on the district website for at least 30 days, under Education Code 12A.005(a)(1) and 19 Administrative Code 102.1307(a)(1). [See AF]

2. A district designated as a district of innovation shall ensure that a copy of its current local innovation plan is available to the public by posting and maintaining the plan in a prominent location on the district's website, under Education Code 12A.0071(a) and 19 Administrative Code 102.1305(e), .1307(f). [See AF]

3. Not later than 30 days after an accreditation status of accredited-warned, accredited-probation, or not accredited-revoked is assigned, a district must post notice on the home page of its website with a link to the required notification under 19 Administrative Code 97.1055(f), and maintain this until the district is assigned the accredited status. [See AIA]

4. A district with a local accountability system must produce a campus scorecard and make available on the district website an explanation of the methodology used to assign local accountability performance ratings, under 19 Administrative Code 97.1003(g). [See AIA]

5. A board shall disseminate its Texas Academic Performance Report (TAPR) by posting it on the district website under 19 Administrative Code 61.1022(f). [See AIB]

6. Not later than the tenth day after the first day of instruction of each school year, a district shall make available each campus report card, the district's performance report, the district's accreditation status and performance rating, and a definition and explanation of each accreditation status, under Education Code 39.362. [See AIB]

7. A district shall post its annual federal report card under 20 U.S.C. 6311(h)(2). [See AIB]

8. A campus intervention team must notify the public of the meeting for input for the development of a targeted improvement plan fifteen days prior to the meeting by way of the district and campus website, under 19 Administrative Code 97.1061(d)(3)(A)(ii) and Education Code 39A.056. [See AIC]

9. A district shall post a targeted improvement plan for a campus assigned an unacceptable performance rating on its website before the board hearing on the plan under Education Code 39A.057(b). [See AIC]

10. A district shall notify stakeholders of their ability to review the completed campus turnaround plan and post the completed plan on the district website at least 30 days before the final plan is submitted to the board of trustees, under 19 Administrative Code 97.1064(e). [See AIC]

11. A district shall post an election notice required under Election Code 85.007. [See BBBA]

12. A district shall post election information under Election Code 4.009. [See BBBA]

13. Each day early voting is conducted, the district shall post the branch daily register under Election Code 85.072. [See BBBA]

14. A district shall post early voting rosters under Election Code 87.121. [See BBBA]

15. A district shall post election results under Election Code 65.016. [See BBBB]

16. A district shall post the minutes of the last regular board meeting held before an election of trustees if the minutes reflect that a trustee is deficient in meeting the trustee's training requirement, under Education Code 11.159(b) and 19 Administrative Code 61.1(j). [See BBD]

17. A district that is located wholly or partly in a municipality with a population of more than 500,000 and with a student enrollment of more than 15,000 shall post a report filed pursuant to Election Code Chapter 254 by a board member, a candidate for membership on the board, or a specific-purpose committee for supporting, opposing, or assisting a candidate or member of a board under Election Code 254.04011. [See BBBC]

18. A district shall provide access to the conflicts disclosure statements and questionnaires under Local Government Code 176.009. [See BBFA, CHE]

19. A district shall post the statements regarding activities to support and promote student health under Education Code 28.004. [See BDF]

20. A district must post notice of school health advisory council (SHAC) meetings under Education Code 28.004(d-1). [See BDF]

21. A district must post the minutes and audio or video recording of each SHAC meeting under Education Code 28.004(d-2). [See BDF]

22. A board must post notice of a board meeting and, if the district contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more, the board must also post the agenda for a board meeting under Government Code 551.056. [See BE]

23. A district that has a student enrollment of 10,000 or more shall post the archived recording, or a link thereto, of its meetings under Government Code 551.128(b-1). [See BE]

24. A district conducting a bond election shall post the election order, the election notice, the contents of the proposition, and any sample ballot under Election Code 4.003(f). [See CCA]

25. A district conducting a bond election shall post the voter information document beginning not later than the 21st day before election day and ending on the day after the election, under Government Code 1251.052(d). [See CCA]

26. A district issuing capital appreciation bonds shall post the information required by Government Code 1201.0245. [See CCA]

27. Not later than 30 days before the date of an election to approve a tax rate, a district must post the results of an efficiency audit under Education Code 11.184. [See CCG]

28. A district shall include on the home page of its website the prescribed statement if the district increases the amount of taxes to fund maintenance and operation expenditures under Tax Code 26.05(b). [See CCG]

29. A district shall maintain a link to the area of the comptroller's website where information on each of the district's agreements to limit appraised value, if any, is maintained, under Tax Code 313.0265(c). [See CCGB]

30. A district shall post a summary of its proposed budget concurrently with publication of the proposed budget under Education Code 44.0041. [See CE]

31. In the format prescribed by the comptroller, a district shall post or cause to be posted tax rate and budget information under Tax Code 26.18. [See CE]

32. A district shall maintain its adopted budget on the district's website until the third anniversary of the date the budget was adopted, under Education Code 44.0051. [See CE]

33. A district shall continuously post its contact information and Annual Local Debt Report under Local Government Code 140.008 and 34 Administrative Code 10.1–.6 on its website until the district posts the next annual report, or, as an alternative, the district may continually maintain a link to the comptroller's website where the district's financial information may be viewed. [See CFA]

34. A district must make available information regarding its compliance with requirements related to the transportation of students enrolled in the district who reside outside the district, under Education Code 34.007. [See CNA]

35. A district that does not participate in the uniform group health insurance program (TRS ActiveCare) shall post its comparability report, together with the policy or contract for the group health coverage plan, under Education Code 22.004(d). [See CRD]

36. A district that is a service provider seeking to limit liability under the Digital Millennium Copyright Act must post information regarding its designated agent under 17 U.S.C. 512(c)(2). [See CY]

37. A district shall post its employment policy and any regulations referenced under Education Code 11.1513(a). [See DC]

38. A district shall post the board's employment policies under Education Code 21.204(d). [See DCB]

39. The board shall adopt and post on the district's website early childhood literacy and mathematics plans that set specific annual goals under Education Code 11.185. [See EA]

40. The board shall post on the district's website and on the website, if any, of each campus the annual report of progress toward the goals set under the early childhood literacy and mathematics plans under Education Code 11.185. [See EA]

41. The board shall post on the district's website and on the website, if any, of each campus the annual report of progress toward the goals set under the college, career, and military readiness plans under Education Code 11.186. [See EA]

42. A district shall post curriculum materials used in the district's human sexuality instruction or instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, if the materials are in the public domain, under Education Code 28.004(j). [See EHAA]

43. A district shall post the transition and employment guide for students enrolled in special education programs and their parents in order to provide information on statewide services and programs that assist in the transition to life outside the public school system, under Education Code 29.0112. [See EHBAD]

44. A district shall make available on the district or campus website by November 1 of each school year a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education, under 19 Administrative Code 102.1003(e). [See EHBG]

45. Annually, a district shall post any agreement between the district and a public institution of higher education to provide a dual credit program, under Education Code 28.009(b-2). [See EHDD]

46. A district shall publish information from TEA under Education Code 28.02121 explaining the advantages of the distinguished level of achievement and each endorsement. [See EIF]

47. A district shall post the date the PSAT/NMSQT will be administered and the date any college advanced placement tests will be administered, under Education Code 29.916. [See EK]

48. A district that receives funds under Title 1, Part A shall post on its website and the website of each campus for each grade served, information on each assessment required by the state to comply with 20 U.S.C. 6311, other assessments required by the state, and assessments required district-wide, under 20 U.S.C. 6312(e)(2)(B). [See EKB]

49. A district shall post information regarding local programs and services, including charitable programs and services, available to assist students who are homeless, under Education Code 33.906. [See FDC]

50. A district shall prominently post information about required and recommended immunizations and procedures for claiming an exemption from immunization requirements under Education Code 38.019. [See FFAB]

51. Each school year, the board shall post a summary of the Guidelines for the Care of Students With Food Allergies At-Risk for Anaphylaxis[1] on the district's website with instructions for obtaining access to the complete guidelines document, under Education Code 38.0151. [See FFAF]

52. A district must prominently display the contact information required to be listed for the Title IX Coordinator and policy on its website, if any, under 34 C.F.R. 106.8(b). [See FFH]

53. A district must make all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on its website, if any, under 34 C.F.R. 106.45(b)(10)(i)(D). [See FFH]

54. To the extent practicable, a district must post the procedure for reporting bullying established by the district's bullying policy, under Education Code 37.0832(e). [See FFI]

55. A district shall post on its website, for each district campus, the email address and dedicated phone number of the campus behavior coordinator under Education Code 26.015. [See FO]

56. If the board designates a method for making a written request for public information, other than mail, email, or hand-delivery, the board must include a statement that a request may be made by that method on its website under Government Code 552.234(b) unless the statement is on the sign required by Government Code 552.205. [See GBAA]

57. A board that allows requestors to use the public information request form created by the attorney general must post the form on the district website under Government Code 552.235. [See GBAA]

58. A district shall post on its website and each campus shall post on any campus website a notice regarding the district's ability to refuse entry or eject certain persons under Education Code

37.105 and 19 Administrative Code 103.1207(g), including the appeal process. [See GKA]

Optional Internet Postings

A district that maintains an internet website has the following options:

1. A board may broadcast an open meeting over the internet, under Government Code 551.128. [See BE]
2. A district may publish the superintendent's employment contract on the district's website instead of publishing it in the annual financial management report under 19 Administrative Code 109.1001(q)(3)(B)(i). [See CFA]
3. Notice of a vacant position for which a certificate or license is required may be provided by posting the position on the district's internet website, rather than on a bulletin board, under Education Code 11.1513. [See DC]
4. A district may place on its internet website a current copy of the procedural safeguards notice regarding special education and related services, under 34 C.F.R. 300.504(b). [See EHBAE]
5. A district may provide the annual notice to the parent of each student enrolled in grade 9 or above of the availability of subsidies for certain exam fees and the availability and enrollment qualifications for programs under which a student may earn college credit and career and technology education programs or other work-based education programs in the district, under Education Code 28.010. [See EHDD]
6. A board may post a mailing address and email address designated for receiving written requests for public information on its website under Government Code 552.234(d). [See GBAA]

Geospatial Data Products

"Geospatial data product" means a document, computer file, or internet website that contains geospatial data; a map; or information about a service involving geospatial data or a map. *Gov't Code 2051.101(1)*

Notice

A district shall include a notice on each geospatial data product that:

1. Is created or hosted by the district;
2. Appears to represent property boundaries; and
3. Was not produced using information from an on-the-ground survey conducted by or under the supervision of a registered

professional land surveyor or land surveyor authorized to perform surveys under laws in effect when the survey was conducted.

The notice must be in substantially the following form: "This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries."

The notice may include language further defining the limits of liability of a geospatial data product producer; apply to a geospatial data product that contains more than one map; or for a notice that applies to a geospatial data product that is or is on an internet website, be included on a separate page that requires the person accessing the website to agree to the terms of the notice before accessing the geospatial data product.

Gov't Code 2051.102

Exemption

A district is not required to include the notice on a geospatial data product that:

1. Does not contain a legal description, a property boundary monument, or the distance and direction of a property line;
2. Is prepared only for use as evidence in a legal proceeding;
3. Is filed with the clerk of any court; or
4. Is filed with the county clerk.

Gov't Code 2051.103

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[1] TDSHS Guidelines for the Care of Students with Food Allergies At-Risk for Anaphylaxis: https://www.dshs.texas.gov/uploadedFiles/Content/Prevention_and_Preparedness/schoolhealth/SHAC/Guidelines-Food%20Allergy-Final.pdf

Definitions

Participating Entity — "Participating entity" means an entity participating in the uniform group coverage program established under Insurance Code Chapter 1579.

Program — "Program" means the uniform group coverage program established under Insurance Code Chapter 1579 (TRS-ActiveCare).

Insurance Code 1579.002(5), (6)

Coverage Requirements

A district shall participate in the uniform group coverage program established under Insurance Code Chapter 1579 as provided by Subchapter D of that chapter. *Education Code 22.004(a)*

Districts with 500 or Fewer Employees — Each district with 500 or fewer employees is required to participate in the program. *Insurance Code 1579.151(a)*

Self-Funded Districts — Notwithstanding the above, a district otherwise subject to the requirement that, on January 1, 2001, was individually self-funded for the provision of health coverage to its employees may elect not to participate in the program. *Insurance Code 1579.151(b)*

Districts with More Than 500 Employees — A district with more than 500 employees may elect to participate in the program. A district that elects to participate shall apply for participation in the manner prescribed by TRS rule. *Insurance Code 1579.152*

TRS-ActiveCare

The Teacher Retirement System (TRS) shall implement and administer the uniform group coverage program described by Insurance Code Chapter 1579. TRS shall establish plans of group coverages for employees participating in the program and their dependents. *Insurance Code 1579.051, .101*

Eligibility — Participation in the program is limited to employees of participating districts who are full-time employees and to part-time employees who are participating members in TRS. *Insurance Code 1579.202(a)*

Full-Time Employees — A "full-time employee" is a participating member who is currently employed by a district in a position that is eligible for membership in TRS and who is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under Insurance Code Chapters 1551 (Texas Employees Group Benefits Act), 1601 (State University Employees Uniform Insurance Benefits Act), or 1575 (Texas Public School Retired Employees Group Benefits Act [TRS-Care]). *34 TAC 41.33(2)*

Certain Part-Time Employees — A part-time employee of a district who is not a participating member in TRS is eligible to participate in the program only if the employee pays all of the premiums and other costs associated with

the health coverage plan selected by the employee. *Insurance Code 1579.204*

A "part-time employee" is an individual who:

1. Is currently employed by a district for ten hours or more each week;
2. Is employed in a position that is not eligible for membership in TRS or is not eligible for membership in TRS because of a service or disability retirement; and
3. Is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under Insurance Code Chapters 1551, 1601, or 1575 (TRS-Care).

34 TAC 41.33(6)

Alternative Group Health Coverage Prohibited

Notwithstanding any other law, a participating entity may not offer or make available to the entity's employees or their dependents group health coverage not provided under the program. *Insurance Code 1579.1045; 34 TAC 41.30(e)*

If, contrary to 34 Administrative Code 41.30(e) and Insurance Code 1579.1045, a participating entity offers alternative group health coverage, TRS may pursue remedies for noncompliance, including but not limited to removal from or denial of entry into TRS-ActiveCare. TRS may impose or pursue one or more remedies. The pursuit of one remedy does not constitute a waiver of any other remedy that TRS may have at law or equity. If TRS discovers that a participating entity is in violation of 34 Administrative Code 41.30(e) after the beginning of a plan year, in addition to any other available remedy, TRS will remove the entity from the program effective at the end of the month in which TRS discovers the situation; and it will be the entity's liability to procure alternative coverage or provide other remedies for the employees and their dependents that lose coverage under these circumstances. *34 TAC 41.30(f)*

Participation Election

Election to Discontinue

Effective September 1, 2022, a participating entity may elect to discontinue the entity's participation in the program by providing written notice to TRS not later than December 31 of the year preceding the first day of the plan year in which the election will be effective.

A participating entity that elects to discontinue participation in the program may not elect to:

1. Participate in the program until the fifth anniversary of the effective date of the entity's election to discontinue participation; or

2. Discontinue the entity's participation after an election described by item 1 until the fifth anniversary of the effective date of that election.

Election to Continue

Effective September 1, 2022, an entity that elects to participate in the program shall provide written notice to TRS not later than December 31 of the year preceding the first day of the plan year in which the election will be effective. The entity may not elect to discontinue the entity's participation until the fifth anniversary of the effective date of the entity's election to participate.

Insurance Code 1579.155; 34 TAC 41.30

An eligible entity that submits a written election to participate in TRS-ActiveCare under 34 Administrative Code 41.30 must include with the notice of election the information specified in 34 Administrative Code 41.45. Written notices of election to participate in TRS-ActiveCare without the information required will be considered incomplete and will be denied by TRS. *34 TAC 41.45*

Optional Coverages

Education Code 22.004 does not preclude a district that is participating in the uniform group coverage program established under Insurance Code Chapter 1579 from entering into contracts to provide optional insurance coverages for district employees. *Education Code 22.004(j)*

Other Health Coverage Programs

A district that does not participate in the program shall make available to its employees group health coverage provided by a risk pool established by one or more districts under Local Government Code Chapter 172 ("authorized risk pool"), or under a policy of insurance or group contract issued by an insurer, a company subject to Insurance Code Chapter 842, or a health maintenance organization under Insurance Code Chapter 843.

Comparability

The coverage provided by a district that does not participate in the program must meet the substantive coverage requirements of Insurance Code Chapter 1251, Subchapter A, Chapter 1364, and Chapter 1366, Subchapter A, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. "Major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under Insurance Code Chapter 1551 (Texas Employees Group Benefits Act).

The following factors shall be considered in determining whether the district's coverage is comparable to the basic health coverage specified above:

1. The deductible amount for service provided inside and outside of the network;
2. The coinsurance percentages for service provided inside and outside of the network;
3. The maximum amount of coinsurance payments a covered person is required to pay;
4. The amount of the copayment for an office visit;
5. The schedule of benefits and the scope of coverage;
6. The lifetime maximum benefit amount; and
7. Verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance (TDI) or is provided by an authorized risk pool or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

Education Code 22.004(b)

Financial Statement

A district that does not participate in the program may not contract with an insurer, a company subject to Insurance Code Chapter 842, or a health maintenance organization to issue a policy or contract under Education Code 22.004, or with any person to assist the district in obtaining or managing the policy or contract unless, before the contract is entered, the insurer, company, organization, or person provides the district with an audited financial statement showing the financial condition of the insurer, company, organization, or person. *Education Code 22.004(f)*

Small Employer Market Election

A district may elect to participate as a small employer without regard to the number of employees in the district. A district that makes this election is treated as a small employer under Insurance Code Chapter 1501 for all purposes.

A district that is participating in the uniform group coverage program established under Insurance Code Chapter 1579 may not participate in the small employer market under this provision and may not renew a health insurance contract obtained in accordance with this provision after the date on which the program of coverages provided under Chapter 1579 is implemented. This provision does not affect a contract for the provision of optional coverages not included in a health benefit plan under Insurance Code Chapter 1501.

Insurance Code 1501.009

Employee Election — Spouses

A district employee who is eligible for coverage under a large or small employer health benefit plan providing coverage to the district's employees and who is the spouse of another district employee covered under the plan may elect whether to be treated under the plan as an employee or as the dependent of the other employee. *Insurance Code 1501.0095*

Self-Funded Health-Care Plan

The board may establish a health-care plan for district employees and their dependents. In implementing the plan, the board shall establish a fund to pay, as authorized under the plan, all or part of the actual costs for hospital, surgical, medical, dental, or related health care incurred by employees or any dependent whose participation in the program is being supported by deductions from an employee's salary. Under the plan, the fund also may be used to pay the costs of administering the fund. The fund consists of money contributed by the district and money deducted from salaries of employees for dependent or employee coverage. Money for the fund may not be deducted from an employee's salary unless the employee authorizes the deduction in writing. The plan shall attempt to protect the district against unanticipated catastrophic individual loss, or unexpectedly large aggregate loss, by securing individual stop-loss coverage, or aggregate stop-loss coverage, or both, from a commercial insurer.

The board may amend or cancel the district's health-care plan at any regular or special board meeting. If the plan is canceled, any valid claim against the fund for payment of health-care costs resulting from illness or injury occurring during the time the plan was in effect shall be paid out of the fund. If the fund is insufficient to pay the claim, the costs shall be paid out of other available district funds.

Education Code 22.005

Compliance Report

Each district that does not participate in the program shall prepare a report addressing its compliance with Education Code 22.004. The report must be available for review, together with the policy or contract for the group health coverage plan, at the central administrative office of each campus in the district and be posted on the district's internet website if the district maintains a website, must be based on the district group health coverage plan in effect during the current plan year, and must include:

1. Appropriate documentation of:

    a. The district's contract for group health coverage with a provider licensed to do business in this state by TDI or an authorized risk pool; or

b. A resolution of the board authorizing a self-insurance plan for district employees and of the district's review of district ability to cover the liability assumed;

2. The schedule of benefits;

3. The premium rate sheet, including the amount paid by the district and employee;

4. The number of employees covered by the health coverage plan offered by the district; and

5. Information concerning the ease of completing the report.

Education Code 22.004(d)

Cost of Coverage

The cost of coverage under the program shall be paid by the state, the district, and the employees in the manner provided by Insurance Code, Chapter 1579, Subchapter F, below. *Education Code 22.004(c)*

TRS-ActiveCare

State Contribution

The state shall provide for each covered employee the amount of $900 each state fiscal year or a greater amount as provided by the General Appropriations Act. The state contribution shall be distributed through the school finance formulas under Education Code Chapters 48 and 49 and used by districts as provided by Education Code 48.275*. Insurance Code 1579.251(a)*

Employee Contribution

An employee covered by the program shall pay that portion of the cost of coverage selected by the employee that exceeds the amount of the state contribution and a district's contribution.

District Contribution

A district may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

Insurance Code 1579.253

A district shall make contributions for the program as provided by Insurance Code Chapter 1581. *Insurance Code 1579.252* [See District Required Minimum Effort, below]

Other Health Coverage Programs

The cost of coverage under a plan adopted by a district that does not participate in the program shall be shared by the employees and the district, using the contributions by the state described by Insurance Code Chapter 1579, Subchapter F. [See State Contribution, above] *Education Code 22.004(c)*

District Required Minimum Effort

A district shall, for each fiscal year, use to provide health coverage an amount equal to the number of participating employees of the district multiplied by $1,800. *Insurance Code 1581.052(a)*

Designation of Compensation for Benefits

An employee who is covered by a cafeteria plan or who is eligible to pay health-care premiums through a premium conversion plan may elect to designate a portion of the employee's compensation to be used as health-care supplementation. [See DEA] *Education Code 22.103(a), (c)*

Use

An employee may use compensation designated for health-care supplementation for any employee benefit, including depositing the designated amount into a cafeteria plan in which the employee is enrolled or using the designated amount for health-care premiums through a premium conversion plan. *Education Code 22.106*

Written Election

Each year, an active employee must elect in writing whether to designate a portion of the employee's compensation to be used as health-care supplementation. An election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. *Education Code 22.105*

Continuation Coverage

After Resignation

Notwithstanding any other law, an employee whose resignation is effective after the last day of an instructional year is entitled to participate or be enrolled in the uniform group coverage plan or the district's group health coverage through the earlier of:

1. The first anniversary of the date participation in or coverage under the uniform group coverage plan or the group health coverage was first made available to district employees for the last instructional year in which the employee was employed by the district; or
2. The last calendar day before the first day of the instructional year immediately following the last instructional year in which the employee was employed by the district.

If an employee's resignation is effective after the last day of an instructional year, the district may not diminish or eliminate the amount of a contribution available to the employee under Insurance Code Chapter 1581 [see District Required Minimum Effort, above] before the last date on which the employee is entitled to participation or enrollment.

Education Code 22.004(k), (l); 34 TAC 41.38

During Military Leave

An employee who is absent from a position of employment by reason of service in the uniformed services may elect to continue coverage under a health plan. The maximum period of coverage of such a person and the person's dependents shall be the lesser of:

1. The 24-month period beginning on the date on which the person's absence begins; or

2. The day after the date on which the person fails to apply for or return to a position of employment. [See DECB]

38 U.S.C. 4317(a)

During FMLA Leave

During any period of leave under the Family and Medical Leave Act (FMLA), a district shall maintain coverage under any group health plan for the duration of the leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. *29 U.S.C. 2614(c); 29 C.F.R. 825.209, .210, .213* [See also DECA]

Upon Termination or Other Qualifying Event (COBRA)

In accordance with regulations that the Secretary of Health and Human Services shall prescribe, each group health plan that is maintained by any state that receives funds under 42 U.S.C. Chapter 6A, by any political subdivision of such a state, or by any agency or instrumentality of such a state or political subdivision, shall provide, in accordance with 42 U.S.C. Chapter 6A, Subchapter XX, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan. *42 U.S.C. 300bb-1(a)*

[For more information on the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), see 42 U.S.C. 300bb-1 through 300bb-8.]

Note: See DEB for continuation benefits that are available to survivors of district peace officers under certain conditions.

Coverage of Preexisting Conditions

Notwithstanding any other law, group health benefit coverage provided by or offered through a district to its employees under any law other than the uniform group coverage program is subject to the requirements of Insurance Code Sections 1501.102–.105, which limit exclusion for preexisting conditions. This provision applies to all group health benefit coverage provided by or offered through a district to its employees, including a standard health benefit plan issued under Insurance Code Chapter 1507 and health and accident coverage provided through a risk pool established under Local Government Code Chapter 172. *Education Code 22.004(m)*

TRS-ActiveCare

Coverage provided under the uniform group coverage program may not be made subject to a preexisting condition limitation during the initial period of eligibility. *Insurance Code 1579.105*

Federal Law

A group health plan and a health insurance issuer offering group or individual health insurance coverage may not impose any preexisting condition exclusion with respect to such plan or coverage. *42 U.S.C. 300gg-3(a)*

Privacy of Health Information

To the extent a district is a covered entity under the Administrative Simplification provisions of HIPAA (42 U.S.C. Chapter 7, Subchapter XI, Part C; 45 C.F.R. Parts 160, 162, 164), the district must maintain the privacy of protected health information in accordance with the Privacy Rule, 45 C.F.R. Part 164, Subpart E.

Definitions

"Covered entity" means:

Covered Entity

1. A health plan;
2. A health-care clearinghouse; or
3. A health-care provider who transmits any health information in electronic form in connection with a transaction covered by 45 C.F.R. Subtitle A, Subchapter C.

45 C.F.R. 160.103

Protected Health Information

"Protected health information" means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any form or medium. "Protected health information" excludes individually identifiable health information:

1. In education records covered by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g. [See FL]
2. In records described at 20 U.S.C. 1232g(a)(4)(B)(iv) (medical treatment records on a student who is at least 18 years of age).
3. In employment records held by a covered entity in its role as employer.

45 C.F.R. 160.103

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Note: For information regarding construction of school facilities, see CV series.

In addition to the facility standards contained in this policy, additional requirements are set out in 19 Administrative Code 61.1036 and 61.1040.

All new facilities must meet the commissioner's standards for adequacy of school facilities to be eligible to be financed with state or local tax funds. *Education Code 46.008*

State Standards for Construction on or After November 1, 2021

Applicability

The school facilities standards established in 19 Administrative Code 61.1040 ("section 61.1040") shall apply to all district capital improvement projects as follows, regardless of the type of school facility or the type of construction delivery method used by the district.

1. A district capital improvement project of any type or size relating to a school facility subject to section 61.1040 must comply with applicable requirements established in section 61.1040(d), (e), (f), (j), and (k).

2. A project for new construction or major renovation at an instructional facility must comply with the requirements established in section 61.1040(d), (e), (f), (g), (j), and (k) and one of the methods required to demonstrate compliance with minimum space requirements established in section 61.1040(h) and (i).

3. A project for minor renovation at an instructional facility must comply with applicable requirements established in section 61.1040(d)(1), (e), (f), (j), and (k).

4. A project for new construction, major renovation, or minor renovation at a specialized instructional facility, noninstructional facility, or noninstructional specialized assembly facility must comply with applicable requirements established in section 61.1040(d)(1), (e), (f), (j), and (k).

5. A project for major renovation that includes minor scopes of work in an area of a school facility that is separate and distinct from the project scope of the major renovation may be performed as a part of a construction services contract for the major renovation without the minor scope of work becoming subject to the standards in section 61.1040(g), (h), or (i) if:

    a. The minor scopes of work would not, on a stand-alone basis, be considered a major renovation project; and

b. The cost of the minor scopes of work is included in the total cost of the project construction budget to determine the appropriate scope of work to be included in the project, as specified in section 61.1040(k)(1)(B).

19 TAC 61.1040(b)(1)

Definitions

The words and terms used in section 61.1040 shall have the meanings set out in section 61.1040(a).

Capital Improvement Project

Any school facility project consisting of new construction, major renovation, or minor renovation for which construction services are procured under Government Code Chapter 2269, in accordance with Education Code 44.031(a)(5). *19 TAC 61.1040(a)(4)* [See CV]

Implementation

The school facilities standards established in section 61.1040 shall apply to a capital improvement project for which at least one of the following has occurred on or after November 1, 2021:

1. A board adopts a fiscal year maintenance and operations budget where a capital improvement project title and a design or design and construction budget are delineated;

2. A board calls a bond election where one or more capital improvement project titles and design or design and construction budgets are delineated; or

3. A new contract or amendment to an existing contract for architectural services for new construction or a major renovation project or a contract for engineering services for a major renovation or minor renovation has been agreed to and signed and dated by both parties to the agreement.

19 TAC 61.1040(c)(1)

A district shall consider implementing the safety and security standards under section 61.1040(k) for any safety and security upgrades to an existing instructional facility that does not require compliance with section 61.1040. *19 TAC 61.1040(c)(4)*

Option for Actions Taken Before November 1, 2021

A board may elect to treat a capital improvement project, for which an action listed above was taken prior to November 1, 2021, under standards established in 19 Administrative Code 61.1036, below, or under the standards established in section 61.1040. If an election to comply with section 61.1040 is made by a board, the district and architect may mutually agree that the contract for design services may be adjusted and then must signify in writing that the project will become subject to the facilities standards established in section 61.1040 through an affirmative indication on the required

certification form for the project or through some other written document or addendum to the contract signifying election under section 61.1040 and any modifications to the contract terms agreed to by the parties.

If a board makes an election to comply with section 61.1036, it may still elect to comply with section 61.1040(k) (safety and security standards).

19 TAC 61.1040(c)(2)–(3)

Educational Adequacy

A district shall ensure that a capital improvement project subject to section 61.1040 complies with the requirements and standards as follows.

Long-Range Facility Plan

Elements

The long-range facility plan shall include all of the following elements that apply to the facility and project and must also be updated prior to commencement of construction to include the access control document required in section 61.1040(k)(1)(B):

1. Existing and proposed instructional programs at the project campus, including special education, dual language, course offerings, and partnerships;
2. The age and condition of all buildings and systems at the project campus;
3. History of completed capital improvement projects at the facility;
4. Site evaluation of the project campus, including, but not limited to, overall site; shape; useable land; suitability for intended use as well as planned improvements; adequate vehicular, pedestrian, and emergency access; queueing; parking; and site amenities;
5. The district's educational specifications;
6. The district's enrollment projections, maximum student enrollment of the facility, and the facility's maximum instructional capacity, if applicable; and
7. The noncompliance, partial compliance, or full compliance with each of the safety and security standards required in section 61.1040(k).

Process

The process of developing the long-range facility plan shall consider input from teachers, students, parents, taxpayers, and other district stakeholders.

Compliance

The requirement for a long-range facility plan is met when a district completes the long-range facility plan, presents it to the board, and makes it available to the prime design professional for a capital improvement project. The long-range facility plan expires after five years from the date of the final plan presented to the board and must be updated prior to commencement of a subsequent capital improvement project. A long-range facility plan developed as part of a district-wide long-range facilities plan may be used to satisfy this requirement.

19 TAC 61.1040(d)(1)

Educational Specifications

A district shall ensure that a project for new construction and major renovation subject to section 61.1040 complies with the requirements and standards as follows.

Elements

Educational specifications are a written document prepared by the district and approved by the board and shall include all of the following:

1. The district mission, vision, goals, and pedagogy;
2. Preliminary details related to facility type, grades served, and maximum student enrollment;
3. Pertinent provisions of the multi-hazard emergency operations plan that may inform the functionality of the built environment, including how the district complies with Education Code 37.108 [see CKC];
4. A written statement that includes:
    a. Inclusive design goals and considerations supported by the district; and
    b. How inclusive design should be addressed in new and renovated facility designs;
5. Minimum total square footage required to comply with the quantitative method of compliance; and
6. Innovative teaching or operational practices intended for implementation at the instructional facility that may lead to the use of the qualitative method of compliance.

Schedule

An educational specification shall be created for each campus type. If the design and construction of a new campus or major renovation of an existing campus differs substantially from an educational specification that exists for the same campus type, a separate educational specification must be developed. Educational specifications shall be initiated upon the first proposed project of its

type and must be completed prior to initiating the planning or programming phase of a project. Each educational specification must be updated after five years from the date of approval.

Compliance

The requirement for educational specifications is met when a district delivers the approved document to the architect.

19 TAC 61.1040(d)(2)

Exceptions

A district is exempt from the requirements of section 61.1040(d) (Educational Adequacy):

1. If a school facility experiences catastrophic damage and the board approves a capital improvement project in accordance with Education Code 44.0312(c) (delegation of contracting authority); or
2. In a situation deemed urgent by action of the board that warrants immediate action because, if left unresolved, it would impair the conduct of classes.

19 TAC 61.1040(d)(3)

Administration

Section 61.1040(e) establishes standards for the administration and procurements of design professional services and other professional services and for the administration of competitive bids and contracting requirements for construction services. A district shall comply with requirements in section 61.1040(e) and with all applicable requirements, restrictions, and responsibilities established in state law, administrative code, or by a local authority having jurisdiction.

A district shall comply with the administrative and procedural requirements established in section 61.1040(e) and with the standards established in section 61.1040(j) to promote construction quality and best value for a capital improvement project subject to section 61.1040.

A standard in section 61.1040 that incorporates by reference a key statutory provision or administrative rule is established as a compliance requirement for a district seeking to procure, obtain a competitive bid, or administer a contract for construction services, construction-related services, design professional services, or any other professional service required for a capital improvement project. The requirements establish a method by which a district shall demonstrate compliance with the requirements in section 61.1040(e) and with the construction quality standards and construction code requirements in section 61.1040(j). Any express reference to, or omission of, an applicable statutory provision in section 61.1040(e) may not be construed to diminish, alter, or abate a

provision of law applicable to a district or to a district capital improvement project subject to section 61.1040.

19 TAC 61.1040(e)(1)

District Requirements and Responsibilities

In addition to the provisions below, district requirements and responsibilities are set out in section 61.1040(e)(2).

Procurement Transparency

In accordance with Education Code 46.003(g), the board and voters of a district shall determine district needs concerning construction, acquisition, renovation, or improvement to instructional facilities. District funding is entrusted to the district by the taxpayers, and a district must ensure procurement processes and procedures are transparent and provide the best value to the district by complying with applicable laws governing procurement of professional design services and construction services [see CV] and with the standards established in section 61.1040(e) to promote construction quality. *19 TAC 61.1040(e)(2)(A)*

Superintendent's Duties

In accordance with Education Code 11.201, a superintendent shall oversee and ensure compliance with the standards for school facilities established in section 61.1040 and shall ensure board consideration for any action specified as being required to be made by the board, whether by statute, board rule, or other applicable requirement. *19 TAC 61.1040(e)(2)(B)*

Requirements for Other Services

Requirements for construction services, design professional services, and third-party consultants are set out in section 61.1040(e)(3)–(5).

Contract Compliance and Quality Control

A district shall ensure that services sought by or provided to the district for a school facility capital improvement project, including, but not limited to, professional design services, construction services, construction administration services, third-party inspection services, third-party testing services, or third-party code compliance services, are provided through a project-specific written agreement that meets the requirements of section 61.1040(e)(6). *19 TAC 61.1040(e)(6)*

Certification of Compliance with Standards

A district, design professional, contractor, and prime subcontractors, if applicable, shall certify compliance with all applicable standards required in section 61.1040(d), (g)–(k) as required by section 61.1040(f). *19 TAC 61.1040(f)(1)*

Instructional Facility Space Standards

Standards for space for instructional facilities are set out in section 61.1040(g).

Board Approval of Compliance

A board shall approve compliance with the quantitative method of compliance for instructional facility space requirements under sec-

tion 61.1040(h) or the qualitative method of compliance for instructional facility space requirements under section 61.1040(i) before the commencement of design development for a capital improvement project for an instructional facility. *19 TAC 61.1040(h), (i)*

A district may use the qualitative method of compliance for a capital improvement project only if the board has prior documented approval of one or more instructional or operational practices for the proposed project that distributes or manages student capacity in an innovative or nontraditional manner. Prior to approving the qualitative method of compliance, all instructional and operational practices applicable to the proposed project must have been documented and approved by the board to demonstrate compliance with the requirements in section 61.1040(i). *19 TAC 61.1040(i)*

Construction Quality Standards

A capital improvement project for a school facility must reasonably comply with the following construction code requirements.

Construction Code Requirements

Projects located outside of a municipal jurisdiction in the unincorporated area of a county must reasonably comply with the requirements of section 61.1040(j)(1)(A).

Projects located inside of a municipal jurisdiction must reasonably comply with the requirements of section 61.1040(j)(1)(B).

19 TAC 61.1040(j)(1)

Third-Party Code Compliance Requirement

District responsibilities and other requirements related to third-party code compliance are set out in section 61.1040(j)(2).

Safety and Security Standards

A capital improvement project of a district must include campus-wide implementation of the provisions of section 61.1040(k)(1) related to communications infrastructure and access control. *19 TAC 61.1040(k)(1)*

Requirements for All Instructional Facilities

A district shall develop a document that designates each exterior door of each instructional facility campus-wide as either primary, secondary, or nondesignated entrances and shall ensure that the documented designation of all exterior doors becomes part of the long-range facility plan prior to commencement of construction of a capital improvement project. *19 TAC 61.1040(k)(1)(B)*

Additional Standards Based on Budget

A district shall approve a project construction budget for a capital improvement project at completion of the design development phase of the project and prior to commencement of the construction documents phase. The project construction budget approved by the district shall determine how many of the additional safety and security standards established in section 61.1040(k)(3) are required for the project. A district shall designate in writing which of

the additional safety and security standards in section 61.1040(k)(3) have been approved by the board for a capital improvement project and shall provide to the prime design professional and each design professional of record written documentation of the approved safety and security standards for the proposed facility prior to commencement of the construction documents phase of a capital improvement project. The following standards shall apply to a capital improvement project for an instructional facility until all instructional facilities campus-wide fully comply with all of the additional safety and security standards specified in section 61.1040(k).

1. If a project construction budget is $1 million to $5 million, the facility is required to comply with at least one additional safety and security standard specified in section 61.1040(k)(3).
2. If a project construction budget is $5 million to $10 million, the facility is required to comply with at least two additional safety and security standards specified in section 61.1040(k)(3).
3. If a project construction budget is over $10 million, the facility is required to comply with all of the additional safety and security standards specified in section 61.1040(k)(3).
4. For a capital improvement project that includes new construction, the new construction of an instructional facility is required to comply with all three of the additional safety and security standards specified in section 61.1040(k)(3).

19 TAC 61.1040(k)(2)

Exceptions

A district may opt out of the requirements specified in section 61.1040(k)(2) if:

1. The facility is scheduled to, according to the long-range facilities plan, cease operations as an instructional facility within three years of the project; and
2. The five-year long-range facility plan clearly states that, prior to the end date of the plan, the facility will be compliant with at least two additional safety and security standards if ceasing operation does not occur or operation resumes. The long-range facility plan must specify which two additional safety and security standards will be implemented.

19 TAC 61.1040(k)(4)

Public Disclosure

A board shall ensure information or documents collected, developed, or produced by the district as part of a capital improvement project are reviewed to ensure that any project-specific safety and

security information is adjusted for disclosure if necessary to accommodate the requirement for a district to use protections provided in Education Code 37.108, which directs the district to protect sensitive information, while also providing general information to the public indicating district compliance commitments made in accordance with section 61.1040(k). *19 TAC 61.1040(k)(5)* [See CKC]

State Standards for Construction Before November 1, 2021

The requirements for school facility standards set out in 19 Administrative Code 61.1036 ("section 61.1036") shall apply to projects for new construction or major space renovations if:

1. A board adopts a fiscal year maintenance and operations budget where a capital improvement project title and a design or design and construction budget are delineated;
2. A board calls a bond election where one or more capital improvement project titles as well as design or design and construction budgets are delineated; or
3. A new contract or amendment to an existing contract for architectural services for new construction or a major renovation for a school facility project has been agreed to, and signed and dated by both parties to the agreement after January 1, 2004, and before November 1, 2021.

19 TAC 61.1036(b)

Definitions and Procedures

The words, terms, and procedures used in section 61.1036 shall have the meanings set out in section 61.1036(a) unless the context clearly indicates otherwise.

Certification of Design and Construction

In section 61.1036, "certify" indicates that the architect or engineer has reviewed the standards contained in 19 Administrative Code Chapter 61 and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the state of Texas in executing the construction documents. The architect or engineer also certifies that these documents conform to the provisions of section 61.1036, except as indicated on the certification.

The district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance. To ensure that facilities have been designed and constructed according to the provisions of section 61.1036, each involved party shall execute responsibilities as set forth in section 61.1036(c)(3).

19 TAC 61.1036(c)

Construction Quality *Districts with Building Codes*	A district located in an area that has adopted local construction codes shall comply with section 61.1036(f)(1).
Districts without Building Codes	A district located in an area that has not adopted local building codes shall comply with section 61.1036(f)(2).
International Energy Conservation Code	The International Energy Conservation Code as it existed on May 1, 2015, is adopted as the energy code for use in this state for all commercial construction. *Health and Safety Code 388.003(b); 34 TAC 19.53(b)* Because a public school building is not a residential building, it falls within the scope of "commercial" construction for purposes of the International Energy Conservation Code and likely for purposes of Health and Safety Code Chapter 388. *Atty. Gen. Op. KP-148 (2017)*
Portable, Modular Buildings	Any portable, modular building capable of being relocated that is purchased or leased for use as a school facility by a district, whether that building is manufactured off-site or constructed on-site, must comply with all provisions of section 61.1036. *19 TAC 61.1036(a)(11), (f)(3)*
Fire Escapes	School buildings of at least two stories shall be equipped with fire escapes as required by law. *Health and Safety Code 791.002, .035, .036*
Security Criteria	A district that constructs a new instructional facility or conducts a major renovation of an existing instructional facility using Instructional Facilities Allotment funds shall consider, in the design of the instructional facility, appropriate security criteria. *Education Code 46.0081*
Accessibility	No qualified individual with a disability shall, because a district's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in or be denied the benefits of the services, programs, and activities of a district or be subject to discrimination. *42 U.S.C. 12132; 28 C.F.R. 35.149; 29 U.S.C. 794; 34 C.F.R. 104.21* A district shall operate each program, service, or activity so that when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. A district is not required to make each existing facility or every part of a facility accessible to and usable by individuals with disabilities. A district may comply with these requirements by: 1. Redesigning or acquisitioning equipment.

2. Reassigning classes or other services to accessible buildings.
3. Assigning aides to qualified individuals with disabilities.
4. Home visits.
5. Delivery of services at alternate accessible sites.
6. Alteration of existing facilities.
7. Constructing new facilities that comply with 34 C.F.R. 104.23 and 28 C.F.R. 35.151.
8. Any other methods that result in making services, programs, and activities accessible to individuals with disabilities.

A district is not required to make structural changes in existing facilities when other methods will achieve compliance with Title II of the Americans with Disabilities Act and its implementing regulation. In choosing among available alternatives for meeting these requirements, a district shall give priority to methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

28 C.F.R. 35.150; 34 C.F.R. 104.22

Review of Plans

All plans and specifications for construction or for the substantial renovation or modification of a building or facility must be submitted to the Department of Licensing and Regulation for review and approval if the estimated construction cost is at least $50,000. The architect, interior designer, landscape architect, or engineer who has overall responsibility for the design of a constructed or reconstructed building or facility shall submit the plans and specifications required. A district as owner of the building or facility may not allow an application to be filed with a local governmental entity for a building construction permit related to the plans and specifications or allow construction, renovation, or modification of the building or facility to begin before the date the plans and specifications are submitted to the Department. On application to a local governmental entity for a building construction permit, the district as owner shall submit to the entity proof that the plans and specifications have been submitted to the Department under Government Code Chapter 469 (Elimination of Architectural Barriers).

A district, as owner of a building or facility described above is responsible for having the building or facility inspected for compliance with the standards and specifications adopted by the Commission of Licensing and Regulation under Government Code Chapter 469 not later than the first anniversary of the date that the

construction or substantial renovation or modification of the building or facility is completed. The inspection must be performed by the Department, an entity with which the Commission contracts, or a person who holds a certificate of registration under Government Code Chapter 469, Subchapter E.

Gov't Code 469.101, .102(a), (c), .105

Notice

A district shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities. *34 C.F.R. 104.22(f)*

Relocatable Educational Facility

In this section, "relocatable educational facility" means a portable, modular building capable of being relocated, regardless of whether the facility is built at the installation site, that is used primarily as an educational facility for teaching the curriculum required under Education Code 28.002.

A relocatable educational facility that is purchased or leased on or after January 1, 2010, must comply with all provisions applicable to industrialized buildings under Occupations Code Chapter 1202.

Occupations Code 1202.004

Playgrounds

Public funds may not be used to purchase or install:

1. Playground equipment that:
    a. Does not comply with each applicable provision of ASTM Standard F1487-07ae1, "Consumer Safety Performance Specification for Playground Equipment for Public Use," published by ASTM International; or
    b. Has a horizontal bare metal platform or a bare metal step or slide, unless the bare metal is shielded from direct sun by a covering provided with the equipment or by a shaded area in the location where the equipment is installed;
2. Surfacing for the area under and around playground equipment if the surfacing will not comply with each applicable provision of ASTM Standard F2223-04e1, "Standard Guide for ASTM Standards on Playground Surfacing," published by ASTM International.

Exception

Public funds may be used to maintain playground equipment or surfacing that was purchased before September 1, 2009, even if

the equipment or surfacing does not comply with the applicable specifications described above.

Health and Safety Code 756.061

Outdoor Lighting

An outdoor lighting fixture may be installed, replaced, maintained, or operated using state funds only if it meets standards for state-funded outdoor lighting fixtures in Health and Safety Code Chapter 425.

Exceptions

The standards for state-funded outdoor lighting fixtures do not apply if:

1. A federal law, rule, or regulation preempts state law;
2. The fixture is used on a temporary basis:
3. Because emergency personnel temporarily require additional illumination for emergency procedures;
4. For nighttime work;
5. Special events or circumstances require additional illumination;
6. The fixture is used solely to enhance the aesthetic beauty of an object; or
7. A compelling safety interest cannot be addressed by another method.

Special events or situations that may require additional illumination include sporting events and illumination of monuments, historic structures, or flags. Illumination for special events or situations must be installed to shield the outdoor lighting fixtures from direct view and to minimize upward lighting and light pollution.

Health and Safety Code 425.002

Natural Gas Piping Pressure Testing

A district shall perform biennial pressure tests on the natural gas piping system in a school facility before the beginning of the school year. A district with more than one facility may perform the testing on a two-year cycle under which the district pressure tests the natural gas piping system in approximately one-half of the facilities each year. If a district operates the facilities on a year-round calendar, the pressure test in each of those facilities must be conducted and reported not later than July 1 of the year in which the pressure test is performed.

A natural gas piping pressure test performed under a municipal code in compliance with Railroad Commission rules shall satisfy the pressure testing requirements.

Utilities Code 121.502; 16 TAC 8.230(c)(1), (4)

Requirements of Test

A district shall perform the pressure test to determine whether the natural gas piping downstream of a district facility's meter holds at least normal operating pressure over a specified period determined by the Railroad Commission. During the pressure test, each system supply inlet and outlet in the facility must be closed. The pressure test shall be performed by a person authorized under Railroad Commission rules. At a district's request, the Railroad Commission shall assist the district in developing a procedure for conducting the test. *Utilities Code 121.503; 16 TAC 8.230(c)(2), (3)*

Notice

A district shall provide written notice to the district's natural gas supplier specifying the date and result of each pressure test or other inspection. The supplier shall develop procedures for receiving such written notice from the district. *Utilities Code 121.504(a); 16 TAC 8.230(b)(1)*

Termination of Service

A supplier shall terminate service to a district facility if:

1. The supplier receives official notification from the firm or individual conducting the test of a hazardous natural gas leakage in the facility piping system; or
2. A test or other inspection is not performed as required.

Utilities Code 121.505(a)

A supplier shall develop procedures for terminating service to a district if the supplier:

1. Receives notification of a hazardous natural gas leak in the school facility piping system; or
2. Does not receive written notification from the district specifying the completion date and results of the testing.

16 TAC 8.230(b)(2)

Reporting Leaks

An identified natural gas leakage in a district facility must be reported to the board. The firm or individual conducting the natural gas piping pressure test shall immediately report any hazardous natural gas leak in a district facility to the board and the natural gas supplier. *Utilities Code 121.506; 16 TAC 8.230(c)(6)*

LP-Gas Systems Testing

At least biennially, a district shall perform leakage tests on the LP-gas piping system in each district facility before the beginning of the school year. The district may perform the leakage tests on a

two-year cycle under which the tests are performed for the LP-gas piping systems of approximately half of the facilities each year. If a district operates one or more district facilities on a year-round calendar, the leakage test in each of those facilities must be conducted and reported not later than July 1 of the year in which the test is performed.

A test performed under a municipal code satisfies the testing requirements.

Natural Resources Code 113.352; 16 TAC 9.41

Requirements of Test

A district shall perform the leakage test to determine whether the LP-gas piping system holds at least the amount of pressure specified by the Railroad Commission. The leakage test must be conducted in accordance with Railroad Commission rules at 16 Administrative Code 9.41. The leakage test shall be conducted by a person authorized under Railroad Commission rules. At a district's request, the Railroad Commission shall assist the district in providing for the certification of a district employee to conduct the test and in developing a procedure for conducting the test. *Natural Resources Code 113.353; 16 TAC 9.41(b)–(d)*

Notice

Before the introduction of any LP-gas into the LP-gas piping system, a district shall provide verification to its supplier that the piping has been tested.

Documentation

A district shall retain documentation specifying the date and the result of each leakage test or other inspection of each LP-gas piping system until at least the fifth anniversary of the date the test or other inspection was performed. The Railroad Commission may review a district's documentation of each leakage test or other inspection conducted by the district.

Natural Resources Code 113.354; 16 TAC 9.41(b)(3)–(4)

Termination of Service

A supplier shall terminate service to a district facility if:

1. The supplier receives official notification from the district or the person conducting the test that there is leakage in a school LP-gas system;
2. The leakage test performed on a school LP-gas system was not performed as required; or
3. The supplier has not received a copy of the required form from the district verifying that the LP-gas system has been tested in accordance with 16 Administrative Code 9.41.

Natural Resources Code 113.355; 16 TAC 9.41(e)

Reporting Leaks

An identified school LP-gas leakage in a school district facility shall be reported to the board. The district shall immediately remove the affected school district facility from LP-gas service until repairs are made and it passes a subsequent school LP-gas system leakage test. If a district employee performs the initial test, then the subsequent test may not be performed by a district employee. *Natural Resources Code 113.356; 16 TAC 9.41(b)(2)*

Definitions

"School district facility" means each building or structure operated by a school district and equipped with a school LP-gas system in which students receive instruction or participate in school sponsored extracurricular activities, excluding maintenance or bus facilities, vehicle fueling facilities, administrative offices, and similar facilities not regularly used by students.

"School LP-gas system" means all piping, fittings, valves, regulators, appliance connectors, equipment, and connections supplying fuel gas from the outlet of the shutoff valve at each LP-gas storage container or upstream of each meter to the shutoff valve(s) on each appliance in a school district facility.

16 TAC 9.41(a)(3)–(4)

Intrastate Pipeline Emergency Response Plan

The Railroad Commission shall require the owner or operator of each intrastate hazardous liquid or carbon dioxide pipeline facility, any part of which is located within 1,000 feet of a public school building containing classrooms, or within 1,000 feet of another public school facility where students congregate, to:

1. On written request from a district, provide in writing the following parts of a pipeline emergency response plan that are relevant to the school:
    a. A description and map of the pipeline facilities that are within 1,000 feet of the school building or facility;
    b. A list of any product transported in the segment of the pipeline that is within 1,000 feet of the school facility;
    c. The designated emergency number for the pipeline facility operator;
    d. Information on the state's excavation one-call system; and
    e. Information on how to recognize, report, and respond to a product release; and
2. Mail a copy of the requested items by certified mail, return receipt requested, to the superintendent of the district in which the school building or facility is located.

A pipeline operator or the operator's representative shall appear at a regularly scheduled board meeting to explain the above items if requested by the board or district.

The Railroad Commission may not require the release of parts of an emergency response plan that include security sensitive information, including maps or data. Security sensitive information shall be made available for review by but not provided to the board.

Natural Resources Code 117.012(k)–(m); 16 TAC 8.315

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For additional legal requirements applicable to purchases with federal funds, see CBB.

For information on procuring goods and services under Education Code Chapter 44, see CH.

For required vendor disclosures and contract provisions, including prohibitions, see CHE.

For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).

For legal requirements related to energy savings performance contracts, see CL.

For facility standards, see CS.

Definition

"Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work. *Gov't Code 2253.001(4)*

Board Authority

A district may adopt rules as necessary to implement Government Code Chapter 2269. *Gov't Code 2269.051; 19 TAC 61.1040(e)(2)(H)*

Delegation of Authority

The board may delegate its authority under Government Code Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person. *Gov't Code 2269.053(a)*

The district shall provide notice of the delegation, the limits of the delegation, and the name or title of each designated person by rule or in the request for bids, proposals, or qualifications or in an addendum to the request. *Gov't Code 2269.053(b); Education Code 44.0312(a)*

If the district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board in an open public meeting is advisory only. *Education Code 44.0312(a); 19 TAC 61.1040(e)(2)(E)*

A superintendent shall ensure that a requirement to specify the level of delegation of authority is included in the bid specifications when procuring construction services to select a contractor, in accordance with Education Code 44.0312. *19 TAC 61.1040(e)(2)(F)*

[For information regarding delegation in the event of a catastrophe, emergency, or natural disaster, see CH.]

Contracts Valued at or Above $50,000

Except as provided by Education Code Chapter 44, Subchapter B, all district contracts for the purchase of goods and services valued at $50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for a district [see also CH]:

1. An interlocal contract. *Education Code 44.031(a)(4)* [See CH]
2. A method provided by Government Code Chapter 2269 for construction services. *Education Code 44.031(a)(5)*
    a. Competitive bidding. *Gov't Code 2269 Subch. C* [See CVA]
    b. Competitive sealed proposals. *Gov't Code 2269 Subch. D* [See CVB]
    c. Construction manager-agent method. *Gov't Code 2269 Subch. E* [See CVC]
    d. Construction manager-at-risk method. *Gov't Code 2269 Subch. F* [See CVD]
    e. Design-build method. *Gov't Code 2269 Subch. G* [See CVE]
    f. Job order contracting. *Gov't Code 2269 Subch. I* [See CVF]
3. The reverse auction procedure as defined by Government Code 2155.062(d). *Education Code 44.031(a)(6)* [See CH]

Education Code 44.031(a); Gov't Code Ch. 2269

Exceptions

Emergency Damage or Destruction

For information on procurement options when school equipment, a facility, or personal property is destroyed or severely damaged as a result of an unforeseen catastrophe or emergency, under Education Code 44.031, see CH.

Contracts Requiring a Bond

A reverse auction procedure may not be used to obtain services related to a public work contract for which a bond is required under Government Code 2253.021 [see Payment and Performance Bonds, below]. "Reverse auction procedure" has the meaning assigned by Government Code 2155.062 or a procedure similar to that described by Section 2155.062. *Gov't Code 2253.021(h)*

Notice Publication

A board shall advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.

For a contract entered into by a board under a method provided by Government Code 2269, the board shall publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law.

Gov't Code 2269.052(a)–(b)

[See CH for additional notice publication requirements.]

Contract Selection Criteria

In determining the award of a contract under Government Code Chapter 2269, the district shall consider and apply:

1. Any existing laws, including any criteria, related to historically underutilized businesses; and
2. Any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

In determining the award of a contract, the district may consider:

1. The price.
2. The offeror's experience and reputation.
3. The quality of the offeror's goods or services.
4. The impact on the ability of the district to comply with rules relating to historically underutilized businesses.
5. The offeror's safety record.
6. The offeror's proposed personnel.
7. Whether the offeror's financial capability is appropriate to the size and scope of the project.
8. Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Gov't Code 2269.055

Using Method Other Than Competitive Bidding

Determine Best Value

The board that considers a construction contract using a method authorized by Government Code Chapter 2269 other than competitive bidding must, before advertising, determine which method provides the best value for the district.

Publish Criteria

The district shall base its selection among offerors on applicable criteria listed for the particular method used. The district shall publish in the request for proposals or qualifications:

1. The criteria that will be used to evaluate the offerors;

2. The applicable weighted value for each criterion; and

3. A detailed methodology for scoring each criterion.

Make Evaluations Public

The district shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Gov't Code 2269.056

Submission

A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery. *Gov't Code 2269.059*

Documents Related to Evaluation and Ranking

An offeror who submits a bid, proposal, or response to a request for qualifications for a construction contract under Government Code Chapter 2269 may, after the contract is awarded, make a request in writing to the district to provide documents related to the evaluation of the offeror's submission.

Not later than the 30th day after the date a request is made, the district shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission.

Gov't Code 2269.060

Uniform General Conditions for Contracts

After reviewing the uniform general conditions adopted by the Texas Facilities Commission under Government Code 2166.302, a school district may adopt uniform general conditions to be incorporated in all district building construction contracts. *Education Code 44.035*

Right to Work

While engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement under Government Code Chapter 2269, a district:

1. May not consider whether a person is a member of or has another relationship with any organization; and

2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

Gov't Code 2269.054

Collective Bargaining

A district awarding a public work contract funded with state money, including the issuance of debt guaranteed by the state, may not:

1. Prohibit, require, discourage, or encourage a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to an agreement with a collective bargaining organization relating to the project; or

2. Discriminate against a person described by item 1 based on the person's involvement in the agreement, including the person's status or lack of status as a party to the agreement or willingness or refusal to enter into the agreement.

Gov't Code 2269.0541(a)

Out-of-State Bidders

For legal requirements regarding out-of-state bidders, see CH.

Change Orders

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

A contract with an original contract price of $1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than $1 million increases the contract amount to $1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

Education Code 44.0411

Inspection, Verification, and Testing

Independently of the contractor, construction manager-at-risk, or design-build firm, a district shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district. The district shall select the services for which it contracts in accordance with Government Code 2254.004.
Gov't Code 2269.058

Note: For additional requirements related to code compliance, including fees and contracts, see 19 Administrative Code 61.1040(e)(5).

Impact Fees

A district is not required to pay impact fees imposed under Local Government Code Chapter 395 unless the board consents to the

payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board considers advisable to provide for the payment of the fees. *Local Gov't Code 395.022*

Design Professionals

A district shall designate one design professional to be the prime design professional for a capital improvement project and shall contractually engage the prime design professional to review and coordinate the design of the project, allowing the prime design professional to rely on and contract for other design professionals where appropriate. *19 TAC 61.1040(a)(4), (e)(4)(D)*

A district shall require any design professional contractually engaged to procure professional design services from any other design professional as a subconsultant to select and subcontract the professional design services based on the qualification-based selection process established in Government Code Chapter 2254. [See Procuring Architectural or Engineering Services, below] *19 TAC 61.1040(e)(5)(B)*

Architects and Engineers

An architect or engineer required to be selected or designated under Government Code Chapter 2269 has full responsibility for complying with Occupations Code Chapter 1051 or 1001, as applicable.

If the selected or designated architect or engineer is not a full-time employee of the district, the district shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Government Code 2254.004 [see Procuring Professional Services, below].

Gov't Code 2269.057

Registered Architect

An architectural plan or specification for any of the following may be prepared only by an architect:

1. A new building having construction costs exceeding $100,000 that is to be:
    a. Constructed and owned by a district; and
    b. Used for education, assembly, or office occupancy; or
2. An alteration or addition having construction costs exceeding $50,000 that:
    a. Is to be made to an existing building that:
        (1) Is owned by a district; and
        (2) Is or will be used for education, assembly, or office occupancy; and

b. Requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit.

This provision does not prohibit an owner of a building from contracting with an architect or engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand the scope of practice of an architect or engineer beyond the scope of practice that the architect or engineer is authorized to practice under Occupations Code Chapter 1001 or 1051.

Occupations Code 1051.703; 22 TAC 1.212

Registered Engineer

A district may not construct a public work involving engineering in which the public health, welfare, or safety is involved, unless:

1. The engineering plans, specifications, and estimates have been prepared by an engineer; and

2. The engineering construction is to be performed under the direct supervision of an engineer.

Occupations Code 1001.407

The following work is exempt from Occupations Code Chapter 1001 (Texas Engineering Practice Act):

1. A public work that involves electrical or mechanical engineering, if the contemplated expense for the completed project is $8,000 or less; or

2. A public work that does not involve electrical or mechanical engineering, if the contemplated expense for the completed project is $20,000 or less.

Occupations Code 1001.053

Certification for Purchases Through Purchasing Cooperatives

A district may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative under Government Code Chapter 791 in an amount greater than $50,000 unless a person designated by the district certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Occupation Code Chapter 1001 or 1051; or

2. The plans and specifications required under Occupation Code Chapters 1001 and 1051 have been prepared.

"Purchasing cooperative" means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

Gov't Code 791.011(j) [See CH for more information on interlocal contracts and purchasing cooperatives.]

Procuring Architectural or Engineering Services

Education Code 44.031 does not apply to a contract for professional services rendered, including the services of an architect. *Education Code 44.031(f)* [See CH for information on the Professional Services Procurement Act generally.]

In procuring architectural, engineering, or land-surveying services, a district shall:

1. First select the most highly qualified provider on the basis of demonstrated competence and qualifications; and

2. Then attempt to negotiate with that provider a contract at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land-surveying services, a district shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. The district shall continue this process to select and negotiate with providers until a contract is entered into.

Gov't Code 2254.004

An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

Contracts for Engineering or Architectural Services

Indemnification

A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the district against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

Duty to Defend

Except as provided below, a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a district is a party is void and unenforceable if the

covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the district, the district's agent, the district's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the district exercises control. A covenant or promise may provide for the reimbursement of a district's reasonable attorney's fees in proportion to the engineer's or architect's liability.

District as Additional Insured

A district may require in a contract for engineering or architectural services to which the district is a party that the engineer or architect name the district as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.

Standard of Care

A contract for engineering or architectural services to which a district is a party must require a licensed engineer or registered architect to perform services:

1. With the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and

2. As expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

In a contract for engineering or architectural services to which a district is a party, a provision establishing a different standard of care than a standard described above is void and unenforceable. If a contract contains a void and unenforceable provision, the standard of care described above applies.

Nothing in these provisions prohibits a district in a contract for engineering or architectural services to which the district is a party from including and enforcing conditions that relate to the scope, fees, and schedule of a project in the contract.

Local Gov't Code 271.904

Payment and Performance Bonds

A district that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the district:

1. A performance bond if the contract is in excess of $100,000; and

2. A payment bond if the contract is in excess of $25,000.

A bond required by this provision must be executed by a corporate surety in accordance with Insurance Code Article 7.19-1 (now Insurance Code 3503.001–.005). A bond for a public work contract with a district must be payable to and its form must be approved by the awarding board.

Gov't Code 2253.021(a), (d)–(e)

The performance bond is solely for the protection of the district awarding the public work contract, in the amount of the contract, and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. *Gov't Code 2253.021(b)*

The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material, and in the amount of the contract. *Gov't Code 2253.021(c)*

Failure to Obtain Payment Bond

If a district fails to obtain from a prime contractor a payment bond as required above:

1. The district is subject to the same liability that a surety would have if the surety had issued a payment bond and if the district had obtained the bond; and

2. A payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the public work contract were subject to Property Code Chapter 53, Subchapter J (Lien on Money Due Public Works Contractor).

Gov't Code 2253.027(a)

Bond for Insured Loss

A district shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the district, furnishes or has furnished by a contractor:

1. A performance bond as described above for the benefit of a district; and

2. A payment bond, as described above for the benefit of the beneficiaries described above.

If the payment bond is not furnished, the district is subject to the same liability that a surety would have if the surety had issued the payment bond and the district had required the bond to be provided.

The bonds required to be furnished by the provisions above shall be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish these bonds.

Exception to Bond Requirement

These provisions do not apply to a district when a surety company is complying with an obligation under a bond that had been issued for the benefit of the district.

Gov't Code 2253.022

Prevailing Wage on Public Works

"Worker" includes a laborer or mechanic. *Gov't Code 2258.001(3)*

A worker employed on a public work by or on behalf of a district shall be paid:

1. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and

2. Not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The requirements above do not apply to maintenance work. A worker is employed on a public work for purposes of this provision if the worker is employed by a contractor or subcontractor in the execution of a contract for public work with a district.

Gov't Code 2258.021

For a contract for a public work awarded by a district, the board shall determine the general prevailing rate of per diem wages in the district for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

1. Conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the district in which the public work is to be performed; or

2. Using the prevailing wage rate as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments.

The board shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents. A board shall specify in the call for bids for the contract and in the contract itself the wage rates determined under these provisions. The

board's determination of the general prevailing rates of per diem wages is final.

Gov't Code 2258.022(a), (c)–(e)

Government Code 2258.022(b) applies to a public work located in a county bordering the United Mexican States or in a county adjacent to a county bordering the United Mexican States. *Gov't Code 2258.022(b)*

Enforcement

A board awarding a contract, and an agent or officer of the board, shall:

1. Take cognizance of complaints of all violations of Government Code Chapter 2258 committed in the execution of the contract; and
2. Withhold money forfeited or required to be withheld under Government Code Chapter 2258 from the payments to the contractor under the contract, except that the board may not withhold money from other than the final payment without a determination by the board that there is good cause to believe that the contractor has violated Government Code Chapter 2258.

On receipt of information, including a complaint by a worker, concerning an alleged violation of Government Code 2258.023 [see Penalty for Noncompliance, below] by a contractor or subcontractor, a board shall make an initial determination as to whether good cause exists to believe that the violation occurred. A board must make its determination before the 31st day after the date the board receives the information. A board shall notify in writing the contractor or subcontractor and any affected worker of its initial determination.

Gov't Code 2258.051–.052(a)–(c)

Retainage and Reimbursement

A board shall retain any amount due under the contract pending a final determination of the violation. *Gov't Code 2258.052(d)*

Note: Arbitration of unresolved issues is governed by Government Code 2258.053–.055.

A board shall use any amounts retained under Government Code Chapter 2258 to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing rate as provided in the arbitrator's award. The board may adopt rules, orders,

or ordinances relating to the manner in which the reimbursement is made. *Gov't Code 2258.056(a)–(b)*

Penalty for Noncompliance

The contractor who is awarded a contract by a district or a subcontractor of the contractor shall pay not less than the rates determined under these provisions to a worker employed by it in the execution of the contract. A contractor or subcontractor who violates this provision shall pay to the district on whose behalf the contract is made, $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A board awarding a contract shall specify this penalty in the contract. A contractor or subcontractor does not violate this section if a board awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as required by these provisions. The board shall use any money collected under this provision to offset the costs incurred in the administration of Government Code Chapter 2258. *Gov't Code 2258.023*

Criminal Offense

An officer, agent, or representative of a district commits an offense if the person willfully violates or does not comply with a provision of Government Code 2258. *Gov't Code 2258.058(a)*

Required Workers' Compensation Coverage

A district shall ensure a contract for construction services required to be procured by a method in Government Code Chapter 2269 specifies the contractor's responsibilities for site safety and requires compliance with the requirement to provide workers' compensation insurance in accordance with Labor Code 406.096, below. *19 TAC 61.1040(e)(3)(D)*

A district that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project. Each subcontractor shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the district. *Labor Code 406.096(a)–(b)*

A district that enters into a building or construction contract on a project shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers' compensation coverage, using the language required by 28 Administrative Code 110.110(c)(7).

2. As part of the contract, using the language required by 28 Administrative Code 110.110(c)(7), require the contractor to perform the duties and responsibilities pertaining to required workers' compensation coverage as set out in 28 Administrative Code 110.110(d).

3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person beginning work on the project.

4. Obtain from the contractor a new certificate of coverage showing extension of coverage:

   a. Before the end of the current coverage period, if the contractor's current certificate shows that the coverage period ends during the duration of the project; and

   b. No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project.

5. Retain certificates of coverage on file for the duration of the project and for three years thereafter.

6. Provide a copy of the certificate of coverage to the Texas Department of Insurance, Division of Workers' Compensation upon request and to any person entitled to a copy by law.

7. Use the language contained in 28 Administrative Code 110.110(c)(7) for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

28 TAC 110.110(c)

Exception — This coverage requirement does not apply to sole proprietors, partners, and corporate officers who meet the requirements of Labor Code 406.097(c), and who are explicitly excluded from coverage in accordance with Labor Code 406.097(a). *28 TAC 110.110(i)*

Definitions — "Persons providing services on the project" includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on

the project. “Services” includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets. *28 TAC 110.110(a)(7)*

“Project” includes the provision of all services related to a building or construction contract for a district. *28 TAC 110.110(a)(8)*

Criminal Offenses

For information on criminal offenses for violations of Education Code 44.031, see CH.

Enforcement Actions

Government Code Chapter 2269 may be enforced through an action for declaratory or injunctive relief filed not later than the 15th day after the date on which the contract is awarded. *Gov’t Code 2269.452*

Defects in Facilities

A district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of a district facility financed by bonds shall provide the commissioner with written notice of the action by registered or certified mail, return receipt requested, not later than the 30th day after the date the action is filed. If the district fails to comply with this provision, the court or an arbitrator or other adjudicating authority shall dismiss the action without prejudice. The dismissal of an action under this provision extends the statute of limitations on the action for a period of 90 days.

The notice must include a copy of the petition and an itemized list of the defects in the design, construction, renovation, or improvement for which the district is seeking damages under the action.

In an action involving an instructional facility financed by bonds for which the district receives state assistance under Education Code Chapter 46, Subchapter A (Instructional Facilities Allotment), the commissioner may join in the action on behalf of the state to protect the state’s share in the action.

A district that brings an action under these provisions shall use the net proceeds from the action for:

1. The repair of the defective design, construction, renovation, or improvement of the facility on which the action is brought, including the repair of any ancillary damage to furniture and fixtures;

2. The replacement of the facility on which the action is brought;

3. The reimbursement of the district for a repair or replacement; or

4. Any other purpose with written approval from the commissioner.

Education Code 46.008 applies to the repair. A district shall provide to the commissioner an itemized accounting of any repairs made.

The state's share resulting from an action brought under these provisions involving an instructional facility financed by bonds for which the school district receives state assistance under Education Code Chapter 46, Subchapter A is state property. The district shall send to the comptroller any portion of the state's share not used by the district to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. Education Code 48.272 applies to the state's share.

Definitions

"Net proceeds" means the difference between the amount recovered by or on behalf of a school district in an action, by settlement or otherwise, and the legal fees and litigation costs incurred by the district in prosecuting the action.

"State's share" means an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under Education Code Chapter 46, Subchapter A used to pay the principal of and interest on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

Education Code 44.151

Attorney General Enforcement

If the attorney general believes that a district has violated or is violating Education Code 44.151(d), (e), or (f) (use of proceeds, accounting, and the state's share), the attorney general may, after providing at least two weeks' notice to the district, bring an action on behalf of the state to enjoin the district from violating those sections.

In such an action, the attorney general may request and the court may order any other appropriate relief that is in the public interest, including payment of:

1. A civil penalty in an amount not to exceed $20,000 for each violation;

2. The attorney general's reasonable costs for investigating and prosecuting the violation; or

3. If applicable, the amount of the state's share.

Education Code 44.152(a)–(b)

Attorney Fees

A governmental contract may not provide for the award of attorney's fees to a district in a dispute in which the district prevails unless the contract provides for the award of attorney's fees to each other party to the contract if that party prevails in the dispute.

"Governmental contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.

Gov't Code 2252.904

Construction Liability Claims

To assert a claim against a contractor, subcontractor, supplier, or design professional for damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property that is a public building or public work in which the district has an interest, the district must comply with Government Code Chapter 2272. *Gov't Code 2272.002(a)*

Employment Policies

A board shall adopt a policy providing for the employment and duties of district personnel. The policy shall provide that:

1. A board employs and evaluates the superintendent;
2. A superintendent has sole authority to make recommendations to a board regarding the selection of all personnel, except that the board may delegate final authority for those decisions to the superintendent [see Superintendent Recommendation, below];
3. Each principal must approve each teacher or staff appointment to the principal's campus as provided by Education Code 11.202 [see DK and DP];
4. Notice will be provided of vacant positions [see Posting of Vacancies, below]; and
5. Each employee has the right to present grievances to the board. [See Grievances, below]

Education Code 11.1513

Tax Identifier

A board shall adopt a policy prohibiting the use of social security numbers as employee identifiers other than for tax purposes [see Social Security Numbers, below]. *Education Code 11.1514* [See DBA]

Contract Positions

A board shall establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply. *Education Code 21.002(c)* [See DCB and DCC]

Delegation of Authority

A district's employment policy may specify the terms of district employment or delegate to the superintendent the authority to determine the terms of employment with the district. *Education Code 11.1513(c)* [For nepotism implications, see BBFB and DBE]

Availability

A district shall post on its internet website, if the district has a website, the employment policy adopted by the board under Education Code 11.1513(a) and the full text of any regulations referenced in the policy.

A district shall make available any forms referenced in its employment policy on an intranet website that is maintained by the district and accessible to district employees, or at a district administrative office designated by the district if the district does not maintain an intranet website.

Education Code 11.1513(k)

Internal Auditor

If a district employs an internal auditor, the board shall select the internal auditor and the internal auditor shall report directly to the board. *Education Code 11.170* [See CFC]

Superintendent Recommendation

A board may accept or reject a superintendent's recommendation regarding the selection of district personnel and shall include the board's acceptance or rejection in the minutes of the board's open meeting, in the certified agenda or tape recording of a closed meeting, or in the recording required under Government Code 551.125 or 551.127, as applicable. If a board rejects a superintendent's recommendation, the superintendent shall make alternative recommendations until the board accepts a recommendation. *Education Code 11.1513(b)*

Posting of Vacancies

A district's employment policy must provide that not later than the tenth school day before the date on which a district fills a vacant position for which a certificate or license is required as provided by Education Code 21.003 [see DBA], other than a position that affects the safety and security of students as determined by the board, the district must provide to each current district employee:

1. Notice of the position by posting the position on:
    a. A bulletin board at:
        (1) A place convenient to the public in the district's central administrative office, and
        (2) The central administrative office of each campus during any time the office is open; or
    b. The district's internet website, if the district has a website; and
2. A reasonable opportunity to apply for the position.

Education Code 11.1513(d)

Exception

If, during the school year, a district must fill a vacant position held by a teacher, as defined by Education Code 21.201 [see DCB], in less than ten school days, the district must provide notice of the position in the manner described above as soon as possible after the vacancy occurs. However, a district is not required to provide the notice for ten school days before filling the position or to provide a reasonable opportunity to apply for the position. *Education Code 11.1513(e)*

Grievances

A district's employment policy must provide each employee with the right to present grievances to the board. The policy may not restrict the ability of an employee to communicate directly with a member of the board regarding a matter relating to the operation of

a district, except that the policy may prohibit ex parte communication relating to:

1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and
2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the board.

Education Code 11.1513(i)–(j) [See DGBA]

Transfers

A district's employment policy may include a provision for providing each current district employee with an opportunity to participate in a process for transferring to another school in or position with the district. *Education Code 11.1513(c)(3)* [See DK]

Contract Employees

A district shall employ each classroom teacher, principal, librarian, nurse, or school counselor under a probationary contract, a continuing contract, or a term contract. A district is not required to employ a person other than these listed employees under a probationary, continuing, or term contract. *Education Code 21.002*

Classroom Teacher

"Classroom teacher" means an educator who is employed by a district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting. The term does not include a teacher's aide or a full-time administrator. *Education Code 5.001(2)*

Minimum Length of Contract

A contract between a district and an educator must be for a minimum of ten months of service. An educator employed under a ten-month contract must provide a minimum of 187 days of service. *Education Code 21.401(a), (b)*

Proportionate Reduction

If a district anticipates providing less than 180 days of instruction for students during a school year, as indicated by the district's academic calendar, the district may reduce the number of days of service proportionately. A reduction by the district does not reduce an educator's salary. *Education Code 21.401(c-1)*

Commissioner Waiver

The commissioner of education may reduce the number of days of service if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools. A reduction by the commissioner does not reduce an educator's salary. *Education Code 21.401(c), 25.081(b)*

Educational Aides

A board shall establish a plan to encourage the hiring of educational aides who show a willingness to become certified teachers. *Education Code 54.363(f)*

Employment of Retirees

Monthly Certified Statement

A district shall submit to the Teacher Retirement System of Texas (TRS) a monthly certified statement of employment for all retirees employed by the district during each month of a school year. A district shall inform TRS of changes in status of the district that affect the district's reporting responsibilities.

Deadline

A district must submit the monthly certified statement and all required employer surcharges under 34 Administrative Code 31.3 (relating to Return-to-Work Employer Pension Surcharges) for each report month from September through July before the eleventh day of the month following the applicable report month. For the monthly certified statement for the report month of August, the employer shall submit the monthly certified statement and all required employer surcharges before the seventh day of September.

If the due date for submission of a monthly certified statement and required employer surcharges falls on a weekend or federal holiday, a district shall submit the monthly certified statement and required employer surcharges on the last business day prior to the due date.

Late Submissions

A district that fails to timely submit a monthly certified statement and all required employer surcharges must also pay all applicable interest and late fees. A district must pay to TRS the late fee established by rule for each business day that the monthly certified statement is past due.

Required Information

A monthly certified statement is not considered submitted to TRS until it is completed. To be complete, the monthly certified statement must include all the following information regarding a retiree employed by the employer during the report month:

1. The number of hours and days worked by the retiree;
2. Whether the retiree's employment qualifies as one or more of the following types:
    a. Substitute employment;
    b. One-half time or less employment;
    c. Employment as a tutor under Education Code 33.913;
    d. Employment in a federally funded COVID-19 personnel position that meets the requirements of Government Code 824.6021 and 34 Administrative Code 31.16 (relating to Federally Funded COVID-19 Personnel);
    e. Full-time employment;

f. Trial employment of a disability retiree for up to three months; or

g. Any combination of these types;

3. The amount of gross compensation paid to the retiree during the report month;

4. The total amount due under 34 Administrative Code 41.4 (relating to Employer Health Benefit Surcharge); and

5. Any other information requested by TRS.

An administrator of a district who is responsible for filing the statement, and who knowingly fails to file the statement, commits an offense.

Gov't Code 824.6022, 825.403(k); 34 TAC 31.2

Former Board Member Employment

A board member is prohibited from accepting employment with the district until the first anniversary of the date the board member's membership on a board ends. *Education Code 11.063* [See BBC]

New Hires

I-9 Forms

A district shall ensure that an employee properly completes section 1—"Employee Information and Verification"—on Form I-9 at the time of hire.

A district must verify employment eligibility, pursuant to the Immigration Reform and Control Act, and complete Form I-9 by the following dates:

1. Within three business days of initial hiring. If a district hires an individual for employment for a duration of less than three business days, the district must verify employment at the time of hire. A district shall not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times. When a district rehires an individual, the district may, in lieu of completing a new I-9, inspect a previously completed I-9 executed within three years of the date of rehire, to determine whether the individual is still eligible to work.

2. For an individual whose employment authorization expires, not later than the date of expiration.

8 C.F.R. 274a.2(b)(1)(ii), (iii), (vii), (viii)

New Hire Reporting

A district shall furnish to the Directory of New Hires (Texas Attorney General's Office) a report that contains the name, address, and social security number of each newly hired employee. The report shall also contain a district's name, address, and employer identification number.

A district may also provide, at its option, the employee's date of hire, date of birth, expected salary or wages, and the district's payroll address for mailing of notice to withhold child support.

A district shall report new hire information on a Form W-4 or an equivalent form, by first class mail, telephonically, electronically, or by magnetic media, as determined by the district and in a format acceptable to the attorney general.

Deadline

New hire reports are due:

1. Not later than 20 calendar days after the date a district hires the employee; or
2. In the case of a district transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

New hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.

Penalties

A district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105.

42 U.S.C. 653a(b), (c); Family Code 234.101–.105; 1 TAC 55, Subch. I

Donations for Supplemental Educational Staff

A district shall accept from a parent-teacher organization or association recognized by the district a donation designated to fund supplemental educational staff positions at a school campus and spend the donation accepted for the designated purpose at the direction of and within the time period specified by the school campus for which the donation was designated. This provision expires September 1, 2025. *Education Code 11.156(c), (d)*

Social Security Numbers

A board shall adopt a policy prohibiting the use of the social security number of an employee of the district as an employee identifier other than for tax purposes. *Education Code 11.1514* [See DBA]

Federal Law

A district shall not deny to any individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number.

Exceptions

The federal law does not apply to:

1. Any disclosure that is required by federal statute. The United States Internal Revenue Code provides that the social security number issued to an individual for purposes of federal income tax laws shall be used as the identifying number for taxpayers;

2. Any disclosure to a district maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual; or

3. Any use for the purposes of establishing the identity of individuals affected by any tax, general public assistance, driver's license, or motor vehicle registration law within a district's jurisdiction.

Statement of Uses

A district that requests disclosure of a social security number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it.

Privacy Act of 1974, Pub. L. No. 93-579, Sec. 7, 88 Stat. 1896, 1897 (1974)

Employment Assistance Prohibited

Federal Law

A district that receives Title I funds shall have regulations or policies that prohibit any individual who is a school employee, contractor, or agent, or a district, from assisting a school employee in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or district knows, or has probable cause to believe, that such school employee engaged in sexual misconduct regarding a minor or student in violation of the law.

This requirement shall not apply if the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the implementing regulations under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations; and:

1. The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee engaged in sexual misconduct regarding a minor or student in violation of the law;

2. The school employee has been charged with and acquitted or otherwise exonerated of the alleged misconduct; or

3. The case or investigation remains open and there have been no charges filed against, or indictment of, the school employee within four years of the date on which the information was reported to a law enforcement agency.

20 U.S.C 7926 [See also CJ]

State Law

SBEC may suspend or revoke a certificate, impose other sanctions against the person, or refuse to issue a certificate to the person if:

1. The person assists another person in obtaining employment at a school district, private school, or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and

2. The person knew that the other person has previously engaged in sexual misconduct with a minor or student in violation of the law.

The commissioner may require a school district to revoke or decline to issue a school district teaching permit under Education Code 21.055 issued to or requested by a person subject to SBEC action above.

Education Code 21.0581; 19 TAC 249.15(b)(13)

Incentive Grants—Contract Provision

A district shall provide in employment contracts that qualifying employees may receive an incentive payment under an awards program established under Education Code Chapter 21, Subchapter O (Educator Excellence Award Program and Educator Excellence Innovation Program) if the district participates in the program. A district shall indicate that any incentive payment distributed is considered a payment for performance and not an entitlement as part of an employee's salary. *Education Code 21.415*

Educator Excellence Innovation Program

The Educator Excellence Innovation Program (EEIP) is a grant program under which a district may receive a competitive grant for the purposes of systematically transforming educator quality and effectiveness. The Texas Education Agency (TEA) will give priority to districts that receive Title I funding and have at a majority of district campuses a student enrollment that is at least 50 percent educationally disadvantaged.

Eligibility

A district is eligible to apply for EEIP grant funds if the district:

1. Completes and submits a Notice of Intent to Apply to TEA by the date established by the commissioner of education;
2. Complies with all assurances in the Notice of Intent to Apply and grant application;
3. Participates in the required technical assistance activities established by the commissioner, including establishing leadership teams, master teachers, mentor teachers, and instructional coaches and developing career pathways;
4. Agrees to participate for four years; and
5. Complies with any other activities set forth in the program requirements.

An eligible district must submit an application in a form prescribed by the commissioner. Each eligible applicant must meet all deadlines, requirements, and assurances specified in the application. The commissioner may waive any eligibility requirements as specified in 19 Administrative Code 102.1073.

Local Plan

An eligible district that intends to participate in the EEIP shall submit a local educator excellence innovation plan to TEA. A local educator excellence innovation plan must address the elements at 19 Administrative Code 102.1073(e)(2).

A district must act pursuant to its local board policy [see DEAA (LOCAL)] for submitting a local educator excellence innovation plan and grant application to TEA. A local decision to approve and

submit a plan and grant application may not be appealed to the commissioner.

A district may renew its local educator excellence innovation plan for three consecutive school years without resubmitting a full grant application to TEA. With TEA approval, a district may amend its local plan in accordance with 19 Administrative Code 102.1073(c) and (h) for each school year the district receives a program grant.

Use of Grant Funds

A district may use grant funds only to carry out purposes of the program as described at Education Code 21.7011, in accordance with the district's local plan, which may include the following specific methods or procedures:

1. Implementation and administration of a high-quality mentoring program for teachers in the first three years of classroom teaching using mentors who meet the qualifications prescribed by Education Code 21.458 [see Mentor Teachers, below];
2. Implementation of a teacher evaluation system using multiple measures that include:
    a. The results of classroom observation, which may include student comments;
    b. The degree of student educational growth and learning; and
    c. The results of teacher self-evaluation;
3. To the extent permitted under Education Code Chapter 25, Subchapter C, restructuring of the school day or school year to provide for embedded and collaborative learning communities for the purpose of professional development [see EC];
4. Establishment of an alternative teacher compensation or retention system; and
5. Implementation of incentives designed to reduce teacher turnover.

Waiver Request

A district may apply to the commissioner in writing for a waiver to exempt the district or one or more district campuses from one or more of the statutory sections listed at Education Code 21.7061(a).

The application for the waiver must demonstrate:

1. Why waiving the identified section of the Education Code is necessary to carry out the purposes of the program;

2. Approval for the waiver by a vote of a majority of the members of the board;

3. Approval for the waiver by a vote of a majority of the educators employed at each campus for which the waiver is sought; and

4. Evidence that the voting occurred during the school year and in a manner that ensured that all educators entitled to vote had a reasonable opportunity to participate in the voting.

Neither the board nor the superintendent may compel a waiver of rights under Education Code 21.7061.

Not later than April 1 of the year in which the waiver application is submitted, the commissioner shall notify the district in writing whether the application has been granted or denied. A waiver expires when the waiver is no longer necessary to carry out the purposes of the program, in accordance with the district's local educator excellence innovation plan.

Education Code Ch. 21, Subch. O; 19 TAC 102.1073

Local Optional Teacher Designation System

A district may designate a classroom teacher as a master, exemplary, or recognized teacher for a five-year period based on the results from single year or multiyear appraisals [see DNA]. *Education Code 21.3521(a)*

Commissioner's Rules

The commissioner's rules specify the requirements for districts to implement local teacher designation systems, including:

1. Teacher eligibility;

2. Application procedures and approval process;

3. System expansion, spending modifications, and changes;

4. Monitoring and annual program evaluation of approved local designation systems;

5. Continuing approval and renewal; and

6. Funding.

19 TAC 150.1012

Standards

The commissioner's rules establish performance and validity standards for each local optional teacher designation system that:

1. Must provide a mathematical possibility that all teachers eligible for a designation may earn the designation; and

2. May not require a district to use an assessment instrument adopted under Education Code 39.023 to evaluate teacher performance.

Education Code 21.3521(b); 19 TAC 150.1014

A classroom teacher that holds a National Board Certification issued by the National Board for Professional Teaching Standards may be designated as recognized in accordance with the commissioner's rules for eligibility. *Education Code 21.3521(c); 19 TAC 150.1013*

Assistance

TEA shall develop and provide technical assistance for districts that request assistance in implementing a local optional teacher designation system, including assistance in prioritizing high needs campuses. *Education Code 21.3521(e)*

No Property Right

A teacher has no vested property right in a teacher designation assigned under a local optional teacher designation system. A teacher designation is void in the determination that the designation was issued improperly, and the Administrative Procedure Act does not apply to the voiding of a local optional teacher designation. *Education Code 21.3521(f)*

Teacher Incentive Allotment

For each classroom teacher with a local optional teacher designation, a district is entitled to an allotment, adjusted by high needs and rural factors, as determined under Education Code 48.112.

A district shall annually certify that:

1. Funds received were used as follows:

    a. At least 90 percent was used for the compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed; and

    b. Any other funds were used for costs associated with implementing the local optional teacher designation system, including efforts to support teachers in obtaining designations; and

2. The district prioritized high needs campuses in the district in using funds.

Education Code 48.112(c), (i)

Evaluations

TEA shall periodically conduct evaluations of the effectiveness of the local optional teacher designation systems and the teacher incentive allotment and report the results of the evaluations to the legislature. A district that has implemented a local optional teacher

designation system or received funds under the teacher incentive allotment shall participate in the evaluations. *Education Code 21.3521(g)*

Mentor Teachers

A district may assign a mentor teacher to each classroom teacher who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned. A teacher assigned as a mentor must:

1. To the extent practicable, teach in the same school;
2. To the extent practicable, teach the same subject or grade level, as applicable; and
3. Meet the qualifications prescribed by commissioner's rules.

Education Code 21.458(a)

Commissioner's Rules

The commissioner's rules for receiving funds under the mentor program allotment specify the requirements for districts to implement a mentor training program, including:

1. Program requirements related to mentor selection, mentor assignment, training, roles and responsibilities, and meetings;
2. An application approval process;
3. Ongoing verification of compliance with program requirements;
4. Allowable expenditures; and
5. Program review through periodic reports.

19 TAC 153.1011

Assignment of Mentor

To be assigned as a mentor, a teacher must agree to serve as a mentor teacher for at least one school year. The assignment must begin not later than the 30th day of employment of the classroom teacher to whom the mentor teacher is assigned. A district must agree to assign a mentor to a new classroom teacher for at least two school years. *Education Code 21.458(a-1)*

Requirements for Mentor

The commissioner's rules must require that a mentor teacher:

1. Complete a research-based mentor and induction training program approved by the commissioner;
2. Complete a mentor training program provided by the district, which the district may allow to be satisfied by completing the commissioner's research-based mentor and induction training program above;

3. Have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance; and

4. Demonstrate interpersonal skills, instructional effectiveness, and leadership skills.

Education Code 21.458(b)

Training

A district must provide the training program described above to mentor teachers and any appropriate district and campus employees who work with the classroom teacher or supervise the classroom teacher. A district may allow the commissioner's research-based mentor and induction training program to qualify for the district's required training. The training must be completed by the mentor teacher and the district and campus employees before the beginning of the school year. A district shall also provide supplemental training to mentor teachers and employees during the school year. The training must include content related to best mentorship practices. *Education Code 21.458(b-1)*

Mentoring Sessions

A mentor teacher must meet with each classroom teacher assigned to the mentor not less than 12 hours each semester. Observations of the mentor by the classroom teacher being mentored or of the classroom teacher being mentored by the mentor may count toward the 12 hours of meeting time required for the semester.

Unless the district has created a mentoring curriculum as provided below, the mentoring sessions must address the following topics:

1. Orientation to the context, policies, and practices of the school district;

2. Data-driven instructional practices;

3. Specific instructional coaching cycles, including coaching regarding conferences between parents and the classroom teacher;

4. Professional development; and

5. Professional expectations.

Subject to approval by TEA, in determining the topics to be addressed in the mentoring sessions, a school district may create an appropriate curriculum that meets the district needs.

A district must:

1. Designate a specific time during the regularly contracted school day for meetings between mentor teachers and classroom teachers assigned to a mentor; and

2. Schedule release time or a reduced teaching load for mentor teachers and classroom teachers under this section to facilitate mentoring activities, including classroom observations or participation in supportive coaching.

Education Code 21.458(f), (f-1)

Allotment

A school district that has implemented a mentoring program is entitled to an allotment to fund the mentoring program and provide stipends for mentor teachers under a formula adopted by the commissioner.

Funding may be used only for providing:

1. Mentor teacher stipends;
2. Scheduled release time for mentor teachers and the classroom teachers to whom they are assigned for meeting and engaging in mentoring activities; and
3. Mentoring support through providers of mentor training.

Education Code 48.114

Achievement Academy Stipends

A stipend received by a teacher who attends a literacy or mathematics achievement academy is not considered in determining whether a district is paying the teacher the minimum monthly salary under Education Code 21.402. *Education Code 21.4552(d), .4553(d)*

A stipend received by a school counselor or teacher who attends a postsecondary education and career counseling academy under Education Code 33.009 is not considered in determining whether a district is paying the school counselor or teacher the minimum monthly salary under Education Code 21.402. *Education Code 33.009(h)*

Autism Training

A district may provide a salary incentive or similar compensation to a teacher who completes training provided by a regional education service center (ESC) relating to autism. A school district that decides to provide an incentive or compensation shall adopt a policy to implement this section. *Education Code 21.465*

Retirement Incentives

A district may not offer or provide a financial or other incentive to an employee to encourage the employee to retire from the Teacher Retirement System of Texas. *Education Code 22.007*

Attendance Supplement

A district shall not deny an educator a salary bonus or similar compensation given in whole or in part on the basis of educator attendance because of the educator's absence from school for observance of a religious holy day observed by a religion whose places of worship are exempt from property taxation under Tax Code 11.20. *Education Code 21.406*

Note: This policy addresses leave for an employee's military service. For provisions on leaves in general, see DEC. For provisions regarding the Family and Medical Leave Act (FMLA), including family and medical leave for an employee seeking leave because of a relative's military service, see DECA.

Federal Military Leave

Reemployment

Any person who is absent from a position of employment by reason of voluntary or involuntary service in the uniformed services shall be entitled to certain reemployment rights and benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301–4335, and its regulations at 20 C.F.R. Part 1002 if:

1. Unless notice is precluded by military necessity or is otherwise unreasonable or impossible, the person, or an appropriate officer of the uniformed service in which such service is performed, has given advance written or verbal notice of such service to such person's employer;

2. The cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years, calculated in accordance with 38 U.S.C. 4312(c); and

3. The person reports to or submits an application for reemployment to such employer in accordance with the provisions of 38 U.S.C. 4312(e) and (f) and 20 C.F.R. Part 1002, Subpart C.

38 U.S.C. 4312(a)–(c); 20 C.F.R. 1002.5(1)

For purposes of federal military leave, the term "uniformed services" means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; the commissioned officer corps of the National Oceanic and Atmospheric Administration (NOAA); system members of the National Urban Search and Rescue Response System during a period of appointment into federal service under Section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and any other category of persons designated by the president in time of war or emergency.

The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty; active

duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; state active duty for a period of 14 days or more; state active duty in response to a national emergency declared by the president under the National Emergencies Act, 50 U.S.C. 1601 et seq.; state active duty in response to a major disaster declared by the president under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170; a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty; a period for which a system member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into federal service under Section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and a period for which a person is absent from employment for the purpose of performing funeral honors duty.

The term “state active duty” means training or other duty, other than inactive duty, performed by a member of the National Guard of a state not under 32 U.S.C. 502 or under U.S.C. Title 10; in service to the governor of a state; and for which the member is not entitled to pay from the federal government.

A person who is reemployed under USERRA is entitled to the seniority, and other rights and benefits determined by seniority, that the person had on the date of the commencement of uniformed service, plus the additional seniority, rights, and benefits that such person would have attained if the person had remained continuously employed.

38 U.S.C. 4303(13), (15)–(16), 4316(a)

Exceptions

An employer, including a school district is not required to reemploy a person if:

1. The employer’s circumstances have so changed as to make reemployment impossible or unreasonable;
2. The person is entitled to reemployment under 38 U.S.C. 4313(a)(3), 4313(a)(4), or 4313(b)(2)(B), and the reemployment of the person would impose an undue hardship on the employer; or
3. The employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

38 U.S.C. 4312(d)

A person's entitlement to the benefits of 38 U.S.C. Chapter 43 by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

1. A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.
2. A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the U.S. secretary concerned.
3. A dismissal of such person permitted under or a dropping of such person from the rolls pursuant to 10 U.S.C. 1161(a) (dismissal of commissioned officers).

38 U.S.C. 4304

Notice

Each employer shall provide to persons entitled to rights and benefits under 38 U.S.C. Chapter 43 a notice of the rights, benefits, and obligations of such persons and such employers. The requirement for the provision of notice may be met by the posting of the notice where employers customarily place notices for employees. The U.S. Secretary of Labor shall provide to employers the text of the notice. *38 U.S.C. 4334*

State Protections for Member of Military or Rescue Team

Paid Leave of Absence

A person who is an officer or employee of the state, a municipality, a county, or another political subdivision of the state, including a school district, who is a member of the state military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team is entitled to a paid leave of absence from the person’s duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a fiscal year. During a leave of absence, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. *Gov’t Code 437.202(a)*

In addition to the leave provided under Government Code 437.202(a), a person described by Section 437.202(a) called to state active duty by the governor or another appropriate authority in response to a disaster is entitled to a paid leave of absence from the person's duties for each day the person is called to active duty during the disaster, not to exceed seven workdays in a fiscal year. During a leave of absence under this provision, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. For purposes of this provision, "disaster" has the meaning assigned by Government Code 418.004. *Gov’t Code 437.202(a-1)*

Notice

This state, a municipality, a county, or another political subdivision of this state, including a school district, shall provide written notice of the number of workdays of paid leave to which an officer or employee is entitled each fiscal year under Government Code 437.202(a) on employment, in the case of an employee, or as soon as practicable after appointment or election, in the case of an officer.

This state, a municipality, a county, or another political subdivision of this state, including a school district, shall, on the request of an officer or employee described by Government Code 437.202(a), provide to that officer or employee a statement that contains the number of workdays for which the officer or employee claimed paid leave under section 437.202(a) in that fiscal year.

Gov't Code 437.202(e)–(f)

Return to Employment

An employee of this state or a municipality, a county, or another political subdivision of this state with at least five full-time employees who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty. An employer, including a school district, may not terminate the employment of an employee who is a member of the military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment. *Gov't Code 437.202(d), .204(a)*

Reemployment

A public employee, other than a temporary employee, who leaves a state position or a position with a local governmental entity, including a school district, to enter active military service is entitled to be reemployed by the state or the local governmental entity in the same department, office, commission, or board of this state, a state institution, or local governmental entity in which the employee was employed at the time of the induction, enlistment, or order, or to a position of similar seniority, status, and pay. To be entitled to reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions not later than the fifth anniversary after the date of induction, enlistment, or call to active military service and must be physically and mentally qualified to perform the duties of the position.

"Military service" means service as a member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, the Texas National Guard, or the Texas State Guard.

Gov't Code 613.001(2)–(3), .002

Exception

A public employee who cannot perform the duties of the position because of a disability sustained during military service is entitled to reemployment in the department, office, commission, or board of the state, a state institution, or a local governmental entity in a position that the employee can perform and that has like seniority, status, and pay as the former position, or the nearest possible seniority, status, and pay. *Gov't Code 613.003*

Application

To be reemployed, a veteran must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service. The application must be made in writing to the head of the department, office, commission, or board of this state, the state institution, or the local governmental entity and have attached to it evidence of the veteran's discharge, separation, or release from military service under honorable conditions. *Gov't Code 613.004*

Discharge

A person reemployed under Government Code Chapter 613 shall not be discharged without cause before the first anniversary of the date of the reemployment. *Gov't Code 613.005*

Application of Federal Laws to Texas Military Members Called to Duty

A service member of the Texas military forces who is ordered to state active duty or to state training or other duty by the governor, the adjutant general, or another proper authority under the law of this state is entitled to the same benefits and protections provided to persons:

1. Performing service in the uniformed services as provided by 38 U.S.C. 4301–4313 and 4316–4319 (USERRA); and
2. In the military service of the United States as provided by 50 U.S.C. 3901–3959, 3991, and 4011–4026 (Servicemembers Civil Relief Act).

Gov't Code 437.213

Use of Personal Leave

An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. This provision applies to any personal or sick leave available under former law or provided by local policy.

A district may adopt a policy providing for paid leave for active military service as part of the consideration of employment.

Education Code 22.003(d), (e)

Resignation without Consent (Unilateral Resignation)

An educator employed under a probationary contract for the following school year, or under a term or continuing contract, may relinquish the position and leave district employment at the end of the school year without penalty by filing a written resignation with a board or a board's designee not later than the 45th day before the first day of instruction of the following school year.

A written resignation mailed by prepaid certified or registered mail to a board president or a board's designee at the post office address of the district is considered filed at the time of mailing.

Education Code 21.105(a), .160(a), .210(a)

An unequivocal resignation filed not later than the 45th day before the first day of instruction of the following school year is effective upon filing with a district and the district cannot reject such a resignation. The resignation cannot be withdrawn by the teacher based on an argument that the district has not accepted the resignation. *Fantroy v. Dallas Indep. Sch. Dist., Tex. Comm'r of Educ. Decision. No. 034-R8-0206 (Mar. 5, 2009); Garcia v. Miles Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 055-Rl-503 (Nov. 30, 2006).*

Resignation with Consent

The educator may resign, with the consent of the board or the board's designee, at any other time. *Education Code 21.105(b), .160(b), .210(b)*

Acceptance or approval of a resignation indicates consent to abandonment of contract. *Quitman Indep. Sch. Dist. v. Wilkerson, Tex. Comm'r of Educ. Decision No. 142-TTC-698 (Dec. 2, 1999); Houston Indep. Sch. Dist. v. Johnson, Tex. Comm'r of Educ. Decision No. 054-TTC-1196 (Sept. 28, 1998)*

Contract Abandonment

Written Complaint

On written complaint by a district, the State Board for Educator Certification (SBEC) may impose sanctions against an educator who is employed under a probationary contract, or under a continuing or term contract, for the following school year, and who:

1. Resigns;
2. Fails without good cause to comply with the resignation deadline or the provision regarding resignation by consent; and
3. Fails without good cause to perform the contract.

Education Code 21.105(c), .160(c), .210(c)

SBEC shall not pursue sanctions against an educator who is alleged to have abandoned his or her contract unless a board:

1. Submits a written complaint within 30 calendar days after the effective date of the educator's separation from employment

from the district. Unless the district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract.

2. Renders a finding that good cause did not exist under Education Code 21.105(c)(2) (probationary contract), 21.160(c)(2) (continuing contract), or 21.210(c)(2) (term contract). This finding constitutes prima facie evidence of the educator's lack of good cause but is not a conclusive determination.

3. Submits the following required attachments to the written complaint:

   a. The educator's resignation letter, if any;

   b. The agreement with the educator regarding the effective date of separation from employment, if any;

   c. The educator's contract; and

   d. Board meeting minutes indicating a finding of "no good cause." If the board does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within ten calendar days after the next board meeting.

19 TAC 249.14(j)

Notice to Teacher

If a district submits a complaint regarding a teacher to SBEC, the district shall promptly notify the teacher of the complaint. The notice must include:

1. The basis of the complaint;

2. Information regarding how the teacher may contact SBEC; and

3. A reminder that the teacher should verify that the teacher's mailing address on file with SBEC is current.

SBEC Review

Before imposing sanctions against a teacher for abandonment of contract, SBEC:

1. Must consider any mitigating factors relevant to the teacher's conduct; and

2. May consider alternatives to sanctions, including additional continuing education or training.

If a teacher files a written resignation after the 45th day but not later than the 30th day before the first day of instruction of the following school year, SBEC may not suspend or revoke the teacher's certificate.

Education Code 21.105(d)–(f), .160(d)–(f), .210(d)–(f)

Good Cause

SBEC may consider the following factors good cause when an educator is reported to have abandoned a contract in violation of Education Code 21.105(c), 21.160(c), or 21.210(c):

1. Serious illness or health condition of the educator or close family member of the educator;
2. Relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator;
3. Significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment; or
4. The educator's reasonable belief that the educator had written permission from the school district administration to resign.

Mitigating Factors

SBEC shall consider the following factors in seeking, proposing, or making a decision regarding an educator who has abandoned a contract in violation of Education Code 21.105(c), 21.160(c), or 21.210(c). The educator:

1. Gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;
2. Assisted the school district in finding a replacement educator to fill the position;
3. Continued to work until the school district hired a replacement educator;
4. Assisted in training the replacement educator;
5. Showed good faith in communications and negotiations with the school district;
6. Provided lesson plans for classes following educator's resignation;
7. Changed careers within the field of education:

a. To a position that required a different class of educator certification as defined in 19 Administrative Code 230.33(b) (relating to Classes of Certificates);

b. To a position with a higher level of authority within the principal class of certificate; or

c. To a position in an open-enrollment charter school or a district of innovation that is equivalent to the positions described above;

8. Had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;

9. Resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator; or

10. Any other relevant circumstances or facts.

19 TAC 249.17(d)

Required Report to SBEC

A superintendent shall report the educator's resignation to SBEC if the conditions set forth at Education Code 21.006 exist. [See DHB] *Education Code 21.006*

Investigation

A superintendent of a district, including a district of innovation, shall complete an investigation of an educator that involves evidence that the educator may have abused or otherwise committed an unlawful act, was involved in a romantic relationship with, or solicited or engaged in sexual contact with a student or minor, despite the educator's resignation from employment before completion of the investigation. *Education Code 21.006(b-1); 19 TAC 249.14(d)(3)(C)*

Report by Principal

A person who serves as a principal in a district, including a district of innovation, must notify the superintendent, and may be subject to sanctions for failure to do so, not later than the seventh business day after the date of an educator's resignation following an alleged incident of misconduct described by Education Code 21.006(b) [see DP]. *Education Code 21.006(b-2); 19 TAC 249.14(e)*

Employee Free Speech

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

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

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

Whistleblower Protection

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

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

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

Gov't Code 554.002

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

Definitions

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

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

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

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

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

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

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

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

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

Whistleblower Complaints

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

Initiate Grievance

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

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

Legal Action

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

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

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

Burden of Proof	If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation of law, in which case the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report.
Affirmative Defense	It is an affirmative defense to a whistleblower suit that the district would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under the whistleblower law. *Gov't Code 554.004*
Notice of Rights	A board shall inform its employees of their rights regarding whistleblower protection by posting a sign in a prominent location in the workplace. The design and content of the sign shall be as prescribed by the attorney general. *Gov't Code 554.009*

Right to Report a Crime

A district employee may report a crime witnessed at the school to any peace officer with authority to investigate the crime. A district may not adopt a policy requiring a school employee to refrain from reporting a crime witnessed at the school or to report a crime witnessed at the school only to certain persons or peace officers. *Education Code 37.148*

Protection for Reporting Child Abuse

A district may not suspend or terminate the employment of, discriminate against, or take other adverse employment action against a professional employee who in good faith:

1. Reports child abuse or neglect to:
    a. The person's supervisor,
    b. An administrator of the facility where the person is employed,
    c. A state regulatory agency, or
    d. A law enforcement agency; or
2. Initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

"Adverse employment action" means an action that affects an employee's compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from making or supporting a report of abuse or neglect under Family Code 261.101.

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

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

Family Code 261.110(a)–(c), (l)

Protection from Disciplinary Proceedings

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

Reporting Child Abuse or Maltreatment

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

Use of Physical Force

A professional employee may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Penal Code 9.62. This provision does not prohibit a district from enforcing a policy relating to corporal punishment or bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment. *Education Code 22.0512(a); Tex. Att'y Gen. Op. GA-0202 (2004)*

Penal Code 9.62 provides that the use of force, other than deadly force, against a person is justified:

1. If the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
2. When and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

Penal Code 9.62

Failure to Follow Scope and Sequence

A district may not penalize a teacher who does not follow 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 based on the teacher's determination that the teacher's students need more or less time in a specific area to demonstrate proficiency in the essential knowledge and skills for that subject and grade level [see EHAA].

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

Education Code 28.0027(b), (c)

Instructional Materials and Technological Equipment

A board may not require an employee who acts in good faith to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned. An employee may not waive this provision by contract or any other means.

Exception

A district may enter into a written agreement with an employee whereby the employee assumes financial responsibility for electronic instructional material or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the employee to use the electronic instructional material or technological equipment for personal business.

The written agreement shall be separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to enter into such an agreement as a condition of employment.

Education Code 31.104(e); 19 TAC 66.107(c)

Controversial Topics

For any course or subject, including an innovative course, for a grade level from kindergarten through grade 12, a teacher may not be compelled to discuss a widely debated and currently controversial issue of public policy or social affairs. *Education Code 28.0022(a)*

Note: For instructional requirements and prohibitions, including requirements for student discussion, see EMB.

Jury Duty

A district may not discharge, threaten to discharge, intimidate, or coerce any permanent employee because the employee serves as a juror or grand juror, or for the employee's attendance or scheduled attendance in connection with the service, in any court in the United States. An employee who is discharged, threatened with discharge, intimidated, or coerced is entitled to return to the same employment that the employee held when summoned for jury or grand jury service if the employee, as soon as practical after release from jury or grand jury service, gives the employer actual notice that the employee intends to return. *Civ. Prac. & Rem. Code 122.001*

A district may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against a school district employee because of the employee's compliance with a summons to appear as a juror. For each regularly scheduled workday on which a nonsalaried employee serves in any phase of jury service, a school district shall pay the employee the employee's normal daily compensation [see DEC]. *Education Code 22.006(a), (b)*

Breaks for Nursing Mothers—Nonexempt Employees

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

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

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

29 U.S.C. 207(r)

Right to Express Breast Milk

A district employee is entitled to express breast milk at the employee's workplace. *Gov't Code 619.002*

The district shall develop a written policy on the expression of breast milk by employees under Government Code Chapter 619. The policy must state that the district shall support the practice of expressing breast milk and make reasonable accommodations for the needs of employees who express breast milk.

A district shall provide a reasonable amount of break time for an employee to express breast milk each time the employee has need to express the milk. The district shall provide a place, other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk.

A district may not suspend or terminate the employment of, or otherwise discriminate against, an employee because the employee has asserted the employee's rights under Government Code Chapter 619. Government Code Chapter 619 does not create a private or state cause of action against a district.

Gov't Code Ch. 619

Charitable Contributions

A board or a district employee may not directly or indirectly require or coerce any district employee to:

1. Make a contribution to a charitable organization or in response to a fund-raiser; or
2. Attend a meeting called for the purpose of soliciting charitable contributions.

A board or district employee may not directly or indirectly require or coerce any district employee to refrain from the same acts.

Education Code 22.011

Protection of Nurses

A district may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission relating to patient care that:

1. Would constitute grounds for reporting the nurse to the Board of Nurse Examiners under Occupations Code Chapter 301, Subchapter I;
2. Constitutes a minor incident, as defined at Occupations Code 301.419; or
3. Would violate Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners, if the nurse notifies the district at the time of the refusal that this is the reason for refusing to engage in the act or omission.

Occupations Code 301.352(a)

Note: The provisions of this policy apply to a district of innovation under Education Code, Chapter 12A. [See AF]

Definitions

"Abuse" has the meaning assigned by Family Code 261.001(1).

"Employee" means a person who is employed by a school district, district of innovation, charter school, service center, or shared services arrangement and does not hold a certification issued by the State Board for Educator Certification (SBEC) under Education Code, Chapter 21, Subchapter B.

19 TAC 153.1201(b), (d)

Misconduct of Noncertified Employees

Education Code 22.093 applies to a district employee who does not hold certification issued by SBEC or a school district teaching permit.

Notice to TEA of Termination or Resignation

A person who serves as the superintendent shall notify the commissioner of education in writing by filing a report within seven business days of the date the person either receives a report from a principal or knew that an employee was terminated or resigned from employment and there is evidence that the employee committed any of the following acts:

1. Abused or otherwise committed an unlawful act with a student or minor; or
2. Was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.

Principal Notification

A person who serves as principal must notify the superintendent no later than seven business days after an employee resigns or is terminated following an alleged incident of misconduct described above.

Investigation

A superintendent shall complete an investigation of an employee if there is reasonable cause to believe the employee may have engaged in misconduct described above, despite the employee's resignation from district employment before completion of the investigation.

Form of Report

The report must include:

1. The name or names of any student or minor who is the victim of abuse or unlawful conduct by an employee;
2. The factual circumstances requiring the report and the subject of the report by providing the following available information:

a. Name and any aliases and certificate number, if any, or social security number;

b. Last known mailing address and home and daytime phone numbers;

c. All available contact information for any alleged victim or victims;

d. Name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;

e. Current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and

f. Involvement by a law enforcement or other agency, including the name of the agency.

The name of the student or minor is not public information under Government Code Chapter 552 (Public Information Act).

Notice to the Board and Employee

A superintendent shall notify the board and the employee of the filing of the report.

Immunity

A superintendent or principal who in good faith and while acting in an official capacity files a report or makes a notification is immune from civil or criminal liability that might otherwise be incurred or imposed.

Sanctions for Failure to Report

The commissioner shall refer an educator who fails to file a report to SBEC, which will determine whether to impose sanctions against the educator.

Criminal Offense

A superintendent commits an offense if the superintendent fails to timely file the report with intent to conceal an employee's criminal record or alleged incident of misconduct.

A principal commits an offense if the principal fails to timely provide notice with intent to conceal an employee's alleged incident of misconduct.

An offense under Education Code 22.093(k) is a state jail felony.

Review of District Records

The commissioner may review district records to ensure compliance with the requirement to report misconduct.

Education Code 22.093; 19 TAC 153.1203

Solicitation of Sexual Contact

"Solicitation of sexual contact" means deliberate or repeated acts that can be reasonably interpreted as the solicitation by an employee of a relationship with a student that is sexual in nature. Solicitation of sexual contact is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an employee of sexual contact with a student:

1. Behavior, gestures, expressions, or communications with a student that are unrelated to the employee's job duties and evidence a sexual intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the intent of such communications or behavior, include, without limitation:
    a. The nature of the communications;
    b. The timing of the communications;
    c. The extent of the communications;
    d. Whether the communications were made openly or secretly;
    e. The extent that the employee attempts to conceal the communications;
    f. If the employee claims to be counseling a student, the commissioner of education may consider whether the employee's job duties included counseling, whether the employee reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the employee reported the abuse or neglect to the appropriate authorities; and
    g. Any other evidence tending to show the context of the communications between employee and student;
2. Making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;
3. Making sexually demeaning comments to a student;
4. Making comments about a student's potential sexual performance;

5. Requesting details of a student's sexual history;
6. Requesting a date, sexual contact, or any activity intended for the sexual gratification of the employee;
7. Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;
8. Inappropriate hugging, kissing, or excessive touching;
9. Providing the student with drugs or alcohol;
10. Violating written directives from school administrators regarding the employee's behavior toward a student;
11. Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and
12. Any other acts tending to show that the employee solicited sexual contact with a student.

19 TAC 153.1201(a)

Note: The Board has adopted an innovation plan[1] that affects application of provisions in this legally referenced policy.

Staff Development

Educator

The staff development provided by a district to an educator other than a principal must be conducted in accordance with standards developed by the district and designed to improve education in the district.

Principal

The staff development provided by a district to a principal shall be governed by Education Code 21.3541 and rules adopted under that section. [See DNB]

Education Code 21.451(a), (a-1)

Professional Development Policy

A board shall annually review the SBEC continuing education and training clearinghouse published under Education Code 21.4514 and adopt a professional development policy that must:

1. Be guided by the recommendations for training in the clearinghouse;
2. Note any differences in the policy adopted by the district or school from the recommendations in the clearinghouse; and
3. Include a schedule of all training required for educators or other school personnel at the district or school.

To the extent of any conflict, a frequency requirement for the completion of training provided by statute prevails over a frequency requirement for that training included in the professional development policy.

Education Code 21.4515(a), (b)

Note: SBEC must publish the continuing education and training clearinghouse not later than June 1, 2022.

A district must adopt its professional development policy for district personnel not later than August 1, 2022.

Requirements for Training

In designing staff development for educators other than principals, a district must use procedures that, to the greatest extent possible, ensure the training included in the staff development:

1. Incorporates proactive instructional planning techniques using a framework that:
   a. Provides flexibility in the ways:
      (1) Information is presented;

(2) Students respond or demonstrate knowledge and skills; and

(3) Students are engaged;

b. Reduces barriers in instruction;

c. Provides appropriate accommodations, supports, and challenges; and

d. Maintains high achievement expectations for all students, including students with disabilities and students of limited English proficiency; and

2. Integrates inclusive and evidence-based instructional practices for all students, including students with disabilities.

Staff development shall be predominantly campus-based, related to achieving campus performance objectives, and developed and approved by the campus-level committee.

A district may use district-wide staff development that has been developed and approved through the district-level decision process. [See BQA and BQB, as appropriate]

Education Code 21.451(a-2), (b), (c)

Optional Training

Staff development may include training in:

1. Technology and digital learning; and

2. Positive behavior intervention and support strategies, including classroom management, district discipline policies, and the Student Code of Conduct.

Technology and digital learning training must:

1. Discuss basic technology proficiency expectations and methods to increase an educator's digital literacy; and

2. Assist an educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices.

Staff development may include instruction as to what is permissible under law, including opinions of the United States Supreme Court, regarding prayer in public school.

Education Code 21.451(d)(1), (d-3), (g)

Required Training

Staff development must include training on:

1. Suicide prevention;

2. Strategies for establishing and maintaining positive relationships among students, including conflict resolution; and

3. Preventing, identifying, responding to, and reporting incidents of bullying.

Required training above must be provided in accordance with the board's professional development policy and use a best practice-based program recommended by the Health and Human Services Commission under Education Code 38.351 [see FFEB]. Required training may include two or more topics listed together.

Education Code 21.451(d)(3), (d-1)

Instruction of Students with Disabilities

Definition

"Student with a disability" means a student who is:

1. Eligible to participate in a school district's special education program under Education Code 29.003;

2. Covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794); or

3. Covered by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

Education Code 21.001(4)

Requirements

Staff development must include training that is evidence-based, as defined by Section 8101, Every Student Succeeds Act (20 USC 7801), and that:

1. Relates to the instruction of students with disabilities, including students with disabilities who also have other intellectual or mental health conditions; and

2. Is designed for educators who work primarily outside the area of special education.

A district is required to provide the training to an educator who works primarily outside the area of special education only if the educator does not possess the knowledge and skills necessary to implement the individualized education program developed for a student receiving instruction from the educator. A district may determine the time and place at which the training is delivered.

In developing or maintaining the training, a district must consult with persons with expertise in research-based practices for students with disabilities, including colleges, universities, private and nonprofit organizations, regional education service centers, qualified district personnel, and any other persons identified as qualified

by the district, regardless of whether the training is provided at the campus or district level.

Education Code 21.451(d)(2), (e)–(f)

Suicide Prevention

The required suicide prevention training may be satisfied through independent review of suicide prevention training material that complies with the guidelines developed by TEA and is offered online. *Education Code 21.451(d-2); 19 TAC 153.1013(d)*

Suicide prevention programs on TEA's list of recommended best practice-based programs [see FFEB] must include components that provide for training school counselors, teachers, nurses, administrators, and other staff, as well as law enforcement officers and social workers who regularly interact with students, to:

1. Recognize students at risk of attempting suicide, including students who are or may be the victims of or who engage in bullying;
2. Recognize students displaying early warning signs and a possible need for early mental health or substance abuse intervention, which warning signs may include declining academic performance, depression, anxiety, isolation, unexplained changes in sleep or eating habits, and destructive behavior toward self and others;
3. Intervene effectively with students described above by providing notice and referral to a parent or guardian so appropriate action, such as seeking mental health or substance abuse services, may be taken by a parent or guardian; and
4. Assist students in returning to school following treatment of a mental health concern or suicide attempt.

A district shall provide training described in the components above for teachers, school counselors, principals, and all other appropriate personnel. A district is required to provide the training at an elementary school campus only to the extent that sufficient funding and programs are available. A school district may implement a program on TEA's list of recommended best practice-based programs [see FFEB] to satisfy this training requirement.

If a district provides the training, a district shall require completion in accordance with the district's professional development policy and maintain records that include district employees who participated in the training.

Education Code 38.351(e), (g), (h); 19 TAC 153.1013

Staff Development Account

A district that receives resources from the commissioner of education's staff development account must pay to the commissioner for deposit in the account an amount equal to one-half of the cost of the resources provided to the district. *Education Code 21.453(c)*

Child Abuse, Trafficking, and Maltreatment

A district's methods for increasing awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children [see District Improvement Plan at BQ and Sexual Abuse, Trafficking, and Maltreatment Policies and Programs at FFG] must include training concerning prevention techniques for and recognition of sexual abuse, sex trafficking, and all other maltreatment of children, including the sexual abuse, sex trafficking, and other maltreatment of children with significant cognitive disabilities.

The training must be provided in accordance with the district's professional development policy and as part of new employee orientation to all new employees.

The training must include:

1. Factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;
2. Warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;
3. Internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;
4. Techniques for reducing a child's risk of sexual abuse, trafficking, or other maltreatment; and
5. Information on community organizations that have relevant research-based programs and that are able to provide training or other education for district staff, students, and parents.

A district must maintain records that include staff members who participated in the training.

To the extent that resources are not yet available from TEA or the commissioner of education, districts shall implement the policies and trainings with existing or publicly available resources. The district may also work in conjunction with a community organization to provide the training at no cost to the district.

Education Code 38.0041(c)–(f); 19 TAC 61.1051(d)

Trauma-Informed Care

A district's efforts to increase awareness and implementation of trauma-informed care must include training to new and existing

employees in accordance with the district's professional development policy. [See BQ, FFBA] *Education Code 38.036(c)*

Student Discipline

Each principal or other appropriate administrator who oversees student discipline shall, at least once every three school years, attend professional development training regarding Education Code Chapter 37, Subchapter G. The professional development shall include training relating to the distinction between a discipline management technique used at the principal's discretion under Education Code 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under Education Code 37.002(b) [see FOA].

The professional development training may be provided in coordination with an education service center through the use of distance learning methods, such as telecommunications networks, and using available TEA resources.

Education Code 37.0181

Test Administration Training

The commissioner may require training for district employees involved in the administration of assessment instruments. The commissioner may only require the employee at each district campus who oversees the administration of the assessment instruments to annually receive the training. The district employee who oversees test administration on a district campus may, with discretion, require other district employees involved in the administration of assessment instruments to repeat the training. *Education Code 39.0304(a), (b-1), (b-2)*

Cybersecurity Training

Employees identified by the district with access to a district computer system or database and who use a computer to perform at least 25 percent of the employee's required duties must complete a cybersecurity training program selected by the board. The district, in consultation with its cybersecurity coordinator, shall determine how frequently employees must complete the training. [See CQB] *Gov't Code 2054.5191(a-1); Education Code 11.175(g)*

Special Programs Training

Teacher Literacy Achievement Academies (Reading Academies)

A district shall ensure that:

1. Not later than the 2022–23 school year, each classroom teacher in kindergarten or first, second, or third grade and each principal at a campus with kindergarten or first, second, or third grade has attended a teacher literacy achievement academy developed under Education Code 21.4552; and
2. Each classroom teacher and each principal initially employed in a grade level or at a campus described above for the 2022–23 school year or a subsequent school year has attended a

teacher literacy achievement academy developed under Education Code 21.4552 by the end of the teacher's or principal's first year of placement in that grade level or campus.

Education Code 28.0062(a)(2)

[See EHAB for kindergarten–grade 3 reading standards.]

Gifted and Talented Education

A district shall ensure that:

1. Before assignment to the program for gifted students, teachers who provide instruction and services that are part of the program have a minimum of 30 hours of staff development that includes nature and needs of gifted/talented students, assessment of student needs, and curriculum and instruction for gifted students.
2. Teachers without the required training who provide instruction and services that are part of the gifted/talented program complete the 30-hour training requirement within one semester.
3. Teachers who provide instruction and services that are part of a program for gifted students receive a minimum of six hours annually of professional development in gifted education.
4. Administrators and counselors who have authority for program decisions have a minimum of six hours of professional development that includes nature and needs of gifted/talented students and program options.

19 TAC 89.2

Elective Bible Course

A teacher of an elective Bible course offered under Education Code 28.011 [see EMI] must hold a certificate in language arts, social studies, or history that qualifies the teacher to teach at the grade level at which the course is offered with, where practical, a minor in religious or biblical studies. The teacher must successfully complete staff development training developed by the commissioner for elective Bible courses. An elective Bible course may be taught only by a teacher who has successfully completed the commissioner's training under Education Code 21.459. *Education Code 28.011(f)*

Texas English Language Proficiency Assessment System Training

The employee assigned to oversee the administration of the Texas English Language Proficiency Assessment System (TELPAS) at a district campus may, with discretion, require other district employees involved in administering the TELPAS to complete training or online calibration activities described by Education Code 21.4571(a). An employee may not be required to complete a training or online calibration activity in one sitting. *Education Code 21.4571(b), (c)*

Automated External Defibrillators

A district shall, in accordance with its professional development policy, make available to employees and volunteers instruction in the principles and techniques of cardiopulmonary resuscitation and the use of an automated external defibrillator (AED).

Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other employee specified by the commissioner, and each student who serves as an athletic trainer, must:

1. Participate in the instruction; and
2. Receive and maintain certification in the use of an AED from the American Heart Association, the American Red Cross, or a similar nationally recognized association.

Education Code 22.902

Extracurricular Activity Safety Training

The following persons must satisfactorily complete an extracurricular activity safety training program in accordance with the district's professional development policy:

1. A coach, trainer, or sponsor for an extracurricular athletic activity; and
2. A director responsible for a school marching band.

The safety training program must include:

1. Certification of participants by the American Red Cross, the American Heart Association, or a similar organization or by the University Interscholastic League;
2. Current training in:
    a. Emergency action planning;
    b. Communicating effectively with 9-1-1 emergency service operators and other emergency personnel; and
    c. Recognizing symptoms of potentially catastrophic injuries, including head and neck injuries, concussions, injuries related to second impact syndrome, asthma attacks, heatstroke, cardiac arrest, and injuries requiring use of a defibrillator; and
3. A safety drill that incorporates the training and simulates various injuries described above.

Education Code 33.202(b), (c); 19 TAC 76.1003

Records

A superintendent shall maintain complete and accurate records of the district's compliance and the district shall make available to the

public proof of compliance for each person employed by or volunteering for the district who is required to receive safety training.

A campus that is determined by a superintendent to be out of compliance with the safety training requirements shall be subject to the range of penalties determined by the UIL.

Education Code 33.206; 19 TAC 76.1003(e)

Steroids

A district shall require that each employee who serves as an athletic coach at or above the seventh grade level for an extracurricular athletic activity sponsored or sanctioned by the UIL complete:

1. The educational program developed by the UIL regarding the health effects of steroids; or
2. A comparable program developed by the district or a private entity with relevant expertise.

Education Code 33.091(c-1)

Concussions

At least once every two years, the following employees shall take a training course from an authorized provider in the subject matter of concussions:

1. A coach of an interscholastic athletic activity shall take a course approved by the UIL.
2. An athletic trainer who serves as a member of a district's concussion oversight team shall take a course approved by the Texas Department of Licensing and Regulation (TDLR) or a course approved for continuing education credit by the licensing authority for athletic trainers.
3. A school nurse or licensed health-care professional, other than an athletic trainer, who serves as a member of a district's concussion oversight team shall take a course approved by the UIL, TDLR, or the appropriate licensing authority for the profession.

The employee must submit proof of timely completion of an approved course to the superintendent or designee. A school nurse or licensed health-care professional who is not in compliance with these training requirements may not serve on a concussion oversight team in any capacity. [See FM]

Education Code 38.158

Seizure Recognition and Related First Aid

A school nurse employed by a district must complete a TEA-approved online course of instruction for school nurses regarding managing students with seizure disorders that includes information about seizure recognition and related first aid.

A district employee, other than a school nurse, whose duties at the school include regular contact with students must complete a TEA-approved online course of instruction for school personnel regarding awareness of students with seizure disorders that includes information about seizure recognition and related first aid.

Education Code 38.033(a), (b)

[See FFAF for information about a seizure management and treatment plan.]

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[1] Innovation Plan: https://tx50000620.schoolwires.net/

The Superintendent shall recommend the District's professional development plan for all District employees. The Board shall annually review the professional development clearinghouse published by the State Board for Educator Certification (SBEC) and annually approve the District's professional development plan. The District's professional development plan must:

1. Be guided by the SBEC clearinghouse training recommendations;
2. Note any differences in the District's plan from the clearinghouse recommendations; and
3. Include a schedule of the required professional development for all District employees.

Principal

Qualifications — A board, by local policy, shall adopt qualifications for principals. *Education Code 11.202(c)*

Certification — State Board for Educator Certification (SBEC) rules establish the requirements for receiving a principal certificate and for first-time principals in Texas. *19 TAC Ch. 241*

Duties — The principal shall be the instructional leader of the school and shall be provided with adequate training and personnel assistance to assume that role. *Education Code 11.202(a)*

A principal shall:

1. Approve all teacher and staff appointments for the campus. [See DK]
2. Set specific education objectives for the campus, through the planning process.
3. Develop budgets for the campus.
4. Assume administrative responsibility and instructional leadership, under the supervision of the superintendent, for discipline at the campus.
5. Assign, evaluate, and promote all personnel assigned to the campus.
6. Recommend to the superintendent the termination, suspension, or nonrenewal of an employee assigned to the campus.
7. Perform any other duties assigned by the superintendent pursuant to board policy.
8. Regularly consult with the campus-level committee in the planning, operation, supervision, and evaluation of the campus educational program. [See BQ series]
9. Each school year, with the assistance of the campus-level committee, develop, review, and revise the campus improvement plan. [See BQ]
10. For high school principals, serve, or appoint someone to serve, as deputy voter registrar for the county in which the school is located. *Election Code 13.046; 1 TAC 81.7*

Education Code 11.202(b), .253(c), (h) [See also DMA]

Principal's Report to Superintendent — A principal must notify the superintendent not later than the seventh business day after the date:

Educators

1. Of an educator's termination of employment or resignation following an alleged incident of misconduct under Education Code 21.006(b); or

2. The principal knew about an educator's criminal record under Education Code 21.006(b)(1).

Education Code 21.006(b-2); 19 TAC 249.14(e) [See Required Reports at DHB(LEGAL)]

Noncertified Employees

A principal must notify the superintendent not later than the seventh business day after the date of a noncertified employee's termination or resignation following allegations that the employee:

1. Abused or otherwise committed an unlawful act with a student or minor; or

2. Was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.

Education Code 22.093(e) [See Principal Notification at DHC(LEGAL)]

Sanctions and Administrative Penalty

SBEC determines whether to impose sanctions, including an administrative penalty, against a principal who fails to provide notification to a superintendent. *Education Code 21.006(f), 22.093(i); 19 TAC 249.14(e), (h)*

If a principal is required to notify a superintendent about an educator's criminal record or alleged incident of misconduct and fails to provide the notice by the required date, SBEC may impose an administrative penalty of not less than $500 and not more than $10,000. SBEC may not renew the certification of an educator against whom an administrative penalty is imposed until the penalty is paid. *Education Code 21.006 (i)*

Criminal Offense

A principal required to notify a superintendent about an employee's criminal record or alleged incident of misconduct commits a state jail felony if the principal fails to provide the notice by the required date with intent to conceal an educator's criminal record or alleged incident of misconduct. *Education Code 21.006(j), 22.093(k)*

School Nurse

Minimum Salary Schedule

For purposes of the minimum salary schedule, a school nurse is an educator employed to provide full-time nursing and health-care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas. *19 TAC 153.1022(a)(1)(D)*

Licensed Vocational Nurse

The practice of vocational nursing must be performed under the supervision of an RN, physician, physician assistant, podiatrist, or dentist. *Occupations Code 301.353*

Supervision is the process of directing, guiding, and influencing the outcome of an individual's performance of an activity. *22 TAC 217.11(2)*

Nursing Peer Review Committee

"Nursing peer review committee" includes a committee established under the authority of the governing body of a political subdivision for the purpose of conducting peer review.

A person shall establish a nursing peer review committee to conduct nursing peer review under Occupations Code Chapter 303 and Chapter 301:

1. For vocational nurses, if the person regularly employs, hires, or contracts for the services of eight or more nurses; and
2. For professional nurses, if the person regularly employs, hires, or contracts for the services of eight or more nurses, at least four of whom are RNs.

A person required to establish a nursing peer review committee under this section may contract with another entity to conduct peer review for the person.

Occupations Code 303.001(4), .0015

Note: Education Code 33.002 regarding certified school counselors applies only to school districts that apply for, receive, and allocate funds under Education Code 33.002(a).

Certified School Counselor

A district with 500 or more students enrolled in elementary school grades shall employ a certified school counselor for each elementary school and at least one school counselor for each 500 elementary school students [see DBA].

A district with fewer than 500 students enrolled in elementary school grades shall provide guidance and counseling services to elementary school students by any of the following methods:

1. Employing a part-time certified school counselor.
2. Employing a part-time teacher who is also certified as a school counselor.
3. Entering into a shared services agreement with one or more other districts to share a certified school counselor.

Education Code 33.002

Note: Education Code 33.006 applies to all districts that employ school counselors.

School Counselor Duties

The primary responsibility of a school counselor is to counsel students to fully develop each student's academic, career, personal, and social abilities. In addition, a school counselor shall:

1. Participate in planning, implementing, and evaluating a comprehensive developmental guidance program to serve all students and to address the special needs of students who are:
    a. At risk of dropping out of school, becoming substance abusers, participating in gang activity, or committing suicide;
    b. In need of modified instructional strategies; or
    c. Gifted and talented, with emphasis on identifying and serving gifted and talented students who are educationally disadvantaged;
2. Consult with students' parents or guardians and make referrals as appropriate in consultation with parents or guardians;
3. Consult with school staff, parents, and other community members to help them increase the effectiveness of students' education and promote student success;
4. Coordinate people and resources in the school, home, and community;
5. With the assistance of school staff, interpret standardized test results and other assessment data that help a student make educational and career plans;
6. Deliver classroom guidance activities or serve as a consultant to teachers conducting lessons based on the school's guidance curriculum; and
7. Serve as an impartial, non-reporting resource for interpersonal conflicts and discord involving two or more students, including accusations of bullying under Education Code 37.0832.

Nothing in item 7, above, exempts a school counselor from any mandatory reporting requirements imposed by other provisions of law.

School Counselor Policy

A board shall adopt a policy that requires a school counselor to spend at least 80 percent of the school counselor's total work time

on duties that are components of the district's comprehensive school counseling program under Education Code 33.005. [See FFEA] Time spent in administering assessment instruments or providing other assistance in connection with assessment instruments, except time spent in interpreting data from assessment instruments, is not considered time spent on counseling.

Each school in the district shall implement the policy. A copy of the policy shall be maintained in the office of each school in the district and made available on request during regular school hours to district employees, parents of district students, and the public.

Exception

If a board determines that, because of staffing needs in the district or at a school in the district, a school counselor must spend less than 80 percent of the school counselor's total work time on duties that are components of the district's comprehensive school counseling program, the policy shall:

1. Include the reasons why the counselor needs to spend less than 80 percent of the counselor's work time on duties that are components of the counseling program;
2. List the duties the counselor is expected to perform that are not components of the counseling program; and
3. Set the percentage of work time that the counselor is required to spend on components of the counseling program.

Counselor Contracts

A district may not include a provision in an employment contract with a school counselor under Education Code Chapter 21 that conflicts with the policy or, except as provided below, has the effect of authorizing a school principal or school district superintendent to require a school counselor to generally perform duties that are not primarily related to a counseling function.

A district that complies with the exception above may not include a provision in an employment contract under Education Code Chapter 21 with an affected school counselor that has the effect of requiring the counselor to generally perform a duty that is not primarily related to a counseling function unless the duty is specified in the district's policy as required above.

Annual Assessment

A district shall annually assess its compliance with its school counselor policy and, on request by the commissioner, provide a written copy of the assessment to the Texas Education Agency (TEA) on or before the date specified by the commissioner.

Education Code 33.006

Nonphysician Mental Health Professional

A school district may employ or contract with one or more nonphysician mental health professionals.

In this section, "nonphysician mental health professional" means:

1. A psychologist licensed to practice in this state and designated as a health-service provider;
2. An RN with a master's or doctoral degree in psychiatric nursing;
3. A licensed clinical social worker;
4. A professional counselor licensed to practice in this state; or
5. A marriage and family therapist licensed to practice in this state.

Education Code 38.0101

Note: For information about mental health treatment, including counseling, see FFEA.

School Psychological Services

The Texas Behavioral Health Executive Council (TBHEC) has authority over the delivery of school psychological services in public schools. Recognizing the purview of the State Board of Education (SBOE) and TEA in safeguarding the rights of school children in Texas, the TBHEC adopts and enforces rules establishing multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas. Incorporating these factors allow for rules that reflect the occupational distinctions between the delivery of school psychological services in public schools and psychological services in the private sector. *22 TAC 465.38(a)*

Licensed Specialist in School Psychology (LSSP)

Licensed specialist in school psychology (LSSP) means a person who holds a license to engage in the practice of psychology under Occupations Code 501.260. *Occupations Code 501.002(2)*

School psychological services may be provided in Texas public schools only by LSSPs and interns and post-doctoral fellows working towards licensure as a psychologist. *22 TAC 465.38(e)*

Scope of Practice

An LSSP is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions that attempt to improve the learning, adjustment and behavior of students. These activities include, but are not limited to:

1. Addressing special education eligibility;

2. Conducting manifestation determinations;
3. Assisting with the development and implementation of individual educational programs (IEPs);
4. Conducting behavioral assessments; and
5. Designing and implementing behavioral interventions and supports.

The assessment of emotional or behavioral disturbance, solely for educational purposes, using psychological techniques and procedures is considered the practice of school psychology.

An LSSP may not provide psychological services in any context or capacity outside of a public or private school.

22 TAC 465.38(b), (c)

Standards

The delivery of school psychological services in Texas public schools shall be consistent with nationally recognized standards for the practice of school psychology. *Occupations Code 501.260(c); 22 TAC 465.38(b)(3)*

Notice of Assignment or Subcontract

An LSSP who contracts with a school to provide school psychological services must notify the school of any intent or plan to subcontract or assign those services to another provider prior to entering into the agreement. An LSSP shall be responsible for ensuring the school psychological services delivered comply with TBHEC standards. *22 TAC 465.38 (e)(3)*

Compliance with Applicable Education Laws

LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

1. Texas Education Code;
2. Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g;
3. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq.;
4. Texas Public Information Act, Texas Government Code, Chapter 552;
5. Section 504 of the Rehabilitation Act of 1973; and
6. Americans with Disabilities Act (ADA) 42 U.S.C. 12101.

22 TAC 465.38 (f)

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 E: INSTRUCTION

EA	INSTRUCTIONAL GOALS AND OBJECTIVES
EB	SCHOOL YEAR
EC	SCHOOL DAY
ED	ORGANIZATION OF INSTRUCTION
EE	INSTRUCTIONAL ARRANGEMENTS
EEA	Grouping for Instruction
EEB	Class Size
EEC	Scheduling for Instruction
EED	Student Schedules
EEH	Homebound Instruction
EEJ	Individualized Learning
EEL	Contracts with Outside Agencies
EEM	Juvenile Residential Facilities
EEP	Lesson Plans
EF	INSTRUCTIONAL RESOURCES
EFA	Instructional Materials
EFB	Library Materials
EH	CURRICULUM DESIGN
EHA	Basic Instructional Program
EHAA	Required Instruction (All Levels)
EHAB	Required Instruction (Elementary)
EHAC	Required Instruction (Secondary)
EHAD	Elective Instruction
EHB	Special Programs
EHBA	Special Education
EHBAA	Identification, Evaluation, and Eligibility
EHBAB	ARD Committee and Individualized Education Program
EHBAC	Students in Non-District Placement
EHBAD	Transition Services
EHBAE	Procedural Requirements
EHBAF	Video/Audio Monitoring
EHBB	Gifted and Talented Students
EHBC	Compensatory/Accelerated Services
EHBD	Federal Title I
EHBE	Bilingual Education/ESL
EHBF	Career and Technical Education
EHBG	Prekindergarten
EHBH	Other Special Populations

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SECTION E: INSTRUCTION

EHBI	Adult and Community Education
EHBJ	Innovative and Magnet Programs
EHBK	Other Instructional Initiatives
EHBL	High School Equivalency
EHBM	Travel Study
EHBN	Honors
EHD	Alternative Methods for Earning Credit
EHDA	Summer School
EHDB	Credit by Examination with Prior Instruction
EHDC	Credit by Examination without Prior Instruction
EHDD	College Course Work/Dual Credit
EHDE	Distance Learning
EHDF	Local Remote Learning Program
EI	ACADEMIC ACHIEVEMENT
EIA	Grading/Progress Reports to Parents
EIAA	Examinations
EIAB	Makeup Work
EIB	Homework
EIC	Class Ranking
EID	Honor Rolls
EIE	Retention and Promotion
EIF	Graduation
EK	TESTING PROGRAMS
EKB	State Assessment
EKBA	English Learners/Emergent Bilingual Students
EKC	Reading Assessment
EKD	Mathematics Assessment
EL	CAMPUS OR PROGRAM CHARTERS
ELA	Partnership Charters
EM	MISCELLANEOUS INSTRUCTIONAL POLICIES
EMA	Academic Freedom
EMB	Teaching About Controversial Issues
EMD	Ceremonies and Observances
EMG	Non-Service Animals
EMI	Study of Religion

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*

Parental Access

A parent is entitled to:

1. Review all teaching materials, instructional materials, including while the child is participating in virtual or remote learning, and other teaching aids used in the classroom of the parent's child;
2. Review each test administered to the child after the test is administered; and
3. Observe virtual instruction while the parent's child is participating in virtual or remote learning to the same extent the parent would be entitled to observe in-person instruction of the child.

A district shall make teaching materials and tests readily available for parental review and may specify reasonable hours for such review.

Taking Home Materials

A student's parent is entitled to request that a district allow the student to take home any instructional materials used by the student. Subject to the availability of the instructional materials, a district or school shall honor the request. A student who takes home instructional materials must return the instructional materials to school at the beginning of the next school day if requested to do so by the student's teacher.

Students Without Reliable Access to Technology

A district must provide the instructional materials to the student in printed format if the student does not have reliable access to technology at the student's home. This requirement does not require a

district to purchase printed copies of instructional materials that the district would not otherwise purchase. A district may comply with this requirement by providing the student a printout of the relevant electronic instructional materials.

Learning Management System or Online Portal

A district that uses a learning management system or any online learning portal to assign, distribute, present, or make available instructional materials as defined by Education Code 31.002 [see EFA] to students shall provide login credentials to the system or portal to each student's parent.

Education Code 26.006

Information Collection and Access

No student shall be required, as part of any program funded in whole or in part by the U.S. Department of Education (ED), 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)*

U.S. ED–Funded Surveys

Consent Required

Parental Inspection

All instructional materials, including teacher's manuals, films, tapes, or other supplementary material, that will be used in connection with any survey, analysis, or evaluation as part of any program funded in whole or in part by the U.S. ED shall be available for inspection by the parents or guardians of the children. *20 U.S.C. 1232h(a)*

Information Collection Funded by Other Sources

Policies

Except as provided by 20 U.S.C. 1232h(a) or (b) [see U.S. ED Funded Surveys, above], as a condition of receiving funds for a program funded in whole or in part by the U.S. ED, a district shall develop and adopt policies, in consultation with parents, pursuant to 20 U.S.C. 1232h(c)(1), regarding the following:

1. The parent's right to inspect a survey created by a third party before the survey is administered or distributed by a school to the student and any applicable procedures for granting a request by a parent for reasonable access to such survey within a reasonable period of time after the request is received.

2. A district's arrangements to protect student privacy in the event a survey containing one or more of the items listed under 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

As a condition of accreditation, a district shall provide instruction in the essential knowledge and skills at appropriate grade levels in the foundation and enrichment curriculum. *Education Code 28.002(c); 19 TAC 74.1(b)*

A district shall ensure that all children in the district participate actively in a balanced curriculum designed to meet individual needs. *Education Code 28.002(g)*

Instruction may be provided in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade-level standards. *19 TAC 74.2*

A primary purpose of the public school curriculum is to prepare thoughtful, informed citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the fundamental democratic principles of our state and national heritage.

A district shall require the teaching of informed American patriotism, Texas history, and the free enterprise system in the adoption of instructional materials for kindergarten through grade 12, including the founding documents of the United States. In providing instruction required by the State Board of Education under Education Code 28.002(h-1), regarding the founding documents of the United States, a district shall use those documents as part of the instructional materials for the instruction.

Education Code 28.002(h), (h-6)

Required Curriculum

Foundation Curriculum

A district that offers kindergarten through grade 12 shall offer a foundation curriculum that includes:

1. English language arts and reading;
2. Mathematics;
3. Science; and
4. Social studies, consisting of Texas, United States, and world history; government; geography; and economics with emphasis on the free enterprise system and its benefits.

Education Code 28.002(a)(1); 19 TAC 74.1(a)(1)

Enrichment Curriculum

A district that offers kindergarten through grade 12 shall offer an enrichment curriculum that includes:

1. Languages other than English, to the extent possible. American Sign Language is a language for these purposes and the district may offer an elective course in the language;
2. Health, with emphasis on:
    a. Physical health, including the importance of proper nutrition and exercise;
    b. Mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision-making; and
    c. Suicide prevention, including recognizing suicide-related risk factors and warning signs;
3. Physical education;
4. Fine arts;
5. Career and technical education;
6. Technology applications;
7. Religious literature, including the Hebrew Scriptures (Old Testament) and New Testament, and its impact on history and literature; and
8. Personal financial literacy.

Education Code 28.002(a)(2), (e); 19 TAC 74.1(a)(2)

Digital Citizenship

The 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)

Positive Character Traits

Beginning with the 2021–22 school year, districts are required to provide instruction in the essential knowledge and skills for positive character traits outlined in 19 Administrative Code Chapter 120, Subchapter A at least once in the following grade bands: kindergarten–grade 2, grades 3–5, grades 6–8, and grades 9–12.

Districts may provide the required instruction in a variety of arrangements, including through a stand-alone course or by integrating the positive character traits standards in the essential knowledge and skills for one or more courses or subject areas at the appropriate grade levels.

19 TAC 120.1

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)*

Coordinated Health Programs

TEA shall make available to each district one or more coordinated health programs in elementary, middle, and junior high school. Each program must provide for coordinating education and services related to:

1. Physical health education, including programs designed to prevent obesity, cardiovascular disease, oral diseases, and Type 2 diabetes and programs designed to promote the role of proper nutrition;
2. Mental health education, including education about mental health conditions, mental health well-being, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision-making;
3. Substance abuse education, including education about alcohol abuse, prescription drug abuse, and abuse of other controlled substances;
4. Physical education and physical activity; and
5. Parental involvement.

Education Code 38.013; 19 TAC 102.1031(a)

A district shall participate in appropriate training to implement TEA's coordinated health program and shall implement the program in each elementary, middle, and junior high school in the district. *Education Code 38.014*

Coordinated school health programs that are developed by districts and that meet TEA criteria may be approved and made available as approved programs. Districts must use materials that are proven effective, such as TEA-approved textbooks or materials developed by nationally recognized and/or government-approved entities. *19 TAC 102.1031(c)*

Physical Education

Each district shall establish specific objectives and goals the district intends to accomplish through the physical education curriculum. The physical education curriculum must be sequential, developmentally appropriate, and designed, implemented, and evaluated to enable students to develop the motor, self-management, and other skills, knowledge, attitudes, and confidence necessary to participate in physical activity throughout life.

A physical education course shall:

1. Offer students an opportunity to choose among many types of physical activity in which to participate;
2. Offer students both cooperative and competitive games; and

3. Be an enjoyable experience for students.

On a weekly basis, at least 50 percent of a physical education class shall be used for actual student physical activity and the activity shall be, to the extent practicable, at a moderate or vigorous level.

Student/Teacher Ratio

The objectives and goals shall include, to the extent practicable, student/teacher ratios [see EEB] that are small enough to enable the district to:

1. Carry out the purposes of and requirements for the physical education curriculum; and
2. Ensure the safety of students participating in physical education.

If a district establishes a student to teacher ratio greater than 45 to 1 in a physical education class, the district shall specifically identify the manner in which the safety of the students will be maintained.

Education Code 25.114, 28.002(d); 19 TAC 74.37

Classification for Physical Education

A district shall classify students for physical education on the basis of health into one of the following categories:

1. Unrestricted—not limited in activities.
2. Restricted—excludes the more vigorous activities. Restricted classification is of two types:
    a. Permanent—A member of the healing arts licensed to practice in Texas shall provide written documentation to the school as to the nature of the impairment and the expectations for physical activity for the student.
    b. Temporary—Students may be restricted from physical activity of the physical education class. A member of the healing arts licensed to practice in Texas shall provide written documentation to the school as to the nature of the temporary impairment and the expected amount of time for recovery. During recovery time, the student shall continue to learn the concepts of the lessons but shall not actively participate in the skill demonstration.
3. Adapted and remedial—specific activities prescribed or prohibited for students as directed by a member of the healing arts licensed to practice in Texas.

19 TAC 74.31

School Health Advisory Council

A board shall establish a local school health advisory council (SHAC) to assist the district in ensuring that local community values are reflected in the district's health education instruction. *Education Code 28.004(a)* [See BDF regarding composition of the SHAC and FFA regarding federal wellness requirements.]

Duties

The SHAC's duties include recommending:

1. The number of hours of instruction to be provided in:
    a. Health education in kindergarten through grade 8; and
    b. If the district requires health education for high school graduation, health education, including physical health education and mental health education, in grades 9 through 12.
2. Policies, procedures, strategies, and curriculum appropriate for specific grade levels designed to prevent physical health concerns, including obesity, cardiovascular disease, Type 2 diabetes, and mental health concerns, including suicide, through coordination of:
    a. Health education, which must address physical health concerns and mental health concerns to ensure the integration of physical health education and mental health education;
    b. Physical education and physical activity;
    c. Nutrition services;
    d. Parental involvement;
    e. Instruction on substance abuse prevention;
    f. School health services, including mental health services;
    g. A comprehensive school counseling program under Education Code 33.005 [see FFEA];
    h. A safe and healthy school environment; and
    i. School employee wellness;
3. Appropriate grade levels and methods of instruction for human sexuality instruction;
4. Strategies for integrating the curriculum components specified by item 2, above, with the following elements in a coordinated school health program:

a. School health services, including physical health services and mental health services, if provided at a campus by the district or by a third party under a contract with the district;

b. A comprehensive school counseling program under Education Code 33.005 [see FFEA];

c. A safe and healthy school environment; and

d. School employee wellness;

5. If feasible, joint use agreements or strategies for collaboration between the district and community organizations or agencies. Any agreement entered into based on a recommendation of the SHAC must address liability for the district and community organization;

6. Strategies to increase parental awareness regarding:

a. Risky behaviors and early warning signs of suicide risks and behavioral health concerns, including mental health disorders and substance use disorders; and

b. Available community programs and services that address risky behaviors, suicide risks, and behavioral health concerns.

7. Appropriate grade levels and curriculum for instruction regarding opioid addiction and abuse and methods for administering an opioid antagonist; and

8. Appropriate grade levels and curriculum for instruction regarding child abuse, family violence, dating violence, and sex trafficking, including likely warning signs that a child may be at risk for sex trafficking, provided that the local SHAC's recommendations under this provision do not conflict with the essential knowledge and skills developed by the State Board of Education.

Education Code 28.004(c), (n)

Policy Recommendations

The SHAC shall consider and make policy recommendations to the district concerning the importance of daily recess for elementary school students. The SHAC must consider research regarding 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)*

Complaints

A parent may use the grievance procedure at FNG concerning a complaint of a violation of Education Code 28.004. *Education Code 28.004(i-1)*

Human Sexuality Instruction

Definitions

"Human sexuality instruction," "instruction in human sexuality," and "instruction relating to human sexuality" include instruction in reproductive health.

"Curriculum materials" includes the curriculum, teacher training materials, and any other materials used in providing instruction.

Education Code 28.004(p)

Board Selection

The board shall determine the specific content of a district's instruction in human sexuality. *Education Code 28.004(h)*

The board shall select any instruction relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS) with the advice of the SHAC. The instruction must:

1. Present abstinence as the preferred choice of behavior for unmarried persons of school age;
2. Devote more attention to abstinence than to any other behavior;
3. Emphasize that abstinence is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with HIV or AIDS, and the emotional trauma associated with adolescent sexual activity;
4. Direct adolescents to a standard of behavior in which abstinence before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with HIV or AIDS; and
5. Teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates, if instruction on contraception and condoms is included in the curriculum.

Education Code 28.004(e)

Notice to Parents

Before each school year, a district shall provide written notice to a parent of each student enrolled in the district of the board's deci-

sion regarding whether the district will provide human sexuality instruction to district students. If instruction will be provided, the notice must include:

1. A statement informing the parent of the human sexuality instruction requirements under state law;
2. A detailed description of the content of the district's human sexuality instruction and a general schedule on which the instruction will be provided;
3. A statement of the parent's right to:
    a. At the parent's discretion, review or purchase a copy of curriculum materials as provided by Education Code 28.004(j) [see EFA];
    b. Remove the student from any part of that instruction without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student's school; and
    c. Use the grievance procedure at FNG or the appeals process under Education Code 7.057 concerning a complaint of a violation of Education Code 28.004;
4. A statement that any curriculum materials in the public domain used for the district's human sexuality instruction must be posted on the district's internet website, if the district has an internet website, and the internet website address at which the curriculum materials are located; and
5. Information describing the opportunities for parental involvement in the development of the curriculum to be used in human sexuality instruction, including information regarding the SHAC.

Education Code 28.004(i)

Parent Consent Before Instruction

Before a student may be provided with human sexuality instruction, a district must obtain the written consent of the student's parent. A request for written consent may not be included with any other notification or request for written consent provided to the parent, other than the notice provided under Education Code 28.004(i), described above, and must be provided to the parent not later than the 14th day before the date on which the human sexuality instruction begins. The requirements in this paragraph expire August 1, 2024. *Education Code 28.004(i-2)–(i-3)*

Condoms

A district may not distribute condoms in connection with instruction relating to human sexuality. *Education Code 28.004(f)*

Separate Classes

If a district provides human sexuality instruction, it may separate students according to sex for instructional purposes. *Education Code 28.004(g)* [See FB regarding single-sex classes under Title IX.]

Adoption of Instructional Materials

The board shall adopt a policy establishing a process for the adoption of curriculum materials for the district's human sexuality instruction. The policy must require:

1. The board to adopt a resolution convening the local SHAC for the purpose of making recommendations regarding the curriculum materials;
2. The local SHAC to:
    a. After the board's adoption of the resolution, hold at least two public meetings [see BDF] on the curriculum materials before adopting recommendations; and
    b. Provide the adopted recommendations to the board at a public meeting of the board; and
3. The board, after receipt of the local SHAC's recommendations under item 2, above, to take action on the adoption of the recommendations by a record vote at a public meeting.

Before adopting curriculum materials for the district's human sexuality instruction, the board shall ensure that the curriculum materials are:

1. Based on the advice of the local SHAC;
2. Suitable for the subject and grade level for which the curriculum materials are intended; and
3. Reviewed by academic experts in the subject and grade level for which the curriculum materials are intended.

Education Code 28.004(e)–(e-1), (e-3)

Abuse Prevention Instruction

Any course materials relating to the prevention of child abuse, family violence, dating violence, and sex trafficking shall be selected by the board with the advice of the local SHAC.

Adoption of Instructional Materials

The board shall adopt a policy establishing a process for the adoption of curriculum materials for the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking. The policy must require:

1. The board to adopt a resolution convening the SHAC for the purpose of making recommendations regarding the curriculum materials;

2. The SHAC to:

    a. After the board's adoption of the resolution, hold at least two public meetings [see BDF] on the curriculum materials before adopting recommendations; and

    b. Provide the adopted recommendations to the board at a public meeting of the board; and

3. The board, after receipt of the SHAC's recommendations, to take action on the adoption of the recommendations by a record vote at a public meeting.

Board Selection

Before adopting curriculum materials for the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, the board shall ensure that the curriculum materials are:

1. Based on the advice of the local SHAC;

2. Suitable for the subject and grade level for which the curriculum materials are intended; and

3. Reviewed by academic experts in the subject and grade level for which the curriculum materials are intended.

The board shall determine the specific content of the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, including the essential knowledge and skills addressing these topics developed by the State Board of Education.

Education Code 28.004(q)–(q-1), (q-3)–(q-4)

Notice to Parents

Before each school year, a district shall provide written notice to a parent of each student enrolled in the district of the board's decision regarding whether the district will provide instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking to district students. If instruction will be provided. The notice must include:

1. A statement informing the parent of the requirements under state law regarding instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking;

2. A detailed description of the content of the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking;

3. A statement of the parent's right to:

a. At the parent's discretion, review or purchase a copy of curriculum materials [see below at Availability of Instructional Materials];

b. Remove the student from any part of the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student's school; and

c. Use the grievance procedure at FNG or the appeals process under Education Code 7.057 concerning a complaint of a violation of Education Code 28.004;

4. A statement that any curriculum materials in the public domain used for the district's instruction regarding the prevention of child abuse, family violence, dating violence, and sex trafficking must be posted on the district's internet website address at which the curriculum materials are located; and

5. Information describing the opportunities for parental involvement in the development of the curriculum to be used in instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, including information regarding the local SHAC.

Parent Consent Before Instruction

Before a student may be provided with instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, a district must obtain the written consent of the student's parent. A request for written consent:

1. May not be included with any other notification or request for written consent provided to the parent, other than the notice described above; and

2. Must be provided to the parent not later than the 14th day before the date on which the instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking begins.

Education Code 28.004(q-5)–(q-6)

Availability of Materials for Human Sexuality Instruction and Abuse Prevention Instruction

Curriculum materials proposed to be adopted for the district's human sexuality instruction or instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking must be made available as provided below, except copyrighted materials must be provided as described by items (2)(a) or (2)(c), as applicable.

A district shall make all curriculum materials used in human sexuality instruction or instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking available by:

1. For curriculum materials in the public domain:
    a. Providing a copy of the curriculum materials by mail or email to a parent of a student enrolled in the district on the parent's request; and
    b. Posting the curriculum materials on the district's internet website, if the district has an internet website; and
2. For copyrighted curriculum materials, allowing a parent of a student enrolled in the district to:
    a. Review the curriculum materials at the student's campus at any time during regular business hours;
    b. Purchase a copy of the curriculum materials from the publisher as provided by the district's purchase agreement for the curriculum materials; or
    c. Review the curriculum materials online through a secure electronic account in a manner that prevents the curriculum materials from being copied and that otherwise complies with copyright law.

For purchase agreements entered into, amended, or renewed on or after September 1, 2021, if a district purchases from a publisher copyrighted curriculum materials for use in the district's human sexuality instruction, the district shall ensure that the purchase agreement provides for a means by which a parent of a student enrolled in the district may purchase a copy of the curriculum materials from the publisher at a price that does not exceed the price per unit paid by the district for the curriculum materials.

If a district purchases from a publisher copyrighted curriculum materials for use in the district's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking, the district shall ensure that the purchase agreement provides for a means by which a parent of a student enrolled in the district may purchase a copy of the curriculum materials from the publisher at a price that does not exceed the price per unit paid by the district for the curriculum materials.

Education Code 28.004(e-2), (j)–(j-2), (q-2)

Character Education

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

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

In developing or selecting a character education program under Education Code 29.906, a district shall consult with a committee selected by the district that consists of parents of district students, educators, and other members of the community, including community leaders.

The provisions above do not require or authorize proselytizing or indoctrinating concerning any specific religious or political belief.

Education Code 29.906

Human Sexuality Instruction

The following process shall apply regarding the adoption of curriculum materials for the District's human sexuality instruction:

1. The Board shall adopt a resolution convening the District's school health advisory council (SHAC) to recommend curriculum materials for the instruction.
2. The SHAC shall hold at least two public meetings on the curriculum materials before adopting recommendations to present to the Board.
3. The SHAC recommendations must comply with the instructional content requirements in law, be suitable for the subject and grade level for which the materials are intended, and be reviewed by academic experts in the subject and grade level for which the materials are intended.
4. The SHAC shall present its recommendations to the Board at a public meeting.
5. After the Board ensures the recommendations from the SHAC meet the standards in law, the Board shall take action on the recommendations by a record vote at a public meeting.

Instruction on Prevention of Child Abuse, Family Violence, Dating Violence, and Sex Trafficking

The following process shall apply regarding the adoption of curriculum materials for the District's instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking:

1. The Board shall adopt a resolution convening the District's SHAC to recommend curriculum materials for the instruction.
2. The SHAC shall hold at least two public meetings on the curriculum materials before adopting recommendations to present to the Board.
3. The SHAC recommendations must comply with the instructional content requirements in law, be suitable for the subject and grade level for which the materials are intended, and be reviewed by academic experts in the subject and grade level for which the materials are intended.
4. The SHAC shall present its recommendations to the Board at a public meeting.
5. After the Board ensures the recommendations from the SHAC meet the standards in law, the Board shall take action on the recommendations by a record vote at a public meeting.

In accordance with administrative procedures, the District shall provide regular training opportunities for teachers of students with dyslexia that include new research and practices for educating students with dyslexia.

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

Students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to evidence-based intervention; and other academic or behavior support services. A student is not required to be provided with interventions for any

specific length of time prior to a referral being made or a full individual and initial evaluation being conducted. If the student continues to experience difficulty in the general classroom with the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. A referral for a full individual and initial evaluation may be initiated at any time by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

19 TAC 89.1011(a)

Parental Request

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:

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

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.

19 TAC 89.1011(b); Education Code 29.004(c); 20 U.S.C. 1414(a)(1); 34 C.F.R. 300.301

Notice of Rights

A reasonable time before a district proposes or refuses to initiate the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education (FAPE) to a student, the district shall provide written notice to the student's parent or guardian. *20 U.S.C. 1415(b)(3); 34 C.F.R. 300.503(a)* [See EHBAE]

Initial Evaluation Required

A district shall conduct a full individual and initial evaluation before the initial provision of special education and related services. *20 U.S.C. 1414(a)(1)(A)*

Consent for Initial Evaluation

Before a district conducts an initial evaluation, it shall make reasonable efforts to obtain informed parental consent.

If the parent does not provide consent for an initial evaluation, or if the parent fails to respond to a request to provide consent, a district may, but is not required to, pursue the initial evaluation by utilizing due process procedures [see EHBAE], except to the extent inconsistent with state law relating to such parental consent.

Parental consent to initial evaluation shall not be construed as consent for placement for special education and related services.

20 U.S.C. 1414(a)(1)(D)(i)(I); 34 C.F.R. 300.300(b)

Wards of the State

If the child is a ward of the state and is not residing with the child's parent, a district shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation, unless:

1. Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent;
2. The rights of the parent have been terminated; or
3. The rights of the parent to make educational decisions have been subrogated and an individual appointed by a judge to represent the student has given consent for an initial evaluation.

20 U.S.C. 1414(a)(1)(D)(iii); 34 C.F.R. 300.300(a)(2)

Time Frame for Completion of Written Report

A district must complete the written report of a full individual and initial evaluation:

1. Not later than the 45th school day following the date on which the district receives written consent for the evaluation from the student's parent. If a student has been absent from school during that period on three or more school days, the period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or
2. For students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or homeschool setting, not later than the 45th school day following the date on which the district receives written consent for the evaluation from the student's parent.

If a district receives written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a 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 timelines above do not apply in such a situation if:

1. The new school district is making sufficient progress to ensure a prompt completion of the evaluation; and

2. The parent and the new school district agree to a specific time when the evaluation will be completed.

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

Disability Definitions

To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 C.F.R. 300.8(a), subject to the provisions of 34 C.F.R. 300.8(c), Education Code 29.003, and 19 Administrative Code 89.1040. The provisions in 19 Administrative Code 89.1040 specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law. *19 TAC 89.1040*

Visual and Auditory Impairments

Students with visual impairments or who are deaf or hard of hearing 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*

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

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:

Initial Provision of Services

1. May not use the procedures in 34 C.F.R. part 300 subpart E (including the mediation and due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child;
2. Will not be considered to be in violation of the requirement to make FAPE available to the child for the failure to provide the services for which the district requests consent; and
3. Is not required to convene an ARD meeting or develop an IEP for the child for the services.

Revoking Consent

If, at any time after the provision of initial services, the parent of a child revokes consent in writing for the continued provision of services, the district:

1. May not continue to provide services to the child, but must provide prior written notice before ceasing services;
2. May not use the procedures in 34 C.F.R. part 300 subpart E in order to obtain agreement or a ruling that the services may be provided to the child;
3. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further services; and

4. Is not required to convene an ARD meeting or develop an IEP for further provision of services.

34 C.F.R. 300.300(b)

Reevaluations

A district shall ensure that each child with a disability is reevaluated if the district determines that the educational or related services needs of the child, including improved academic achievement and functional performance, warrant a reevaluation, or if the child's parent or teacher requests a reevaluation.

Reevaluation shall occur:

1. No more than once a year, unless the parent and the district agree otherwise; and

2. At least once every three years, unless the parent and district agree that a reevaluation is unnecessary.

A district shall obtain informed parental consent before conducting a reevaluation, except that informed parental consent is not needed if the district can demonstrate that it has taken reasonable measures to obtain consent and the child's parent has failed to respond.

20 U.S.C. 1414(a)(2), (c)(3); 34 C.F.R. 300.303

Evaluation for Change in Eligibility

A district must evaluate a child with a disability before determining that the child is no longer a child with a disability. However, an evaluation is not required before the termination of eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under state law. If a child's eligibility terminates under the aforementioned circumstances, a district must provide a summary of academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. *34 C.F.R. 300.305(e); 20 U.S.C. 1414(c)(5)*

All students graduating under 19 Administrative Code 89.170 [see EIF] must be provided with a summary of academic achievement and functional performance as described above. 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), must be included as part of the summary for a student graduating under 19 Administrative Code 89.1070(b)(3)(A), (B), or (C) or (f)(4)(A), (B), or (C).*19 TAC 89.1070(g)*

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)

When a student transitions from early childhood intervention (ECI) to early childhood special education (ECSE) services, the District shall develop and implement an individualized education program (IEP) by the child's third birthday.

Admission, Review, and Dismissal Committee

Each district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted. The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including 34 C.F.R. 300.321.

The district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the responsibilities listed at 19 Administrative Code 89.1050.

19 TAC 89.1050(a); 34 C.F.R. 300.116(a), .321(a)

Committee Members

A district shall ensure that each ARD committee meeting includes all of the following:

1. The parents of a student with a disability;
2. At least one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);
3. At least one special education teacher or, if appropriate, at least one special education provider of the student;
4. A representative of the district who:
    a. Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
    b. Is knowledgeable about the general education curriculum; and
    c. Is knowledgeable about the availability of resources of the district;
5. Other individuals who have knowledge or special expertise regarding the student at the discretion of the district or the parent;
6. An individual who can interpret the instructional implications of evaluation results, who may be a member of the ARD committee described in items 2–5;
7. The student, if appropriate;
8. For a student who is suspected to be deaf or hard of hearing, a teacher who is certified in the education of students who are deaf or hard of hearing;

9. For a student with a suspected or documented visual impairment, a teacher who is certified in the education of students with visual impairments;

10. For a student with suspected or documented deaf-blindness, a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing;

11. For a student with limited English proficiency, a member of the language-proficiency assessment committee (LPAC), who may also be a member as described at items 2 or 3;

12. A representative of any participating agency likely to be responsible for providing transition services for a student, as appropriate, and with the consent of the student's parents or a student who has reached the age of majority; and

13. When considering initial or continued placement of a student in a career and technical education program, a representative from career and technical education, preferably the teacher.

The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 C.F.R. 300.18 and 300.156.

19 TAC 75.1023(d)(1), 89.1050(c); 20 U.S.C. 1414(d)(1)(B); 34 C.F.R. 300.321;

A district member of the ARD committee shall not be required to attend an IEP meeting, in whole or in part, if the parent and the district agree in writing that the attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed during the meeting.

A district member of the ARD committee may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services if the parent, in writing, and the district consent to the excusal and the member submits, in writing, to the parent and the ARD committee, input into the development of the IEP before the meeting.

20 U.S.C. 1414(d)(1)(C); 34 C.F.R. 300.321(e)

Regular Education Teacher

If an ARD committee is required to include a regular education teacher, the regular education teacher must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's IEP. *Education Code 29.005(a)*

Parent Involvement

A district shall take steps to ensure that one or both parents of a student with a disability are present at each ARD committee meeting or are afforded an opportunity to participate, including:

1. Notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend (the notice shall include the purpose, time, and location of the meeting, who will be in attendance, that persons with knowledge or special expertise may be invited by either the parent or the district, and that the Part C service coordinator or other representatives of the Part C system may be invited to the initial meeting for a child previously served under a Part C early childhood intervention program); and
2. Scheduling the meeting at a mutually agreed on time and place.

If the purpose of the meeting is to consider transition services, the notice must also indicate this purpose, indicate that the district will invite the student, and identify any other agency that will be invited to send a representative.

34 C.F.R. 300.322(a)–(b); 19 TAC 89.1050(d)

Alternative Means of Meeting Participation

If neither parent can attend an ARD meeting, the district must allow other methods of participation, such as through telephone calls or video conferencing. *20 U.S.C. 1414(f); 34 C.F.R. 300.322(c); 19 TAC 89.1050(d)*

An ARD meeting may be conducted without a parent in attendance if a district is unable to convince the parents that they should attend, but the district shall have a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls, correspondence, or visits made or attempted and the results of any of those actions. *34 C.F.R. 300.322(d)*

Meetings

A district shall initiate and conduct ARD committee meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability. The committee shall review each child's IEP periodically, and, if appropriate, revise the IEP. A meeting must be held for this purpose at least once a year. The ARD committee must also determine the child's placement once a year.

A "meeting" does not include informal or unscheduled conversations involving district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provisions if those issues are not addressed in the child's IEP. A "meeting" also does not include preparatory activities that district

personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

20 U.S.C. 1414(d)(4); 34 C.F.R. 300.116(b)(1), .324(b), (c)(1), .501(b)(3)

Meeting at Parent's Request

Upon receipt of a written request for an ARD committee meeting from a parent, the school district must schedule and convene a meeting in accordance with the procedures in 19 Administrative Code 89.1050(d) or within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting. *19 TAC 89.1050(e)*

Written Notice

If a parent is unable to speak English, a district must provide the parent with a written notice regarding the ARD committee meeting required under 19 Administrative Code 89.1050(d) (notice for purposes of scheduling) or (e)(2) (notice explaining why the district refuses to convene a meeting) in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice. *19 TAC 89.1050(f)*

Transfer Students

In-State Transfers

When a student transfers to a new district within the state in the same school year and the parents verify that the student was receiving special education services in the previous district or the previous district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 C.F.R. 300.323(e) regarding the provision of special education services. The timeline for completing the requirements outlined in 34 C.F.R. 300.323(e)(1) or (2) is 30 school days from the date the student is verified as being a student eligible for special education services.

Transfers from Another State

When a student transfers from a district in another state in the same school year and the parents verify that the student was receiving special education services in the previous district or the previous district verifies in writing or by telephone that the student was receiving special education services, the new district must meet the requirements of 34 C.F.R. 300.323(f) regarding the provision of special education services. If the new district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by 19 Administrative Code 89.1011(c) and (e). The timeline for completing the requirements in 34 C.F.R. 300.323(f)(2), if appropriate, is 30 calendar days from the date of

the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 C.F.R. 300.323(f)(2) is 30 school days from the date the student is verified as being a student eligible for special education services.

A student with a disability who has an IEP in place from a previous in- or out-of-state district and who enrolls in a new district during the summer is not considered a transfer student for the purposes of this provision or for 34 C.F.R. 300.323(e) or (f). For these students, the new district must implement the IEP from the previous district in full on the first day of class of the new school year or must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year.

19 TAC 89.1050(j)

Transfer of Records

The district in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous district.

The previous district shall take reasonable steps to promptly respond to the request from the new district and must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the tenth working day after the date a request for the information is received by the previous school district.

20 U.S.C. 1414(d)(2)(C)(ii); 34 C.F.R. 300.323(g); 19 TAC 89.1050(j)(3)

Students Who Are Homeless or in Substitute Care

When a student who is homeless or in substitute care transfers into a district after being referred by a previous district for a special education evaluation, the receiving district must accept the referral and ensure that any written report of a full individual and initial evaluation must be completed in accordance with the timelines established in 19 Administrative Code 89.1011 (relating to Full Individual and Initial Evaluation).

When a student who is already eligible for special education and is homeless or in substitute care transfers into a district during the school year, the receiving district must ensure that it meets the student transfer requirements of 19 Administrative Code 89.1050(j) (relating to the Admission, Review, and Dismissal Committee).

19 TAC 89.1615

Military Dependents

A district shall initially provide comparable services to a military student with disabilities based on his or her current IEP. This does not preclude the district from performing subsequent evaluations to ensure appropriate placement of the student. *Education Code 162.002 art. V, C* [See FDD]

Individualized Education Program

A district shall develop, review, and revise an IEP for each child with a disability. *20 U.S.C. 1412(a)(4); 34 C.F.R. 300.320(a)*

At the beginning of each school year, a district shall have in effect, for each child with a disability in its jurisdiction, an IEP. *20 U.S.C. 1414(d)(2)(A); 34 C.F.R. 300.323(a)*

The term "individualized education program" means a written statement for each student with a disability that documents the decisions of the ARD committee with respect to issues discussed at each committee meeting and includes:

1. A statement of the student's present levels of academic achievement and functional performance;
2. A statement of measurable annual goals, including academic and functional goals;
3. A description of how the student's progress toward the annual goals will be measured and when periodic reports on the progress of the student will be provided;
4. A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student;
5. A statement of the program modifications or supports for school personnel that will be provided for the student;
6. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in extracurricular and nonacademic activities;
7. The projected dates for initiation of services and modifications and the anticipated frequency, location, and duration of these services and modifications;
8. A statement of any individual appropriate and allowable accommodations that are necessary to measure the academic achievement and functional performance of the student on state or district-wide assessments;
9. If the ARD committee determines that the student must take an alternative assessment instead of a particular regular state

or district-wide assessment, a statement of why the student cannot participate in the regular assessment and why the particular assessment selected is appropriate for the student;

10. If the ARD committee determines that a student is in need of extended school year (ESY) services, identification of the goals and objectives that will be addressed during ESY services;

11. Beginning not later than when a student reaches 14 years of age and updated annually thereafter, the ARD committee's consideration and decisions regarding the transition issues under 19 Administrative Code 89.1055(h) [see EHBAD];

12. Beginning not later than the first IEP to be in effect when the student is 16, or younger if determined appropriate by the ARD committee, and updated annually thereafter, a statement of appropriate measurable postsecondary goals and transition services needed to assist the student in reaching those goals [see EHBAD];

13. Beginning not later than one year before the student reaches the age of 17, a statement that the student has been informed of the rights that will transfer to the student upon reaching the age of majority;

14. The date of the meeting;

15. The name, position, and signature of each member participating in the meeting; and

16. An indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the ARD committee.

20 U.S.C. 1414(d); 34 C.F.R. 300.320; Education Code 29.005(b-1), .011; 19 TAC 89.1055

The written statement of a student's IEP may be required to include only information included in the model form developed by TEA under Education Code 29.0051(a) and posted on the TEA website. A district may use the model form to comply with the requirements for an IEP under 20 U.S.C. 1414(d). *Education Code 29.005(f), .0051*

IEP Supplement

For each child who was enrolled in a district's special education program during the 2019–20 school year or the 2020–21 school year, the district shall prepare a supplement to be included with the written statement of the IEP. For more information about the re-

quired supplement, see Education Code 29.0052 and the commissioner rules, when adopted. This requirement expires September 1, 2023. *Education Code 29.0052*

Supplemental Special Education Services

The ARD committee of a student approved for participation in the supplemental special education services and instructional materials program shall provide to the student's parent at an ARD committee meeting for the student:

1. Information regarding the types of supplemental special education services available under the program and provided by agency-approved providers for which an account maintained under Education Code 29.042(b) for the student may be used; and

2. Instructions regarding accessing the account.

The supplemental special education services and instructional materials program (SSES) expires September 1, 2024.

Education Code 29.048

A district shall notify parents and guardians of students served by special education of the SSES program and how to apply.

A student's ARD committee may not consider a student's current or anticipated eligibility for any supplemental special education instructional materials or services that may be provided under the SSES program when developing or revising a student's IEP, when determining a student's educational setting, or in the provision of a free appropriate public education.

19 TAC 102.1601(i)-(j)

Behavioral Intervention Plan

The ARD committee may determine that a behavior improvement plan or a behavioral intervention plan (BIP) is appropriate for a student for whom the committee has developed an IEP. If the committee makes that determination, the BIP shall be included as part of the student's IEP and provided to each teacher with responsibility for educating the student. *Education Code 29.005(g); 19 TAC 89.1055(g)*

If a behavior improvement plan or a behavioral intervention plan is included as part of a student's IEP, the committee shall review the plan at least annually and more frequently if appropriate to address the safety of the student or others or changes in a student's circumstances that may impact the student's behavior, such as:

1. The placement of the student in a different educational setting;

2. An increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;

3. A pattern of unexcused absences; or

4. An unauthorized unsupervised departure from an educational setting.

Education Code 29.005(h)

Translation of IEP into Native Language

If the parent is unable to speak English and Spanish is the parent's native language, a district shall provide a written or audiotaped copy of the student's IEP translated into Spanish. If the parent's native language is other than Spanish or English, a district shall make a good faith effort to provide a written or audiotaped copy of the student's IEP translated into the parent's native language. *Education Code 29.005(d)*

A written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.

An audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.

If a parent's native language is not a written language, the district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.

Under 34 C.F.R. 300.322(f), a district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language as provided above.

19 TAC 89.1050(i)

Autism/Pervasive Developmental Disorder

For students with autism/pervasive developmental disorders, the following strategies shall be considered by the ARD committee, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

1. Extended educational programming;
2. Daily schedules reflecting minimal unstructured time and active engagement in learning activities;
3. In-home training and community-based training or viable alternatives that assist the student with the acquisition of social/behavioral skills;
4. Positive behavior support strategies based on relevant information;
5. Beginning at any age, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and postsecondary environments;
6. Parent/family training and support, provided by qualified personnel with experience in Autism Spectrum Disorders (ASD);
7. Suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence;
8. Communication interventions, including language forms and functions that enhance effective communication across settings;
9. Social skills supports and strategies based on social skills assessment/curriculum and provided across settings;
10. Professional educator/staff support; and
11. Teaching strategies based on peer-reviewed, research-based practices for students with ASD.

If the ARD committee determines that services are not needed in one or more of the areas in 1–11 above, the IEP shall include a statement reflecting that decision and the basis upon which the determination was made.

19 TAC 89.1055(e)–(f)

Visual Impairment

If a district provides special education services to students with visual impairments, it shall have written procedures as required in Education Code 30.002(c)(10) (staff access to resources). *19 TAC 89.1075(b)*

Collaborative Process

All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. Decisions of the ARD committee concerning the required elements of the IEP shall be made by mutual agreement, if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

Ten-Day Recess

When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when:

1. The student's presence on campus represents a danger of physical harm to the student or others;
2. The student has committed an expellable offense; or
3. The student has committed an offense that may lead to placement in a disciplinary alternative education program. [See FOF]

These requirements do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

Failure to Reach Agreement

If a recess is implemented and the ARD committee still cannot reach mutual agreement, a district shall implement the IEP it has determined to be appropriate for the student. Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.

If the IEP is not developed by agreement, the written statement of the program must include the basis of the disagreement. Each

member of the ARD committee who disagrees with the IEP developed by the committee is entitled to include a statement of disagreement in the written statement of the program.

Education Code 29.005(c); 19 TAC 89.1050(g)

Modification of Existing IEP

Changes to the IEP may be made either by the entire ARD committee or by amending the IEP by agreement, rather than redrafting the entire IEP.

After the annual IEP meeting for a school year, the parent and district may agree not to convene an IEP meeting for the purposes of making changes to the IEP and instead may develop a written document to amend or modify the child's current IEP.

Upon request, a parent shall be provided with a revised copy of the IEP with amendments incorporated.

To the extent possible, a district shall encourage the consolidation of reevaluation meetings for the child and other ARD meetings for the child.

20 U.S.C. 1414(d)(3)(D)–(F); 34 C.F.R. 300.324(a)(4)–(6)

Teacher Access to IEP

Each district must ensure that each teacher who provides instruction to a student with a disability has access to relevant sections of the student's current IEP, is informed of the teacher's specific responsibilities related to implementation of the IEP, and has an opportunity to request assistance regarding implementation of the student's IEP. *19 TAC 89.1075(c)*

Teacher Request to Review IEP

Each district shall develop a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:

1. To request a review of the student's IEP;
2. To provide input in the development of the student's IEP;
3. That provides for a timely district response to the teacher's request; and
4. That provides for notification to the student's parent or legal guardian of that response.

Education Code 29.001(11); 19 TAC 89.1075(d)

Private School—District Placed

Student Receives IEP

If a district places a child with a disability in a private school or facility, or refers the child to a private school or facility, as a means of carrying out the requirements of the special education laws, the district shall ensure that the child is provided special education and related services, in accordance with an individualized education program (IEP), at no cost to the parents. *20 U.S.C. 1412(a)(10)(B)(i)*

Private School—Parent Placed

When a parentally placed child with a disability is referred to a district, the district shall convene an admission, review, and dismissal (ARD) committee to determine whether the district can offer the child a free appropriate public education (FAPE). If the district determines that it can offer FAPE, it is not responsible for providing educational services to the child, except that the district must develop and implement an individualized services plan (ISP). *19 TAC 89.1096(b)*

Offer of FAPE Rejected

Student Receives ISP

If a district made FAPE available to a child with a disability and the parents elected to place the child in a private school or facility, the district is not required to pay for the cost of education, including special education and related services. However, the district must develop and implement an ISP. *20 U.S.C. 1412(a)(10)(C)(i); 34 C.F.R. 300.148(a)*

FAPE Offered but Not Provided

Reimbursement

If the parents of a child with a disability, who previously received special education and related services under the authority of a district, enroll the child in a private school without the consent or referral by the district, a court or a hearing officer may require the district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the district had not made FAPE available to the child in a timely manner before the enrollment. This right of reimbursement is subject to the notice and other requirements set forth at 34 C.F.R. 300.148(d). *20 U.S.C. 1412(a)(10)(C)(ii); 34 C.F.R. 300.148(c)*

Home School Students

A home school student is considered a private school student, for purposes of a district's obligations under IDEA, if the home school provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress. *19 TAC 89.1096(a)(2)*

Individualized Services Plan (ISP)

Each parentally placed private school child with a disability who has been designated to receive services shall have an ISP that describes the specific special education and related services that a district will provide the child.

Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in

public schools. No parentally placed private school child has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

Decisions about the services that will be provided must be made in accordance with 34 C.F.R. 300.134(c) (consultation process) and 300.137(c) (attendance of private school representatives at services plan committee meetings). A district must make the final decisions with respect to the services to be provided.

34 C.F.R. 300.137, .138

Dual Enrollment

Parents shall have the right to "dual enroll" an eligible student age three or four in both the public school and a private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five, or until the student is eligible to attend a district's kindergarten program, whichever comes first, subject to the following:

1. The student's ARD committee shall develop an IEP designed to provide the student with FAPE in the least restrictive environment (LRE).
2. From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the LRE and the policies and procedures of the district.
3. The district shall be responsible for employing and supervising the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the district.

19 TAC 89.1096(c)

Responsible District

The district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.

If the parents decline dual enrollment, but request an ISP, the district where the private school is located is responsible for development of the ISP for a student designated to receive services.

19 TAC 89.1096(c), (d)

Transportation

If a student has been placed by his or her parents in a private school or facility, a district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP. *19 TAC 89.1096(e)*

District Charter Schools

A district shall serve children with disabilities attending district charter schools in the same manner as it serves children with disabilities in its other schools and shall provide federal special education funds to those schools in the same manner as it provides those funds to its other schools. *20 U.S.C. 1413(a)(5); 34 C.F.R. 300.209(b)*

Residential Facilities

Identification of Students

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.

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.

19 TAC 89.1001(c)

District Placements

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. *Education Code 29.008(a); 19 TAC 89.1092*

If placement in a public or private residential program is necessary to provide special education and related services, the program, including non-medical care and room and board, must be at no cost to the parents. *34 C.F.R. 300.104*

If a district contracts for education services, rather than providing the services itself, it shall oversee the implementation of the student's IEP and shall annually reevaluate the appropriateness of the arrangement. *Education Code 29.008(d)*

Additional Placement Requirements

A district shall have the responsibilities set forth at 19 Administrative Code 89.1092(a)(4) regarding students in residential placements. A district must contract with residential placements in accordance with 19 Administrative Code 89.1092.

Notification

Within 30 calendar days from an ARD committee's decision to place a student in a residential education program, a district must electronically submit to TEA notice of and information regarding the placement in accordance with submission procedures specified by TEA. *19 TAC 89.1092(b)*

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)

Referral

Students may be referred for the gifted and talented program at any time by teachers, school counselors, parents, or other interested persons.

Screening and Identification Process

The District shall provide assessment opportunities to complete the screening and identification process for referred students at least once per school year.

The District shall schedule a gifted and talented program awareness session for parents that provides an overview of the assessment procedures and services for the program prior to beginning the screening and identification process.

Parental Consent

The District shall obtain written parental consent before any special testing or individual assessment is conducted as part of the screening and identification process. All student information collected during the screening and identification process shall be an educational record, subject to the protections set out in policies at FL.

Identification Criteria

The Board-approved program for the gifted and talented shall establish criteria to identify gifted and talented students. The criteria shall be specific to the state definition of gifted and talented and shall ensure the fair assessment of students with special needs, such as the culturally different, the economically disadvantaged, and students with disabilities.

Assessments

Data collected through both objective and subjective assessments shall be measured against the criteria approved by the Board to determine individual eligibility for the program. Assessment tools may include, but are not limited to, the following: achievement tests, intelligence tests, creativity tests, behavioral checklists completed by teachers and parents, student/parent conferences, and available student work products.

Selection

A selection committee shall evaluate each referred student according to the established criteria and shall identify those students for whom placement in the gifted and talented program is the most appropriate educational setting. The committee shall be composed of at least three professional educators who have received training in the nature and needs of gifted students, as required by law.

Notification

The District shall provide written notification to parents of students who qualify for services through the District’s gifted and talented program. Participation in any program or services provided for gifted students shall be voluntary, and the District shall obtain written permission from the parents before placing a student in a gifted and talented program.

Reassessment

If the District reassesses students in the gifted and talented program, the reassessment shall be based on a student's performance in response to services and shall occur no more than once in elementary grades, once in middle school grades, and once in high school grades.

Transfer Students

When a student identified as gifted by a previous school district enrolls in the District, the selection committee shall review the student's records and conduct assessment procedures when necessary to determine if placement in the District's program for gifted and talented students is appropriate.

[See FDD(LEGAL) for information regarding transfer students and the Interstate Compact on Educational Opportunities for Military Children]

Furloughs

The District may place on a furlough any student who is unable to maintain satisfactory performance or whose educational needs are not being met within the structure of the gifted and talented program. A furlough may be initiated by the District, the parent, or the student.

In accordance with the Board-approved program, a furlough shall be granted for specified reasons and for a specified period of time. At the end of a furlough, the student may reenter the gifted and talented program, be placed on another furlough, or be exited from the program.

Exit Provisions

The District shall monitor student performance in response to gifted and talented program services. If at any time the selection committee or a parent determines it is in the best interest of the student to exit the program, the committee shall meet with the parent and student before finalizing an exit decision.

Appeals

A parent, student, or educator may appeal any final decision of the selection committee regarding selection for or exit from the gifted and talented program. Appeals shall be made first to the selection committee. Any subsequent appeals shall be made in accordance with FNG(LOCAL) beginning at Level Two.

Program Evaluation

The District shall annually evaluate the effectiveness of the District's gifted and talented program, and the results of the evaluation shall be used to modify and update the District and campus improvement plans. The District shall include parents in the evaluation process and shall share the information with Board members, administrators, teachers, school counselors, students in the gifted and talented program, and the community.

Funding

The District's gifted and talented program shall address effective use of funds for programs and services consistent with the standards in the state plan for gifted and talented students.

Community Awareness

The District shall ensure that information about the District's gifted and talented program is available to parents and community members and that they have an opportunity to develop an understanding of and support for the program.

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Compensatory Education Allotment

Census Block

On a schedule determined by the commissioner of education and in accordance with Education Code 48.104, each district shall report to the agency the census block group in which each student enrolled in the district who is educationally disadvantaged resides. *Education Code 48.104(i)*

Use

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

1. Fund supplemental programs and services, including services provided by an instructional coach, designed to eliminate any disparity in performance on assessment instruments administered under Education Code Chapter 39, Subchapter B 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(k)

Dropout Prevention Strategies

A district with a high dropout rate, as determined by the commissioner, shall submit a plan to the commissioner describing the manner in which the district intends to use its compensatory education allotment for developing and implementing research-based strategies for dropout prevention.

A district shall submit the plan not later than December 1 of each school year preceding the school year in which the district will receive the compensatory education allotment to which the plan applies.

A district may not spend or obligate more than 25 percent of the district's compensatory education allotment unless the commissioner approves the plan.

A district's plan shall:

1. Design a dropout recovery plan that includes career and technology education courses or technology applications courses that lead to industry or career certification;

2. Integrate into the dropout recovery plan research-based strategies to assist students in becoming able academically to pursue postsecondary education, including:

    a. High-quality, college readiness instruction with strong academic and social supports;

    b. Secondary to postsecondary bridging that builds college readiness skills, provides a plan for college completion, and ensures transition counseling; and

    c. Information concerning appropriate supports available in the first year of postsecondary enrollment to ensure postsecondary persistence and success, to the extent funds are available for the purpose; and

3. Plan to offer advanced academic and transition opportunities, including dual credit courses and college preparatory courses, such as advanced placement courses.

A district may enter into a partnership with a public junior college in accordance with Education Code 29.402 [see GNC] in order to fulfill a plan.

Any program designed to fulfill a plan must comply with the requirements of Education Code 29.081(e) and (f).

Education Code 29.918

Reporting

A district shall report financial information relating to expenditure of the state compensatory education allotment under the Foundation School Program to the Texas Education Agency (TEA), according to standards for financial accounting provided in 19 Administrative Code 109.41 (relating to *Financial Accountability System Resource Guide*). Costs charged to state compensatory education shall be for programs and services that supplement the regular education program. *19 TAC 109.25(a)*

A district shall ensure that supplemental direct costs and personnel attributed to compensatory education and accelerated instruction are identified in district and/or campus improvement plans at the summary level for financial units or campuses. A district shall maintain documentation that supports the attribution of supplemental costs and personnel to compensatory education. A district must also maintain sufficient documentation supporting the appropriate identification of students in at-risk situations, under criteria established in Education Code 29.081 [see Definition of At-Risk Student, below]. *19 TAC 109.25(b)*

Educationally Disadvantaged Students

Student Eligibility

To be considered educationally disadvantaged in order to be counted to generate the compensatory education allotment pursuant to Education Code 48.104, a student must meet the income requirements for eligibility under the National School Lunch Program (NSLP), authorized by 42 U.S.C. 1751, et seq.

Districts may use the following approved methods for the purpose of receiving the compensatory education allotment pursuant to Education Code 48.104:

1. Parent certification, where the parent or guardian asserts meeting the income requirements for eligibility;
2. Direct certification, where the process by which eligible children are certified for free meals without the need for a household application based on household participation in one or more federal assistance programs; or
3. Direct verification, where public records are used to verify a student's eligibility for free or reduced-price meals when verification of student eligibility is required.

19 TAC 61.1027(a)

Virtual School Network

Districts must request prior approval from the commissioner to claim students receiving a full-time virtual education through the state virtual school network in their counts of educationally disadvantaged students. The request must include a plan detailing the enhanced services to be delivered to full-time state virtual school network students and submitted in a manner and with a deadline specified by the commissioner. *19 TAC 61.1027(b)(3)(B)*

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. Except as provided by TEA rule or if retained in prekindergarten under Education Code 28.02124 [see EIE], was not advanced from one grade level to the next for one or more school years, unless the student did not advance from prekindergarten or kindergarten to the next grade level only as a result of the request of the student’s parent;
2. If the student is in grades 7–12, did not maintain an average equivalent to 70 on a scale of 100 in two or more subjects in the foundation curriculum during a semester in the preceding or current school year, or is not maintaining such an average in two or more subjects in the foundation curriculum in the current semester;

3. Did not perform satisfactorily on a state assessment instrument and who has not in the previous or current school year subsequently performed on that instrument or another appropriate instrument at a level equal to at least 110 percent of the level of satisfactory performance on that instrument;

4. If the student is in prekindergarten, kindergarten, or grades 1–3, did not perform satisfactorily on a readiness test or assessment instrument administered during the current school year;

5. Is pregnant or is a parent;

6. Has been placed in a DAEP in accordance with Education Code 37.006 during the preceding or current school year;

7. Has been expelled in accordance with Education Code 37.007 during the preceding or current school year;

8. Is currently on parole, probation, deferred prosecution, or other conditional release;

9. Was previously reported through the Public Education Information Management System (PEIMS) to have dropped out of school;

10. Is an emergent bilingual student, as defined by Section 29.052;

11. Is in the custody or care of the Department of Family and Protective Services or has, during the current school year, been referred to the department by a school official, officer of the juvenile court, or law enforcement official;

12. Is homeless [see FD];

13. Resided in the preceding school year or resides in the current school year in a residential placement facility in a district, including a detention facility, substance abuse treatment facility, emergency shelter, psychiatric hospital, halfway house, cottage home operation, specialized child-care home, or general residential operation;

14. Has been incarcerated, or has a parent or guardian who has been incarcerated, within the lifetime of the student, in a penal institution as defined by Penal Code 1.07; or

15. Is enrolled in a district or a campus that is designated as a dropout recovery school under Education Code 39.0548.

Education Code 29.081(d)(1)

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

Local Eligibility Criteria

In addition to students described above, a student who satisfies local eligibility criteria adopted by a board may receive compensatory education services. The number of students receiving services under local eligibility criteria during a school year may not exceed 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)*

Designing and Implementing Services

A district shall use student performance data from state basic skills assessment instruments and achievement tests to design and implement appropriate compensatory, intensive, or accelerated instructional services for students in the district's schools that enable the students to perform at grade level at the conclusion of the next regular school term. *Education Code 29.081(a)*

Services After Unsatisfactory Performance on State Assessments

Accelerated Learning Committee

A district shall establish an accelerated learning committee for each student who does not perform satisfactorily on the following state assessment instruments [see EKB]:

1. The third grade mathematics or reading assessment;
2. The fifth grade mathematics or reading assessment; or
3. The eighth grade mathematics or reading assessment.

Education Code 28.0211(a)

Composition

The accelerated learning committee shall be composed of the principal or the principal's designee, the student's parent or guardian, and the teacher of the subject of an assessment instrument on which the student failed to perform satisfactorily. The district shall notify the parent or guardian of the time and place for convening the accelerated learning committee and the purpose of the committee. *Education Code 28.0211(c)*

Educational Plan

An accelerated learning committee shall, not later than the start of the subsequent school year, develop an educational plan for the student that provides the necessary accelerated instruction to enable the student to perform at the appropriate grade level by the conclusion of the school year. The educational plan must be documented in writing, and a copy must be provided to the student's parent or guardian.

During the school year, the student shall be monitored to ensure that the student is progressing in accordance with the educational

plan. The district shall administer to the student the assessment instrument for the grade level in which the student is placed at the time the district regularly administers the assessment instruments for that school year.

The board shall adopt a policy consistent with the grievance procedure adopted under Education Code 26.011 [see FNG] to allow a parent to contest the content or implementation of an educational plan.

Education Code 28.0211(f)–(f-3)

Failure in a Subsequent School Year

If a student who fails to perform satisfactorily on the third, fifth, or eighth grade math or reading assessment fails in the subsequent school year to perform satisfactorily on an assessment instrument in the same subject, the superintendent, or the superintendent's designee, shall meet with the student's accelerated learning committee to:

1. Identify the reason the student did not perform satisfactorily; and
2. Determine, in order to ensure the student performs satisfactorily on the assessment instrument at the next administration of the assessment instrument, whether the educational plan developed for the student must be modified to provide the necessary accelerated instruction for that student and any additional resources are required for that student.

The superintendent's designee may be an employee of a regional education service center and may not be a person who served on the student's accelerated learning committee.

Education Code 28.0211(f-4)–(f-5)

ARD Meeting

The admission, review, and dismissal (ARD) committee of a student who does not perform satisfactorily on a third, fifth, or eighth grade math or reading assessment must meet to determine the manner in which the student will participate in an accelerated instruction program. *Education Code 28.0211(i)*

Parent Request

Each district shall establish a process allowing for the parent or guardian of a student who fails to perform satisfactorily on a third, fifth, or eighth grade math or reading assessment to make a request for district consideration that the student be assigned to a particular classroom teacher in the applicable subject area for the subsequent school year, if more than one classroom teacher is available. *Education Code 28.0211(a-5)*

Classroom Assignment

A student who fails to perform satisfactorily on a third, fifth, or eighth grade math or reading assessment and is promoted to the next grade level must be assigned in the subsequent school year in each subject in which the student failed to perform satisfactorily on the applicable assessment instrument to an appropriately certified teacher who meets all state and federal qualifications to teach that subject and grade.

In a manner consistent with federal law and notwithstanding any other law, the commissioner may waive the requirement regarding the assignment of a student to an appropriately certified classroom teacher on the request of a district.

Education Code 28.0211(n)–(n-1)

Accelerated Instruction

Each time a student fails to perform satisfactorily on a state assessment instrument in the third, fourth, fifth, sixth, seventh, or eighth grade [see EKB], the district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year and either:

1. Allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under the local optional teacher designation system [see DEAA] for the subsequent school year in the applicable subject area; or

2. Provide the student supplemental instruction under Education Code 28.0211(a-4) [see below].

Participation Requirements

Accelerated instruction provided during the following school year may require participation of the student before or after normal school hours.

In providing accelerated instruction, a district may not remove a student, except under circumstances for which a student enrolled in the same grade level who is not receiving accelerated instruction would be removed, from:

1. Instruction in the foundation curriculum and enrichment curriculum adopted under Education Code 28.002 [see EHA series] for the grade level in which the student is enrolled; or

2. Recess or other physical activity that is available to other students enrolled in the same grade level.

Supplemental Instruction Requirements

If a district receives funding under Education Code 29.0881, the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Div. M, Pub. L. No. 116-260), or the American Rescue

Plan Act of 2021 (Pub. L. No. 117-2), then supplemental instruction provided by a district must:

1. Include targeted instruction in the essential knowledge and skills for the applicable grade levels and subject area;
2. Be provided in addition to instruction normally provided to students in the grade level in which the student is enrolled;
3. Be provided for no less than 30 total hours during the subsequent summer or school year and, unless the instruction is provided fully during summer, include instruction no less than once per week during the school year;
4. Be designed to assist the student in achieving satisfactory performance in the applicable grade level and subject area;
5. Include effective instructional materials designed for supplemental instruction;
6. Be provided to a student individually or in a group of no more than three students, unless the parent or guardian of each student in the group authorizes a larger group;
7. Be provided by a person with training in the applicable instructional materials for the supplemental instruction and under the oversight of the district; and
8. To the extent possible, be provided by one person for the entirety of the student's supplemental instruction period.

Education Code 28.0211(a-1)–(a-4)

Transportation

A district shall provide students required to attend the accelerated programs described above with transportation to those programs if the programs occur outside of regular school hours. *Education Code 28.0211(j)*

Notice to Parents of Performance and Accelerated Instruction

Whenever a district is required to notify a parent or guardian about the requirements related to promotion and accelerated instruction, the district shall make a good-faith effort to ensure that the notice is provided either in person or by regular mail, is clear and easy to understand, and is written in English or in the parent or guardian's native language. *Education Code 28.0211(h)*

Assessments Not Required

Education Code 28.0211 does not require the administration of a fifth or eighth grade assessment instrument in a subject under Education Code 39.023(a) to a student enrolled in the fifth or eighth grade, as applicable, if the student:

1. Is enrolled in a course in the subject intended for students above the student's grade level and will be administered an

assessment instrument adopted or developed under Education Code 39.023(a) [see EKB] that aligns with the curriculum for the course in which the student is enrolled; or

2. Is enrolled in a course in the subject for which the student will receive high school academic credit and will be administered an end-of-course assessment instrument [see EKB] for the course.

Notwithstanding any other provision of Education Code 28.0211, the student may not be denied promotion on the basis of failure to perform satisfactorily on an assessment instrument not required to be administered to the student, nor may a student in grade 5 or grade 8 be denied promotion to the next grade on the basis of failure to perform satisfactorily on a reading or mathematics assessment instrument intended for use above the student's grade level.

Education Code 28.0211(o)–(p)

Accelerated Instruction After EOC Assessments

A district shall provide accelerated instruction to an enrolled student who has taken an end-of-course (EOC) 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)

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.

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 and must comply with the requirements for accelerated instruction provided under Education Code 28.0211 [see above].

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. *Education Code 29.082(a); 19 TAC 105.1001*

Optional Flexible Year Program

A district may provide an optional flexible year program (OFYP) for students who did not or are not likely to perform successfully on state assessment instruments or who would not otherwise be promoted to the next grade level. *Education Code 29.0821; 19 TAC 129.1029*

Optional Flexible School Day Program

Notwithstanding Education Code 25.081 or 25.082, a district may apply to the commissioner to provide a flexible school day program (OFSDP) for students who:

1. Have dropped out of school or are at risk of dropping out of school as defined by Education Code 29.081;

2. Attend a campus that is implementing an innovative redesign of the campus or an early college high school under a plan approved by the commissioner; or

3. As a result of attendance requirements under Education Code 25.092, will be denied credit for one or more classes in which the students have been enrolled.

Education Code 29.0822

A district may apply to the commissioner to provide an OFSDP for students, in accordance with 19 Administrative Code 129.1027.

A board must approve the application. The board must include the OFSDP as an item on the regular agenda for a board meeting in compliance with 19 Administrative Code 129.1027(h)(2) before applying to operate an OFSDP. The application shall include the information described in 19 Administrative Code 129.1027.

19 TAC 129.1027(c)

Tutorial Services

A district may provide tutorial services at district schools. If a district provides tutorial services, it shall require a student whose grade in a subject for a reporting period is lower than the equivalent of 70 on a scale of 100 to attend tutorials. [See EC for provisions on loss of class time.]

A district may provide transportation services to accommodate students who are required to attend tutorials and who are eligible for regular transportation.

Education Code 29.084

Basic Skills Programs

A district may apply to the commissioner for funding of basic skills programs for students in grade 9 who are at risk of not earning sufficient credit or who have not earned sufficient credit to advance to grade 10 and who fail to meet minimum skills levels established by the commissioner.

With the consent of a student's parent or guardian, a district may assign a student to the basic skills program.

A basic skills program may not exceed 210 instructional days and must meet the requirements set forth at Education Code 29.086.

Education Code 29.086(a)

After-School and Summer Intensive Mathematics and Science Programs

A district may provide an intensive after-school program or an intensive program during the period that school is recessed for the summer to provide mathematics and science instruction to:

1. Students who are not performing at grade level in mathematics or science to assist those students in performing at grade level;
2. Students who are not performing successfully in a mathematics course or science course to assist those students in successfully completing the course; or
3. Other students as determined by the district.

Before providing a program, a board must adopt a policy for:

1. Determining student eligibility for participating in the program that:
    a. Prescribes the grade level or course a student must be enrolled in to be eligible; and
    b. Provides for considering teacher recommendations in determining eligibility;
2. Ensuring that parents of or persons standing in parental relation to eligible students are provided notice of the program;
3. Ensuring that eligible students are encouraged to attend the program;
4. Ensuring that the program is offered at one or more locations in the district that are easily accessible to eligible students; and
5. Measuring student progress on completion of the program.

Education Code 29.088, .090; 19 TAC 102.1041

Mentoring Services Program

A district may provide a mentoring services program to students at risk of dropping out of school. A board may arrange for any public or nonprofit community-based organization to come to the district's schools and implement the program.

A board shall obtain the consent of a student's parent or guardian before allowing the student to participate in the program.

Education Code 29.089

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.

Education Code 28.006(g), (g-1)

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

College Preparatory Courses

Each district shall partner with at least one institution of higher education to develop and provide courses in college preparatory mathematics and English language arts. The courses must be designed:

1. For students at the 12th grade level whose performance on:
    a. An end-of-course assessment instrument required under Education Code 39.023(c) does not meet college readiness standards; or
    b. Coursework, a college entrance examination, or an assessment instrument designated under Education Code 51.334 [Texas Success Initiative (TSI) assessment] indicates that the student is not ready to perform entry-level college coursework; and
2. To prepare students for success in entry-level college courses.

A course must be provided on the campus of the high school offering the course or through distance learning or as an online course provided through an institution of higher education with which the district partners.

Faculty

Appropriate faculty of each high school offering courses and appropriate faculty of each institution of higher education with which the district partners shall meet regularly as necessary to ensure that each course is aligned with college readiness expectations.

Notice

Each district shall provide a notice to each eligible student and the student's parent or guardian regarding the benefits of enrolling in a course.

Credit Earned

A student who successfully completes an English language arts course may use the credit earned toward satisfying the advanced English language arts curriculum requirement for the foundation high school program under Education Code 28.025(b-1)(1). A student who successfully completes a mathematics course may use the credit earned in the course toward satisfying an advanced mathematics curriculum requirement under Education Code 28.025 after completion of the mathematics curriculum requirements for the foundation high school program under Education Code 28.025(b-1)(2).

Dual Credit

A course may be offered for dual credit at the discretion of the institution of higher education with which a district partners.

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)*

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 (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 (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 (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 (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*

Student Eligibility

Generally

A student is eligible to enroll in a TXVSN course only if the student:

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 48.003;
2. Has not graduated from high school; and
3. Is otherwise eligible to enroll in a public school in this state.

A student is eligible to enroll full-time in courses provided through the TXVSN only if:

1. The student was enrolled in a public school in this state in the preceding school year;
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
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.

Exception for Military Dependents

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:

1. Is a dependent of a member of the United States military;
2. Was previously enrolled in high school in this state; and
3. No longer resides in this state as a result of a military deployment or transfer.

Provisional Enrollment

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.

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.

Education Code 30A.002; 19 TAC 70.1013

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

classroom setting, the district shall notify parents and students of the option to enroll in an electronic course offered through the TXVSN.

Requests to Enroll

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.

A district may deny a request to enroll a student in an electronic course if:

1. A student attempts to enroll in a course load that is inconsistent with the student's high school graduation plan or requirements for college admission or earning an industry certification;
2. The student requests permission to enroll in an electronic course at a time that is not consistent with the enrollment period established by the district providing the course; or
3. The district offers a substantially similar course.

The course provider shall make all reasonable efforts to accommodate the enrollment of a student in the course under special circumstances.

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).

Appeals

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.

Education Code 26.0031; 19 TAC 70.1008, .1035

Students with Disabilities

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. *Education Code 30A.007(b)*

Required Enrollment Prohibited

A school district or open-enrollment charter school may not require a student to enroll in an electronic course. *Education Code 30A.107(d)*

Inducements for Enrollment Prohibited	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. *Education Code 30A.1052*
Course Portability	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. *Education Code 30A.1051; 19 TAC 70.1015(d)*
Student Assessment	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. 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. All districts participating in the TXVSN OLS program are included in the state's academic accountability system. *Education Code 30A.110; 19 TAC 70.1023*
Funding	A district in which a student is enrolled is entitled to funding under Education Code Chapter 48 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. 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. *Education Code 30A.153* A district may decline to pay the cost for a student of more than three yearlong electronic courses, or the equivalent, during any 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

Average Daily Attendance for Certain Programs

A district may provide one or more off-campus electronic courses, an off-campus electronic program, or an instructional program that combines in-person instruction and off-campus electronic instruction to students enrolled in the district who have reasonable access to in-person services at a district or school facility. Off-campus electronic instruction for a course or program provided under this provision may be provided synchronously or asynchronously. A student enrolled in a course or program provided under this provision shall be counted toward the district's average daily attendance in the same manner as other district students. The off-campus electronic instruction for a course or program provided under this provision shall be counted for average daily attendance (ADA) in accordance with Education 48.0071 and commissioner-adopted rule. *Education Code 48.0071(a)–(b)*

[For information regarding a local remote learning program, authorized by Education Code 29.9091, see EHDF.]

Note: The local remote learning program is a specially authorized program under the Education Code. The provisions below are set to expire on September 1, 2023. For information about other remote instruction, including the TxVSN and distance learning and correspondence courses, see EHDE.

A district assigned an overall performance rating of C or higher under Education Code 39.054 [see AIA] for the preceding school year or the most recent school year in which a performance rating was assigned may operate a local remote learning program to offer virtual courses outside the state virtual school network to eligible students.

District Requirements

A district that operates a full-time local remote learning program must include in the program at least one grade level in which a state assessment instrument is required to be administered under Education Code 39.023(a), including each subject for which an assessment instrument is required or a complete high school program, including each course for which an end-of-course assessment instrument is required to be administered under Education Code 39.023(c) [see EKB].

The district must offer the option for a student's parent or person standing in parental relation to select in-person instruction for the student.

Type of Instruction

A virtual course offered under a local remote learning program may be provided through synchronous instruction, asynchronous instruction, or a combination of synchronous and asynchronous instruction; and may be provided in combination with in-person instruction as appropriate to meet the needs of individual students.

Student Eligibility

A student is eligible to enroll in a virtual course offered under a local remote learning program if the student is enrolled in a district, has reasonable access to in-person services for the course at a district facility, and meets any additional criteria, including minimum academic standards, established by the district in which the student is enrolled.

Student Performance and Attendance

A district that operates a local remote learning program shall periodically assess the performance of students enrolled in virtual courses under the program.

A district that operates a local remote learning program may not count a student for purposes of calculating the district's average

daily attendance if the student has ten or more unexcused absences in the program in a six-month period.

Education Code 29.9091(a)–(e)(1), (e)(3)

Returning a Student to In-Person Instruction

A district that operates a local remote learning program may remove a student from virtual courses under the program and return the student to in-person instruction if the district determines that the student does not meet the criteria described at Student Eligibility, above.

A district may remove a student from virtual courses only if the district establishes a process to ensure that each student and the student's parent or person standing in parental relation have sufficient notice and opportunity to provide input before the student is removed from those courses.

Education Code 29.9091(e)(2), (f)

Contract with a District

A district may contract with another district or open-enrollment charter school to allow a student enrolled in the sending district to enroll in virtual courses offered under the local remote learning program of the receiving district. A student enrolled in virtual courses under an agreement described by this provision is considered enrolled in the sending district for purposes of average daily attendance [see FEB] and accountability under Chapters 39 and 39A [see AIB].

State Assessment

A state assessment instrument administered under Education Code 39.023 or 39.025 [see EKB] to a student enrolled in a virtual course offered under a local remote learning program shall be administered to the student in the same manner in which the assessment instrument is administered to other district students.

Special Education

If a district offers virtual courses under a local remote learning program for students receiving special education services, the courses must meet the needs of a participating student in a manner consistent with Education Code Chapter 29, Subchapter A (special education program) and with federal law, including the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

Teacher Requirements

A teacher may not provide instruction for a virtual course offered under a full-time local remote learning program unless the teacher has completed a professional development course on virtual instruction.

A district may not directly or indirectly coerce any teacher to agree to an assignment to teach a full-time local remote learning program.

A district may not require a teacher to provide both virtual instruction and in-person instruction for a course during the same class period. The commissioner may waive this requirement for courses included in the enrichment curriculum under Education Code 28.002 [see EHAA].

Extracurricular Activities

A student enrolled in a virtual course offered under a local remote learning program may participate in an extracurricular activity sponsored or sanctioned by the district in which the student is enrolled or by the University Interscholastic League in the same manner as other district students.

Attendance Accounting

A student enrolled in a virtual course offered under a local remote learning program shall be counted toward the district's average daily attendance in the same manner as other district students, unless the student has ten or more unexcused absences in the program in a six-month period. The commissioner shall adopt rules providing for a method of taking attendance, once each school day, for students enrolled in a virtual course offered under a local remote learning program.

Education Code 29.9091(g)–(n)

Except for students enrolled in programs or courses offered under Education Code Chapter 30A (Texas Virtual School Network) or Education Code 48.053 (allotment for certain special purpose districts), a district may not count for purposes of calculating the district's average daily attendance a student who received virtual or remote instruction for a majority of the instructional days during the preceding school year if the student:

1. Did not achieve satisfactory performance or higher or the equivalent in the preceding school year on:

    a. Each state assessment instrument administered to the student under Education Code 39.023 or 39.025; or

    b. If the student was not administered a required state assessment instrument during the preceding school year, an assessment instrument designed to show grade-level proficiency in the essential knowledge and skills identified under Education Code 28.002 by the State Board of Education for the student's grade level;

2. Had a number of unexcused absences that exceeds ten percent of the number of instructional days in the preceding school year; or

3. Did not earn a grade of C or higher or the equivalent in each of the foundation curriculum courses taken virtually or remotely in the preceding school year.

Education Cote 48.005(m-1)

TXVSN

Education Code Chapter 30A (Texas Virtual School Network) does not apply to a virtual course offered under a local remote learning program. Education Code 29.9091 does not prohibit a student enrolled in a district that operates a local remote learning program from enrolling in courses offered through the state virtual school network. *Education Code 29.9091(o)–(p)*

Enrollment Cap

A district that operates a local remote learning program may not enroll in the program a number of students that exceeds ten percent of the total number of students enrolled in the district during the 2021–22 school year. The commissioner may waive this provision on application by a district in response to a public health emergency.

In calculating the number of students that may be enrolled in a local remote learning program, a district shall count students who spend at least half of the student's instructional time during the 2021–22 school year or 2022–23 school year, as applicable, enrolled in virtual courses or receiving remote instruction, other than by enrollment in electronic courses offered through the state virtual school network, including students enrolled in virtual courses or who received remote instruction during the 2021–22 school year or 2022–23 school year, as applicable, because the student was:

1. Medically fragile;

2. Placed in a virtual setting by an admission, review, and dismissal committee; or

3. Receiving accommodations under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

Education Code 29.9091(q)–(r)

Program Evaluation

In evaluating under Education Code 39.054 (state accountability) [see AIA], the commissioner shall assign the program separate overall and domain performance ratings in accordance with Education Code 39.0549. *Education Code 39.0549(a)*

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High School Diploma

A student may graduate and receive a diploma only if the student:

1. Successfully completes the curriculum requirements identified by the State Board of Education (SBOE) [see State Graduation Requirements, below], has performed satisfactorily on applicable state assessments [see EKB], and complies with the financial aid application requirements in Education Code 28.0256 [see below]; or

2. Successfully completes an individualized education program (IEP) developed under Education Code 29.005. [See EHBAB]

Education Code 28.025(c)

Note: Education Code 28.0256 applies beginning with students enrolled at the 12th grade level during the 2021–22 school year.

FAFSA Required

Before graduating from high school, each student must complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA), except as provided below.

A student is not required to comply with the above provision if:

1. The student's parent or other person standing in parental relation submits a signed form indicating that the parent or other person authorizes the student to decline to complete and submit the financial aid application;

2. The student signs and submits the form described above on the student's own behalf if the student is 18 years of age or older or the student's disabilities of minority have been removed for general purposes under Family Code Chapter 31; or

3. A school counselor authorizes the student to decline to complete and submit the financial aid application for good cause, as determined by the school counselor.

If a school counselor notifies a district whether a student has complied with this section for purposes of determining whether the student meets high school graduation requirements under Education Code 28.025, the school counselor may only indicate whether the student has complied with this section and may not indicate the manner in which the student complied, except as necessary for the district to comply with the commissioner’s rules.

A school counselor may not indicate that a student has not complied with this section if the district fails to provide the required form

to the student or the student's parent or other person standing in parental relation to the student.

Education Code 28.0256; 19 TAC 74.11(b)

Opt-Out Form

The board shall adopt the standard opt-out form provided by the Texas Education Agency (TEA).

The opt-out form shall be available in English, Spanish, and any other language spoken by a majority of the students enrolled in a bilingual education or special language program in the district. A district is responsible for translations not provided by TEA.

The opt-out form must include the student's signature of intent to decline to complete a financial aid application prior to the student's anticipated graduation date.

19 TAC 74.1023(c)

Notification

A district shall provide students with the notifications regarding the financial aid application requirement, in accordance with 19 Administrative Code 74.1023(d).

Proof of Submission

A district shall require one of the following methods of proof that a student has completed and submitted the FAFSA or TASFA.

For completion and submission of the FAFSA:

1. ApplyTexas Counselor Suite FAFSA data;
2. Notification from the U.S. Department of Education that demonstrates a student has completed and submitted a FAFSA; or
3. A local policy developed by a district for the method by which a student must provide proof that the student has completed a FAFSA.

A district shall develop a local policy for the method by which a student must provide proof that the student has completed a TASFA.

19 TAC 74.1023(e)

Information Submission and Confidentiality

A district shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) not later than December 1 of each school year for students awarded diplomas in the previous school year the number of students who completed and submitted a financial aid application and the number of students who submitted an exception.

A district shall maintain student financial aid application information securely and ensure compliance with federal law regarding the

confidentiality of student educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information [see FL].

19 TAC 74.1023(f)–(g)

Individual Graduation Committee

A student may receive a diploma if the person is eligible for a diploma as determined by an individual graduation committee (IGC) established under Education Code 28.0258. *Education Code 28.025(c-6)*

A student receiving special education services is not subject to the IGC requirements in Education Code 28.0258 or 19 Administrative Code 74.1025. A student's admission, review, and dismissal (ARD) committee determines whether a student is required to achieve satisfactory performance on an end-of-course (EOC) assessment to graduate. *19 TAC 74.1025(n)* [See EHBAB]

For each 11th or 12th grade student who has failed to comply with the EOC assessment instrument performance requirements under Education Code 39.025 for not more than two courses, the district shall establish an IGC at the end of or after the student's 11th grade year to determine whether the student may qualify to graduate. A student may not qualify to graduate as a result of an IGC decision before the student's 12th grade year.

The IGC shall be composed of:

1. The principal or principal's designee;
2. For each EOC assessment instrument on which the student failed to perform satisfactorily, the teacher of the course;
3. The department chair or lead teacher supervising the teacher(s) above; and
4. As applicable:
    a. The student's parent or person standing in parental relation to the student;
    b. A designated advocate if the parent is unable to serve; or
    c. The student, at the student's option, if the student is at least 18 years of age or is an emancipated minor.

The superintendent shall establish procedures for convening the committee.

The district shall provide an appropriate translator, if available, for a parent, advocate, or student who is unable to speak English.

Education Code 28.0258(a)–(c), (c-2); 19 TAC 74.1025(b)

A district may not establish an initial IGC for eligible students after June 10 or before the start of the next school year. Once the IGC has been established, it is the original IGC for that student.

If a student leaves a district after an original IGC has been established and before that original IGC awards a high school diploma to the student, any other district that later enrolls the student shall request information from the student's original IGC of record and shall implement the original IGC recommendations to the extent possible.

Alternate Members

In the event that the teacher identified in item 2 above is unavailable, the principal shall designate as an alternate member of the committee a teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is most familiar with the student's performance in that subject area.

In the event that the individual identified above in item 3 above is unavailable, the principal shall designate as an alternate member of the committee an experienced teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is familiar with the content of and instructional practices for the applicable course.

In the event that the student's parent or person standing in parental relation to the student is unavailable to participate in the IGC, the principal shall designate an advocate with knowledge of the student to serve as an alternate member of the committee.

19 TAC 74.1025(c), (e), (g)–(i)

Notice

A district shall ensure a good faith effort is made to timely notify the appropriate person described under item 4 above of the time and place for convening the IGC and the purpose of the committee. The notice must be provided in person or by regular mail or email; clear and easy to understand; and written in English, in Spanish, or, to the extent practicable, in the native language of the appropriate person. *Education Code 28.0258(d)*

Curriculum Requirements

To be eligible to graduate and receive a high school diploma from the IGC, a student must successfully complete the curriculum requirements required for high school graduation. [See State Graduation Requirements, below] *Education Code 28.0258(e)*

Additional Requirements to Graduate

A student's IGC shall recommend additional requirements by which the student may qualify to graduate, including additional remediation; and for each EOC assessment instrument on which the student failed to perform satisfactorily:

1. The completion of a project related to the subject area of the course that demonstrates proficiency in the subject area; or
2. The preparation of a portfolio of work samples in the subject area of the course, including work samples from the course that demonstrate proficiency in the subject area.

A student may submit to the IGC coursework previously completed to satisfy a recommended additional requirement.

Education Code 28.0258(f), (g)

In determining whether a student is qualified to graduate, the committee shall consider the criteria at Education Code 28.0258(h) and any other academic information designated for consideration by the board. After considering the criteria, the committee may determine 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.

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

In accordance with Education Code 28.02541, a 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-2);
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

District Determination — The 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)*

Special Education — A student receiving special education services who successfully completes the requirements of his or her IEP, including performance on a state assessment required for graduation, shall receive a high school diploma. A student's ARD committee shall determine if the student will be required to meet satisfactory performance on an assessment for purposes of graduation. *19 TAC 101.3023(a)* [See Graduation of Students Receiving Special Education Services, below, and EKB]

Posthumous Diploma — Beginning with students who would have graduated at the end of the 2019–20 school year, and on request of the student's parent, a district shall issue a high school diploma posthumously to each student who died while enrolled in the district at the end of the school year in which the student was expected to graduate under the regular schedule of school attendance. The high school diploma may not be issued before the graduation date of the class in which the student was enrolled at the time of death.

Exception — A district is not required to issue a posthumous diploma if the student was convicted of a felony offense under 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

Diplomas for Veterans

Notwithstanding any other provision of this policy, a district may issue a high school diploma to a person who is an honorably discharged member of the armed forces of the United States; was scheduled to graduate from high school after 1940 and before 1975 or after 1989; and left school after completing the sixth or a higher grade, before graduating from high school, to serve in:

1. World War II, the Korean War, the Vietnam War, the Persian Gulf War, the Iraq War, or the war in Afghanistan; or
2. Any other war formally declared by the United States, military engagement authorized by the United States Congress, military engagement authorized by a United Nations Security Council resolution and funded by the United States Congress, or conflict authorized by the president of the United States under the War Powers Resolution of 1973, 50 U.S.C. 1541, et seq.

Education Code 28.0251

Texas First Early High School Completion Program

A district may issue a high school diploma to a student under the Texas First Early High School Completion Program if, using the standards established by TEA and the Texas Higher Education Coordinating Board and eligible institutions of higher education, the student demonstrates mastery of and early readiness for college in each of the subject areas described by the standards and in a language other than English, notwithstanding any other local or state requirements.

A student who earns a high school diploma through the program is considered to have earned a distinguished level of achievement.

Notice Upon Enrollment

On a student's initial enrollment in high school in a grade level below grade 12 in a district, the district shall provide to the student and the student's parent or guardian information regarding the requirements to earn a high school diploma under the Texas First Early High School Completion Program and the Texas First Scholarship Program.

Education Code 28.0253(e)–(g)

Personal Graduation Plan

Junior High or Middle School PGP

A principal of a junior high or middle school shall designate a school counselor, teacher, or other appropriate individual to develop and administer a personal graduation plan (PGP) for each student enrolled in the junior high or middle school who:

1. Does not perform satisfactorily on a state assessment instrument; or

2. Is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade level 9, as determined by a district.

A PGP must:

1. Identify educational goals for the student;

2. Include diagnostic information, appropriate monitoring and intervention, and other evaluation strategies;

3. Include an intensive instruction program described in Education Code 28.0213 [see EHBC];

4. Address participation of the student's parent or guardian, including consideration of the parent's or guardian's educational expectations for the student; and

5. Provide innovative methods to promote the student's advancement, including flexible scheduling, alternative learning environments, online instruction, and other interventions that are proven to accelerate the learning process and have been scientifically validated to improve learning and cognitive ability.

Education Code 28.0212

Students Receiving Special Education Services

For a student receiving special education services, the student's ARD committee and the district are responsible for developing the student's PGP.

A student's IEP developed under Education Code 29.005 may be used as the student's PGP.

Education Code 28.0212(c); 19 TAC 89.1050(a) [See EHBAB]

High School PGP

A principal of a high school shall designate a school counselor or school administrator to review PGP options with each student entering grade 9 together with that student's parent or guardian. The PGP options reviewed must include the distinguished level of achievement and endorsements.

Before the conclusion of the school year, the student and the student's parent or guardian must confirm and sign a PGP for the student that identifies a course of study that:

1. Promotes college and workforce readiness and career placement and advancement; and

2. Facilitates the student's transition from secondary to postsecondary education.

A district may not prevent a student and the student's parent or guardian from confirming a PGP that includes pursuit of a distinguished level of achievement or an endorsement.

A student may amend the student's PGP after the initial confirmation of the plan. If a student amends the student's PGP, the school must send written notice to the student's parents regarding the change.

TEA must make available to a district information that explains the advantages of the distinguished level of achievement described by Education Code 28.025(b-15) and each endorsement described by Education Code 28.025(c-1). A district, in turn, shall publish the information from TEA on the internet website of the district and ensure that the information is available to students in grades nine and above and the parents or legal guardians of those students in the language in which the parents or legal guardians are most proficient.

A district is required to provide this information in the language in which the parents or legal guardians are most proficient only if at least 20 students in a grade level primarily speak that language.

Education Code 28.02121

Early Graduation

A parent is entitled to request, with the expectation that the request will not be unreasonably denied, that the parent's child be permitted to graduate from high school earlier than the child would normally graduate, if the child completes each course required for graduation. The decision of a board concerning the request is final and may not be appealed. *Education Code 26.003(a)(3)(C), (b)* [See FMH, FNG]

State Graduation Requirements

Note: For current state graduation requirements, including those for students who entered grade 9 before the 2007–08 school year but that are not otherwise referenced in this policy, see Education Code 28.025 and 19 Administrative Code Chapter 74.

Students Entering Grade 9

To receive a high school diploma, a student entering grade 9 in the 2014–15 school year and thereafter must complete:

1. Requirements of the foundation high school program under 19 Administrative Code 74.12 [see Foundation High School Program, below];

2. Testing requirements for graduation under 19 Administrative Code Chapter 101 [see EKB]; and

3. Demonstrated proficiency, in grade 8 or higher, as determined by the district, in delivering clear verbal messages; choosing effective nonverbal behaviors; listening for desired results; applying valid critical-thinking and problem-solving processes; and identifying, analyzing, developing, and evaluating communication skills needed for professional and social success in interpersonal situations, group interactions, and personal and professional presentations.

A student shall enroll in the courses necessary to complete the curriculum requirements for the foundation high school program and the curriculum requirements for at least one endorsement.

Education Code 28.025(c); 19 TAC 74.11(a), (d)

Foundation High School Program

A student must earn at least 22 credits to complete the foundation high school program and must demonstrate proficiency in the following core courses:

1. English language arts—4 credits;

2. Mathematics—3 credits;

3. Science—3 credits;

4. Social Studies—3 credits;

5. Languages other than English—2 credits;

6. Physical Education—1 credit;

7. Fine Arts—1 credit; and

8. Elective courses—5 credits.

19 TAC 74.12(a)–(b)

Endorsements

A student shall specify in writing an endorsement the student intends to earn upon entering grade 9. *19 TAC 74.13(a)*

A student may earn any of the following endorsements:

1. Science, technology, engineering, and mathematics (STEM);

2. Business and industry;

3. Public services;

4. Arts and humanities; and

5. Multidisciplinary studies.

A district must make at least one endorsement available to students. A district that offers only one endorsement curriculum must offer multidisciplinary studies.

To earn an endorsement a student must demonstrate proficiency in the curriculum requirements for the foundation high school program and, in accordance with 19 Administrative Code 74.13(e), earn:

1. A fourth credit in mathematics;
2. An additional credit in science; and
3. Two additional elective credits.

A course completed as part of the four courses needed to satisfy an endorsement requirement may also satisfy a requirement under the foundation high school program, including an elective requirement. The same course may count as part of the set of four courses for more than one endorsement.

A district shall permit a student to enroll in courses under more than one endorsement before the student's junior year and to choose, at any time, to earn an endorsement other than the endorsement the student previously indicated.

A student must earn at least 26 credits to earn an endorsement, but a student is not entitled to remain enrolled to earn more than 26 credits.

A district may define advanced courses and determine a coherent sequence of courses for an endorsement area, provided that prerequisites in 19 Administrative Code Chapters 110–118, 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(e)

Distinguished Level of Achievement

A student may earn a distinguished level of achievement by successfully completing the curriculum requirements for the foundation high school program and the curriculum requirements for at least one endorsement, including four credits in science and four credits in mathematics, including Algebra II. *19 TAC 74.11(f)*

Algebra II Notification

Not later than September 1 of each school year, a district shall notify by regular mail or email the parent of or other person standing in parental relation to each student enrolled in grade 9 or above that the student is not required to complete an Algebra II course to graduate under the foundation high school program. The notification must include information regarding the potential consequences to a student of not completing an Algebra II course, including the impact on eligibility for:

1. Automatic college admission under Education Code 51.803; and
2. Certain financial aid authorized under Title 3 of the Education Code.

Education Code 28.02123

Prerequisites

A student may not be enrolled in a course that has a required prerequisite unless:

1. The student has completed the prerequisite course(s);
2. The student has demonstrated equivalent knowledge as determined by the district; or
3. The student was already enrolled in the course in an out-of-state, an out-of-country, or a Texas nonpublic school and transferred to a Texas public school prior to successfully completing the course.

A district may award credit for a course a student completed without having met the prerequisites if the student completed the course in an out-of-state, an out-of-country, or a Texas nonpublic school where there was not a prerequisite.

19 TAC 74.11(j)–(k)

Dual Credit Courses

Courses offered for dual credit at or in conjunction with an institution of higher education (IHE) that provide advanced academic instruction beyond, or in greater depth than, the essential knowledge

and skills for the equivalent high school course required for graduation may satisfy graduation requirements, including requirements for required courses, advanced courses, and courses for elective credit as well as requirements for endorsements. *19 TAC 74.11(i)*

Core Curriculum College Courses

A district shall permit a student to comply with the curriculum requirements under the foundation high school program by successfully completing appropriate courses in the core curriculum of an IHE. A student who has completed the core curriculum of an IHE in accordance with Education Code 61.822, as certified by the IHE in accordance with Education Code 4.28:

1. Is considered to have earned an endorsement by successfully completing the appropriate courses for that endorsement;
2. Is considered to have earned a distinguished level of achievement under the foundation high school program; and
3. Is entitled to receive a high school diploma.

19 TAC 74.11(o)

Languages Other Than English

Students may earn credit for languages other than English in accordance with 19 Administrative Code 74.12(b)(5).

A student who successfully completes a dual language immersion program may satisfy one credit of the two credits required in a language other English in accordance with 19 Administrative Code 74.12(b)(5)(F).

19 TAC 74.12(b)(5)

A student who successfully completes a course in American Sign Language while in elementary school may satisfy one credit of the two credits required in a language other than English. *19 TAC 74.12(b)(5)(G)*

Physical Education 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; or
    e. On an established, valid, reliable, and nationally norm-referenced assessment instrument used by colleges and universities as part of their undergraduate admissions process; or
2. Earning a state-recognized or nationally or internationally recognized business or industry certification or license.

Education Code 28.025(c-5); 19 TAC 74.14

Students Who Entered Grade 9 Before the 2014–15 School Year

All credit for graduation must be earned no later than grade 12. *19 TAC 74.61(b), .71(b)*

Minimum High School Program

A student entering grade 9 prior to the 2014–15 school year who does not choose to complete the curriculum requirements for high school graduation under the foundation high school program must enroll in the courses necessary to complete the curriculum requirements for the Recommended High School Program or the Advanced/Distinguished Achievement High School Program, unless the student, the student's parent or other person standing in parental relation to the student, and a school counselor or school administrator agree in writing signed by each party that the student should be permitted to take courses under the Minimum High School Program, and the student:

1. Is at least 16 years of age;

2. Has completed two credits required for graduation in each subject of the foundation curriculum under Education Code 28.002(a)(1); or

3. Has failed to be promoted to the 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.

19 TAC 74.61(c), (d), .71(c), (d)

Requirements — A student must earn at least 22 credits to complete the Minimum High School Program.

A student who entered grade 9 in the 2012–13 or 2013–14 school year must demonstrate proficiency in the program requirements listed at 19 Administrative Code 74.72.

A student who enters grade 9 before the 2012–13 school year must meet the applicable program requirements in 19 Administrative Code Chapter 74, Subchapters D–F.

Education Code 28.025; 19 TAC 74.62, .72

Recommended High School Program — A student who entered grade 9 in the 2012–13 or 2013–14 school year must earn at least 26 credits to complete the Recommended High School Program. A student must demonstrate proficiency in the program requirements listed at 19 Administrative Code 74.73. *Education Code 28.025; 19 TAC 74.63, .73*

Advanced / Distinguished Achievement High School Program — A student who entered grade 9 in the 2012–13 or 2013–14 school year must earn at least 26 credits to complete the Advanced/Distinguished Achievement High School Program. A student must demonstrate proficiency in the program requirements listed at 19 Administrative Code 74.74. *Education Code 28.025; 19 TAC 74.64, .74*

Substitutions — No substitutions are allowed for high school graduation requirements in the Recommended and Advanced/Distinguished Achievement High School Programs, except as provided by State Board rule. *19 TAC 74.63(d), .64(e), .73(d), .74(e)*

AP or IB Courses — College Board advanced placement and international baccalaureate courses may be substituted for required courses in appropriate

areas. These courses may be used as electives in all three high school graduation programs. *19 TAC 74.61(k), .71(i)*

Reading

A district may offer a maximum of 3 credits of reading for state graduation elective credit for identified students if the district:

1. Adopts policies to identify students in need of additional reading instruction;
2. Has procedures that include assessment of individual student needs and ongoing evaluation of each student's progress; and
3. Monitors instructional activities to ensure that student needs are addressed.

Reading credits may be selected from Reading I, II, or III.

19 TAC 74.61(h), .71(f)

College Courses

A student may comply with the curriculum requirements under the Minimum, Recommended, or Advanced/Distinguished Achievement High School Program for each subject of the foundation curriculum and for languages other than English by successfully completing appropriate courses in the core curriculum of an IHE. *19 TAC 74.61(l), .71(j)*

Physical Education Substitutions

In accordance with local district policy, credit for any physical education course may be earned through participation in the following activities:

Other Physical Activity

1. Athletics;
2. JROTC; and
3. Appropriate private or commercially sponsored physical activity programs conducted on or off campus. A district must apply to the commissioner for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:
    a. Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

b. Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

In accordance with local district policy, up to one credit for any one of the physical education courses listed in 19 Administrative Code Chapter 74 [see EHAC] may be earned through participation in any of the following activities:

1. Drill team;
2. Marching band; and
3. Cheerleading.

Restrictions

All substitution activities must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

No more than four substitution credits may be earned through any combination of substitutions listed above.

Student with Disability or Illness

A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit in English language arts, mathematics, science, or social studies for the required physical education credit. A credit allowed to be substituted may not also be used by the student to satisfy a graduation requirement other than completion of the physical education credit. The determination regarding a student's ability to participate in physical activity must be made by:

1. The student's ARD committee if the student receives special education services under Education Code Chapter 29, Subchapter A;
2. The committee established for the student under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794) if the student does not receive special education services under Education Code Chapter 29, Subchapter A but is covered by the Rehabilitation Act of 1973; or
3. A committee, established by the district, of persons with appropriate knowledge regarding the student if each of the committees described above is inapplicable. This committee must follow the same procedures required of an ARD or a Section 504 committee.

Student with Physical Limitations

If a student entering grade 9 during the 2007–08 school year or thereafter is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Recommended or Advanced/Distinguished High School Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

Education Code 28.025(b-10)–(b-11); 19 TAC 74.62(b)(7), .63(b)(7), .64(b)(7), .72(b)(6), .73(b)(6), .74(b)(6)

Transfers from Out-of-State or Nonpublic Schools

Out-of-state or out-of-country transfer students (including foreign exchange students) and transfer students from Texas nonpublic schools are eligible to receive Texas diplomas but shall complete all applicable high school graduation requirements. Any course credits required for graduation that are not completed before enrollment may be satisfied through credit by examination, correspondence courses, distance learning, or completing the course, according to the provisions of 19 Administrative Code 74.26. *19 TAC 74.11(g)* [See EHDB, EHDC, EHDE, and EI]

Graduation of Students Receiving Special Education Services

Modified Curriculum and Content

Modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in 19 Administrative Code Chapters 110–117, 126–128, and 130. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content. *19 TAC 89.1070(k)*

Employability and Self-Help Skills

Employability and self-help skills are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment. *19 TAC 89.1070(i)*

Summary of Academic Achievement and Evaluation

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), (b)(3)(A), (B), or (C) or (f)(4)(A), (B), or (C). Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2), (b)(3)(A), (B), or (C) or (f)(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(g)–(h)*

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 110–117, 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 as established in Education Code Chapter 39, on the required EOC assessment instruments.

2. The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110–117, 126–128, and 130 and satisfactorily completed credit requirements for graduation under the foundation high school program specified in 19 Administrative Code 74.12 applicable to students in general education but the student's ARD committee has determined that satisfactory performance on the required EOC assessment instruments is not necessary for graduation.

3. The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110–117, 126–128, and 130 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 as established in Education Code Chapter 39, on the required EOC assessment instruments, unless the student's ARD committee has determined that satisfactory performance on the required EOC assessment instruments is not 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 or 3(a), (b), or (c), above, the ARD committee must determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

19 TAC 89.1070(b), (j)

Endorsements

A student who is enrolled in a special education program may earn 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 SBOE for the foundation high school program; and

   b. The additional endorsement curriculum requirements prescribed by the SBOE; and

2. Successfully completing all curriculum requirements for that endorsement adopted by the SBOE:

   a. Without modification of the curriculum; or

   b. With modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's ARD committee.

The ARD committee of a student in a special education program shall determine whether the student is required to achieve satisfactory performance on an end-of-course assessment instrument to earn an endorsement on the student's transcript.

Education Code 28.025(c-7)–(c-8), 19 TAC 89.1070(c)

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 in accordance with 19 Administrative Code 89.1070.

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. *Education Code 28.025(i)*

Course Requirements

To graduate, a student must complete the courses required by the District in addition to those mandated by the state.

Foundation Program

The courses that satisfy District requirements under the foundation program, including courses for the distinguished level of achievement and courses for endorsements offered by the District, shall be listed in appropriate District publications.

Without an Endorsement

The District requires no additional credits beyond the number mandated by the state to graduate under the foundation program without an endorsement. Graduation under the foundation program without an endorsement shall be permitted only as authorized under state law and rules.

With an Endorsement

The District requires completion of 2 credits in addition to the number mandated by the state for graduation under the foundation program with an endorsement.

Distinguished Level of Achievement

The District requires completion of 2 credits in addition to the number mandated by the state for graduation under the foundation program with the distinguished level of achievement.

No Fine Arts Substitutions

The District shall not award state graduation credit in fine arts for participation in a community-based fine arts program.

Physical Education Substitutions

Activities and Courses

To the extent permitted by state rules, the District shall award state graduation credit in physical education for participation in approved activities and elective courses.

No Private or Commercial Programs

The District shall not award state graduation credit in physical education for private or commercially sponsored physical activity programs conducted either on or off campus. [See also EHAC]

Financial Aid Application Confirmation

As confirmation of a student's completion and submission of a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA), the District shall accept the following:

1. A screenshot that includes the processed date field in ApplyTexas Counselor Suite FAFSA data;
2. Notification, such as a copy of an email, from the United States Department of Education verifying completion of the FAFSA;
3. A copy or screenshot of the FAFSA acknowledgment page;
4. A screenshot of the TASFA submission acknowledgment page (from those institutions that offer an electronic form);

5. An acknowledgment receipt from an institution of higher education (IHE); or

6. A copy of a financial aid award letter from an IHE.

[For students who choose not to complete and submit a FAFSA or a TASFA, see EIF(LEGAL).]

The District shall maintain individual student documentation of the financial aid application requirement as an education record. [See FL]

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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*

Emergent Bilingual Students

In grades 3–12, an emergent bilingual student, as defined by Education Code Chapter 29, Subchapter B, shall participate in the state assessment in accordance with commissioner rules at 19 Administrative Code Chapter 101, Subchapter AA. *Education Code 39.023(l), (m)* [See EKBA]

Special Education

The Texas Education Agency (TEA) shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to each student in a special education program for whom a state assessment instrument adopted under Education Code 39.023(a), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal (ARD) committee, including assessment instruments approved by the commissioner of education that measure growth. The assessment instruments developed or adopted, including the assessment instruments approved by the commissioner, must, to the extent allowed under federal law, provide a district with options for the assessment of students.

TEA may not adopt a performance standard that indicates that a student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's ARD committee.

The student's ARD committee shall determine whether any allowable modification is necessary in administering to the student a required EOC assessment instrument under Education Code 39.023(c), and whether the student is required to achieve satisfactory performance on an EOC assessment instrument to receive a high school diploma.

Education Code 39.023(b)–(c), .025(a-4)

Military Dependents

If the student is a military dependent, the district shall incorporate procedures to accept:

1. Exit or EOC exams required for graduation from the sending state;

2. National norm-referenced achievement tests; or

3. Alternative testing, in lieu of testing requirements for graduation in the receiving state.

In the event the above alternatives cannot be accommodated by the receiving state for a military dependent transferring in his or her senior year, then Education Code 162.002 article VII, section C, shall apply.

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 [See EIF]

Administration

A district shall follow the test administration procedures established by TEA in the applicable test administration materials. A superintendent shall be responsible for administering tests. *19 TAC 101.25, .27*

Schedule

The commissioner shall specify the schedule for testing that is in compliance with Education Code 39.023(c-3) and supports reliable and valid assessments. Participation in University Interscholastic League (UIL) area, regional, or state competitions is prohibited on any days on which testing is scheduled between Monday and Thursday of the school week in which the primary administration of assessment instruments occurs.

The commissioner may provide alternate dates for the administration of tests required for a high school diploma to students who are migratory children and who are out of the state.

19 TAC 101.25

On request by a district, the commissioner may allow the district to administer an assessment instrument on the first instructional day

of a week if administering the assessment instrument on another instructional day would result in a significant administrative burden due to specific local conditions. *Education Code 39.023(c-3)*

Alternate Test Dates

The commissioner shall consider requests from districts or campuses for alternate test dates on a case-by-case basis. Alternate test dates will only be allowed if the campus or district is closed on the day on which testing is scheduled or if there is an exceptional circumstance, defined below, that may affect a district's or campus's ability to administer an assessment or the students' performance on the assessment.

"Exceptional circumstances" include:

1. Inclement weather or natural disasters that would cause a district or campus to be closed or that would cause a small percentage of students to be in attendance on the day testing is scheduled;
2. Health epidemics that result in a large number of students being absent on the day of testing;
3. Death of a student or school official that may impact student performance; and
4. Sudden emergencies that occur on the day of testing or shortly before testing that may inhibit students from completing the assessments, such as a fire on campus, a bomb threat, an extended power outage, or a water main break.

If an alternate test date for primary test administration is approved, the commissioner may prohibit a district or campus from participating in UIL competition on the new test date if that is determined to be in the best interest of the district, campus, and students.

19 TAC 101.5003

Test Administration Training

The commissioner may require training for district employees involved in the administration of the assessment instruments. The commissioner may only require for the employee at each district campus who oversees the administration of the assessment instruments to annually receive the training. The district employee who oversees test administration on a district campus may, with discretion, require other district employees involved in the administration of assessment instruments to repeat the training. *Education Code 39.0304(a), (b-1)–(b-2)*

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) (emergent bilingual students) or exempted under Education Code 39.027, shall be assessed in:

1. Mathematics, annually in grades 3–8;

2. Reading, annually in grades 3–8;

3. Social studies in grade 8;

4. Science in grades 5 and 8; and

5. Any other subject and grade required by federal law.

Education Code 39.023(a)

Exception

For purposes of federal accountability, a student shall not be administered a grade-level assessment if the student:

1. Is enrolled in a course or subject intended for students above the student's enrolled grade level and will be administered a grade-level assessment instrument developed under the list above that aligns with the curriculum for that course or subject within the same content area; or

2. Is enrolled in a course for high school credit in a subject intended for students above the student's enrolled grade level and will be administered an EOC assessment instrument that aligns with the curriculum for that course or subject within the same content area.

For purposes of federal accountability, a grade 3–8 student who is accelerated in mathematics, reading/language arts, or science and on schedule to complete the high school end-of-course assessments in that same content area prior to high school shall be assessed at least once in high school with the ACT or the SAT.

A student is only eligible to take an assessment instrument intended for use above the student's enrolled grade if the student is on schedule to complete instruction in the entire curriculum for that subject during the semester the assessment is administered.

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

Education Code 28.0211(o)–(p), 39.023(a-2); 19 TAC 101.3011(a)(1)–(4)

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 39.0237*

Accommodations

Testing accommodations are permitted for any student unless they would make a particular test invalid. Decisions regarding testing accommodations shall take into consideration the needs of the student and the accommodations the student routinely receives in classroom instruction. Permissible testing accommodations shall be described in the appropriate test administration materials.

The committee established by a board to determine the placement of students with dyslexia or related disorders shall determine whether any allowable modification is necessary in administering an assessment to such a student.

A student's ARD committee shall determine the allowable accommodations and shall document them in the student's individualized education program (IEP). [See Special Education, above]

19 TAC 101.3013; Education Code 39.023(a)–(c), (n); 34 C.F.R. 300.320(a)(6)

End-of-Course Assessments

Beginning with students first enrolled in grade 9 in the 2011–12 school year, a student enrolled in a course for which an EOC assessment exists as required by Education 39.023(c) shall take the appropriate assessment. *19 TAC 101.3021(a)*

TEA shall adopt EOC assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history. The Algebra I EOC assessment instrument must be administered with the aid of technology, but may include one or more parts that prohibit the use of technology. The English I and English II EOC assessment instruments must each assess essential knowledge and skills in both reading and writing and must provide a single score. A district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this provision.

If a student is in a special education program, the student's ARD committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this provision.

Education Code 39.023(c)

Students Enrolled Below High School Level

Beginning in the 2011–12 school year, a student in grade 8 or lower who takes a high school course for credit is required to take the applicable EOC assessment. The EOC assessment result shall be applied toward the student's assessment graduation requirements, as specified in 19 Administrative Code 101.3022. *19 TAC 101.3021(d)*

Assessment Requirements for Graduation

A student must meet satisfactory performance on an EOC assessment listed in Education Code 39.023(c) 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.

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) (student who qualifies for use of the Texas Success Initiative (TSI) as a substitute assessment and is enrolled in certain college preparatory courses).

A student at any grade level is eligible to use a substitute assessment as provided in the commissioner's chart at 19 Administrative Code 101.4002(b) if the student:

1. Was administered an approved substitute assessment for an equivalent course in which the student was enrolled;
2. Received a satisfactory score on the substitute assessment as determined by the commissioner and provided in the chart at 19 Administrative Code 101.4002(b); and
3. Using a Texas Success Initiative Assessment (TSIA) or a Texas Success Initiative Assessment, Version 2.0 (TSIA2) also meets the additional criteria of 19 Administrative Code 101.4002(d).

TSI Additional Criteria

A student must meet the criteria established in 19 Administrative Code 101.4002(d) in order to qualify to use TSIA or TSIA2 as a substitute assessment.

Accountability Testing

A student electing to substitute an assessment for graduation purposes must still take the corresponding EOC assessment required under Education Code 39.023(c) at least once for accountability purposes. If a student sits for an EOC assessment, a district may not void or invalidate the test in lieu of a substitute assessment.

A student who fails to perform satisfactorily on a PSAT, PLAN, or Aspire test (or any versions of these tests) as indicated in the chart in 19 Administrative Code 101.4003(b) must take the appropriate EOC assessment required under Education Code 39.023(c). However, a student who does not receive a passing score on the EOC assessment and retakes a PSAT, PLAN, or Aspire test (or any versions of these tests) is eligible to meet the requirements specified in 19 Administrative Code 101.4002(c).

19 TAC 101.4002

Verification of Results

An eligible student is responsible for providing a district an official copy of the student's scores from the substitute assessment.

Upon receipt of official results of an approved substitute assessment, a district must:

1. Verify the student's score on the substitute assessment; and
2. Determine whether the student met the performance standard required to qualify for a public high school diploma in Texas as established by the commissioner.

19 TAC 101.4005

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-5)*

Special Education

A student receiving special education services is not subject to the IGC requirements in Education Code 28.0258. As provided in 19 Administrative Code 89.1070 (Graduation Requirements) and 19 Administrative Code 101.3023 (Participation and Graduation Assessment Requirements for Students Receiving Special Education Services), a student's ARD committee determines whether a student is required to achieve satisfactory performance on an EOC assessment to graduate.

A student dismissed from a special education program who achieved satisfactory performance on an alternate EOC assessment while enrolled in a special education program is not required to take and achieve satisfactory performance on the general EOC assessment to graduate. A student who took an EOC assessment

while enrolled in a special education program is not required to retake and achieve satisfactory performance on the EOC assessment if the student's ARD committee determined that the student was not required to achieve satisfactory performance on the EOC assessment to graduate. A student dismissed from a special education program must achieve satisfactory performance on any 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).

19 TAC 101.3023(a), (b)

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 of Results, 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 district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year and either:

1. Allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under the local optional teacher designation system [see DEAA] for the subsequent school year in the applicable subject area; or

2. Provide the student supplemental instruction under Education Code 28.0211(a-4). [See EHBC]

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 under Education Code 28.0217 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 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 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 district employees who have:
    a. Met the requirements to participate in the student assessment program;
    b. Received training in test security and test administration procedures; and
    c. Signed an oath affirming they understand their obligation to maintain and preserve the security and confidentiality of all state assessments and student information, acknowledge their responsibility to report any suspected testing violation, and are aware of the range of penalties that may result from a violation of test security and confidentiality or a departure from test administration procedures; and
5. Ensure the security of the test materials as required by 19 Administrative Code 101.3031(a)(2)(E).

19 TAC 101.3031(a)(1)–(a)(2)

Violations

Violations of the security and confidential integrity of a test include:

1. Directly or indirectly assisting students with responses to test questions;
2. Tampering with student responses;
3. Falsifying holistic ratings or student responses;
4. Viewing secure test content before, during, or after an administration unless specifically authorized by TEA or by the procedures outlined in the test administration materials;

5. Discussing or disclosing secure test content or student responses;

6. Scoring students' tests, either formally or informally;

7. Duplicating, recording, or electronically capturing confidential test content unless specifically authorized by TEA or by the procedures outlined in the test administration materials;

8. Responding to secure test questions;

9. Fraudulently exempting or preventing a student from participating in the administration of a required state assessment;

10. Receiving or providing unallowable assistance during calibration activities (e.g., taking notes, providing answer sheets, or sharing answers);

11. Encouraging or assisting an individual to engage in the conduct described above or in any other serious violation of security and confidentiality;

12. Failing to report to an appropriate authority that an individual has engaged or is suspected of engaging in the above conduct or in any other serious violation of security and confidentiality under this provision;

13. Failing to implement sufficient procedures to prevent student cheating; and

14. Failing to implement sufficient procedures to prevent alteration of test documents by anyone other than the student.

Consequences

If a district determines that a student has cheated or attempted to cheat on a state assessment either by providing or receiving direct assistance, the district shall invalidate the student's test results.

Any violation of test security or confidential integrity may result in TEA:

1. Invalidating student test results;

2. Referring certified educators to the State Board for Educator Certification (SBEC) for sanctions in accordance with 19 Administrative Code Chapter 247 (Educators' Code of Ethics) and Chapter 249 (Disciplinary Proceedings, Sanctions, and Contested Cases); and

3. Lowering the district's accreditation status or a district's or campus's accountability rating in accordance with Education Code 39.057(d) (redesignated to Education Code 39.003), or appointment of a monitor, conservator, or management team

to the district in accordance with Education Code Chapter 39A.

Test Administration Procedures

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

Districts shall ensure that test coordinators and administrators receive training to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner.

Records Retention

As part of test administration procedures, the commissioner shall require districts to maintain records related to the security of assessment instruments for five years.

19 TAC 101.3031(a-3)–(d)

Disciplinary Action and Penalties

SBEC may take disciplinary action against a person who has violated the security or integrity of any assessment required by Education Code Chapter 39, Subchapter B or has committed an act that is a departure from the test administration procedures established by the commissioner under 19 Administrative Code Chapter 101.

The superintendent and campus principal must develop procedures to ensure the security and confidentiality of the tests and will be responsible for notifying TEA in writing of conduct that violates the security or confidentiality of a test. Failure to report can subject the person responsible to the applicable penalties.

19 TAC 249.15(a)–(b), (g)

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]

Exemption from Instruction

A parent or person standing in parental relation is entitled to remove the parent's child from a class or other school activity that conflicts with the parent's religious or moral beliefs if the parent presents or delivers to the teacher of the parent's child a written statement authorizing the removal of the child from the class or other school activity.

Limitations

A parent or person standing in parental relation is not entitled to remove the parent's child from a class or other school activity to avoid a test or to prevent the child from taking a subject for an entire semester. This provision does not exempt a child from satisfying grade level or graduation requirements in a manner acceptable to the district and the Texas Education Agency (TEA).

Education Code 26.002, .010

Instructional Requirements and Prohibitions

The following provisions under Education Code 28.022(a) apply to any course or subject, including an innovative course, for a grade level from kindergarten through grade 12.

Controversial Topics

A teacher may not be compelled to discuss a widely debated and currently controversial issue of public policy or social affairs.

A teacher who chooses to discuss a topic described above shall explore that topic objectively and in a manner free from political bias.

Education Code 28.0022(a)(1)–(a)(2)

Political Activism and Advocacy Participation

A district or teacher may not require, make part of a course, or award a grade or course credit, including extra credit, for a student's:

1. Work for, affiliation with, or service learning in association with any organization engaged in:
    a. Lobbying for legislation at the federal, state, or local level, if the student's duties involve directly or indirectly attempting to influence social or public policy or the outcome of legislation; or
    b. Social policy advocacy or public policy advocacy;
2. Political activism, lobbying, or efforts to persuade members of the legislative or executive branch at the federal, state, or local level to take specific actions by direct communication; or
3. Participation in any internship, practicum, or similar activity involving social policy advocacy or public policy advocacy.

Education Code 28.0022(a)(3)

The above provisions do not apply to a student's participation in:

1. Community charitable projects, such as building community gardens, volunteering at local food banks, or other service projects;
2. An internship or practicum:
    a. For which the student receives course credit under a career and technology education program or under the P-TECH program established under Education Code 29.553; and
    b. That does not involve the student directly engaging in lobbying, social policy advocacy, or public policy advocacy; or
3. A program that prepares the student for participation and leadership in this country's democratic process at the federal, state, or local level through the simulation of a governmental process, including the development of public policy.

Education Code 28.0022(b)

Concepts Prohibited

A teacher, administrator, or other employee of a district may not require or make part of a course inculcation in the concept that:

1. One race or sex is inherently superior to another race or sex;
2. An individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
3. An individual should be discriminated against or receive adverse treatment solely or partly because of the individual's race or sex;
4. An individual's moral character, standing, or worth is necessarily determined by the individual's race or sex;
5. An individual, by virtue of the individual's race or sex, bears responsibility, blame, or guilt for actions committed by other members of the same race or sex;
6. Meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race to oppress members of another race;
7. The advent of slavery in the territory that is now the United States constituted the true founding of the United States; or

8. With respect to their relationship to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States, which include liberty and equality.

A teacher, administrator, or other employee of a district may not teach, instruct, or train any administrator, teacher, or staff member of a state agency, school district, or open-enrollment charter school to adopt a concept listed above.

A teacher, administrator, or other employee of a district may not require an understanding of The 1619 Project.

Education Code 28.0022(a)(4)

Student Discussion

A district may not implement, interpret, or enforce any rule in a manner that would result in the punishment of a student for reasonably discussing the concepts described above in school or during a school-sponsored activity or have a chilling effect on reasonable student discussions involving those concepts in school or during a school-sponsored activity. *Education Code 28.0022(d)*

Limitations on Statute

Education Code 28.0022 may not be construed as limiting the teaching of or instruction in the essential knowledge and skills adopted under Education Code Chapter 28, Subchapter A.

Education Code 28.0022 does not create a private cause of action against a teacher, administrator, or other employee of a district. A district may take appropriate action involving the employment of any teacher, administrator, or other employee based on the individual's compliance with state and federal laws and district policies.

Education Code 28.0022 may not be construed as prohibiting a teacher employed by a district from directing a classroom activity that involves students communicating with an elected official so long as the district, school, or teacher does not influence the content of a student's communication.

Education Code 28.0022(e)–(g)

Note: The Board has adopted an innovation plan[1] that affects application of provisions in this legally referenced policy.

Absences Considered

In order to receive credit or a final grade for a class, a student is required to attend class 90 percent of the days class is offered regardless of whether the student's absences are excused [see FEA] or unexcused. *Atty. Gen. Op. JC-0398 (2001)*

90 Percent Rule

Except as provided below, a student in any grade level from kindergarten through grade 12 shall not be given credit or a final grade for a class unless the student is in attendance 90 percent of the days the class is offered. This restriction does not affect a student's right to excused absences to observe religious holy days [see FEA] and does not apply to a student who receives credit by examination for a class as provided by Education Code 28.023. [See EHDC]

Serious or Life-Threatening Illness Exception

A student's excused absence resulting from a serious or life-threatening illness or related treatment [see FEA] may not be considered in determining whether the student has satisfied the attendance requirement under the 90 percent rule.

Local Remote Learning Program Exception

A district may adopt a policy to exempt students from the requirements of the 90 percent rule for one or more courses identified in the policy that are offered under a local remote learning program [see EHDF].

Principal's Plan

A student who is in attendance for at least 75 percent but less than 90 percent of the days a class is offered may be given credit or a final grade if the student completes a plan approved by the school's principal that provides for the student to meet the instructional requirements of the class. However, a student under the jurisdiction of a court in a criminal or juvenile justice proceeding may not receive credit or a final grade without the consent of the judge presiding over the student's case.

Extenuating Circumstances

An attendance committee may give class credit or a final grade to a student because of extenuating circumstances. A board shall establish guidelines for determining what constitutes extenuating circumstances.

A board shall adopt policies that establish alternative ways for students to make up work or regain credit or a final grade lost because of absences. The alternative ways must include at least one option that does not require a student to pay a fee. The availability of such option must be substantially the same as the availability of the educational program for which a district may charge a fee. [See FP]

Attendance Committee

A board shall appoint one or more attendance committees to hear petitions for class credit or a final grade by students who have not met the 90 percent rule and have not earned class credit or a final grade by completing a principal's plan. Classroom teachers shall comprise a majority of the attendance committee.

Appeal

If the committee denies a student credit or a final grade, the student may appeal the decision to the board. A board's decision may be appealed to the district court of the county in which the district's central administrative office is located.

Additional Duties

A certified employee may not be assigned additional instructional duties as a result of the above provision outside of the regular workday unless the employee is compensated for the duties at a reasonable rate of pay.

Education Code 25.092

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[1] Innovation Plan: https://tx50000620.schoolwires.net/

Trauma-Informed Care Program

The District's trauma-informed care program, as included in the District improvement plan, shall provide for the integration of trauma-informed care practices in the school environment, including increasing staff and parent awareness of trauma-informed care, implementation of trauma-informed practices and care by District and campus staff, and providing information about available counseling options for students affected by trauma or grief.

Training

The District shall provide training in trauma-informed care to District educators as required by law and the Board-approved District professional development plan. The District improvement plan shall specify required training for any other District employees as applicable.

Policy and Program to Address Sexual Abuse, Trafficking, and Maltreatment

A district shall provide child abuse antivictimization programs in elementary and secondary schools. *Education Code 38.004*

A district shall adopt and implement a policy addressing sexual abuse, sex trafficking, and other maltreatment of children, to be included in the district improvement plan [see BQ] and any information handbook provided to students and parents. *Education Code 38.0041(a)*

The policy included in any informational handbook provided to students and parents must address the following:

1. Methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;
2. Actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and
3. Available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.

19 TAC 61.1051(b)(3)

Definitions

Child Abuse or Neglect — The definition of child abuse or neglect includes the trafficking of a child in accordance with Education Code 38.004.

Other Maltreatment — This term has the meaning assigned by Human Resources Code 42.002.

Trafficking of a Child — This term has the meaning assigned by Penal Code 20A.02(a)(5), (6), (7), or (8).

19 TAC 61.1051(a)

Duty to Report

Report by Any Person — Any person who has reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as required by law. *Family Code 261.101(a)*

Report by Any Professional — Any professional who has reasonable cause to believe that a child has been or may be abused or neglected shall make a report as required by law. The report must be made within 48 hours after the professional first has reasonable cause to believe that the child has been or may be abused or neglected or is the victim of an offense of indecency with a child.

A professional may not delegate to or rely on another person to make the report.

A "professional" is a person who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, juvenile probation officers, and juvenile detention or correctional officers.

Family Code 261.101(b)

Abuse of Persons with Disabilities

A person having cause to believe that a person with a disability is in a state of abuse, neglect, or exploitation shall report the information immediately to the Texas Department of Family and Protective Services (DFPS).

A person commits a Class A misdemeanor if the person has cause to believe that a person with a disability has been abused, neglected, or exploited or is in a state of abuse, neglect, or exploitation and knowingly fails to report.

A person filing a report or testifying or otherwise participating in any judicial proceeding arising from a petition, report, or investigation is immune from civil or criminal liability on account of his or her petition, report, testimony, or participation, unless the person acted in bad faith or with a malicious purpose.

Human Resources Code 48.051, .052, .054

Adult Victims of Abuse

A person or professional shall make a report in the manner required above if the person or professional has reasonable cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of another child or an elderly person or person with a disability. *Family Code 261.101(b-1)*

Restrictions on Reporting

Psychotropic Drugs and Psychological Testing

An employee may not use or threaten to use the refusal of a parent, guardian, or managing or possessory conservator to administer or consent to the administration of a psychotropic drug to a child, or to consent to any other psychiatric or psychological testing or treatment of the child, as the sole basis for making a report of neglect, unless the employee has cause to believe that the refusal:

1. Presents a substantial risk of death, disfigurement, or bodily injury to the child; or

2. Has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Education Code 26.0091; Family Code 261.111(a) [See FFEB]

Contents of Report

The report should reflect the reporter's belief that a child has been or may be abused or neglected or has died of abuse or neglect. The 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

Abuse and Neglect Involving School Personnel and Those Responsible for Care

If the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child, the report must be made to DFPS, unless the report is made to a state agency under item 4, below, or the report involves a juvenile justice program or facility [see JJAEPS, below].

All other reports shall be made to:

1. 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(b)(1)–(2)

"Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

1. A parent, guardian, managing or possessory conservator, or foster parent of the child;
2. A member of the child's family or household as defined by Family Code Chapter 71;
3. A person with whom the child's parent cohabits;
4. School personnel or a volunteer at the child's school;

5. Personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides; or

6. An employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42, Human Resources Code.

Family Code 261.001(5)

Reporting Abuse, Neglect, or Exploitation in a JJAEP

Any report of alleged abuse, neglect, or exploitation, as those terms are defined in Family Code 261.405, in a juvenile justice program or facility shall be made to the Texas Juvenile Justice Department and a local law enforcement agency for investigation. The term "juvenile justice program" includes a juvenile justice alternative education program. *Family Code 261.405(a)(4)(A), (b)*

Confidentiality of Report

A report of alleged or suspected abuse or neglect and the identity of the person making the report is confidential and not subject to release under Government Code Chapter 552 (Public Information Act) and may be disclosed only for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by an investigating agency. *Family Code 261.201(a)–(a)(1)*

Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only to a law enforcement officer for the purposes of a criminal investigation of the report, or as ordered by a court under Family Code 261.201. *Family Code 261.101(d)*

Immunity from Liability

A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from any civil or criminal liability that might otherwise be incurred or imposed. *Family Code 261.106*

A district may not suspend or terminate the employment of, or otherwise discriminate against, or take any other adverse employment action against a professional who makes a good faith report of abuse or neglect. *Family Code 261.110(b)* [See DG]

Criminal Offenses

Failure to Report

A person commits a Class A misdemeanor if he or she is required to make a report under Family Code 261.101(a) [see Duty to Report, above] and knowingly fails to make a report as provided by law.

A person who is a professional commits a Class A misdemeanor if the person is required to make a report under Family Code 261.101(b) [see Duty to Report] and knowingly fails to make a report as provided by law. The professional commits a state jail felony if he or she intended to conceal the abuse or neglect.

Family Code 261.109

False Report

A person commits an offense if, with the intent to deceive, the person knowingly makes a report of abuse and neglect that is false. The offense is a state jail felony, except that it is a felony of the third degree if the person has previously been convicted of the offense. *Family Code 261.107(a)*

Coercion

A public servant, including as a school administrator, who coerces another into suppressing or failing to report child abuse or neglect to a law enforcement agency commits a Class C misdemeanor offense. *Penal Code 39.06*

SBEC Disciplinary Action

The State Board for Educator Certification (SBEC) may take any of the actions listed in 19 Administrative Code 249.15(a) (impositions, including revocation of a certificate and administrative penalties) based on satisfactory evidence that the person has failed to report or has hindered the reporting of child abuse pursuant to Family Code 261.001, or has failed to notify the SBEC, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by Education Code 21.006, 21.0062, 22.093, and 19 Administrative Code 249.14(d)–(f). *19 TAC 249.15(b)(4)*

Note: The following legal provisions address child abuse and neglect investigations generally. See GRA for additional legal provisions addressing notification requirements and right of access to students when DFPS investigates reports of abuse and neglect at school.

Investigations

Reports to District

If DFPS initiates an investigation and determines that the abuse or neglect involves an employee of a public elementary or secondary school, and that the child is a student at the school, the department shall orally notify the superintendent of the district in which the employee is employed. *Family Code 261.105(d)*

On request, DFPS shall provide a copy of the completed report of its investigation to the board, the superintendent, and the school principal, unless the principal is alleged to have committed the abuse or neglect. The report shall be edited to protect the identity of the person who made the report. *Family Code 261.406(b)*

Interview of Student	The investigating agency shall be permitted to interview the child at any reasonable time and place, including at the child's school. *Family Code 261.302(b)* [See GRA]
Interference with Investigation	A person may not interfere with an investigation of a report of child abuse or neglect conducted by DFPS. *Family Code 261.303(a)*
Confidentiality	A photograph, videotape, audiotape, or other audio or visual recording, depiction, or documentation of a child that is made by DFPS in the course of an inspection or investigation is confidential, is not subject to release under the Public Information Act, and may be released only as required by state or federal law or rules adopted by the DFPS. *Human Resources Code 42.004*

Reporting Policy

A board shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements of Family Code Chapter 261. *19 TAC 61.1051(b)*

The policies must require every school employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect to submit a written or oral report to at least one of the authorities listed above [see To Whom Reported, above] within 48 hours or less, as determined by the board, after learning of facts giving rise to the suspicion. *19 TAC 61.1051(b)(1)*

The policies must be consistent with the Family Code, Chapter 261, and 40 Administrative Code Chapter 700 (CPS) regarding investigations by DFPS, including regulations governing investigation of abuse by school personnel and volunteers. [See GRA]

The policies must require a report to DFPS if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:

1. Penalties under Penal Code 39.06 (misuse of official information), Family Code 261.109 (failure to report), and 19 Administrative Code Chapter 249 (actions against educator's certificate) for failure to submit a required report of child abuse or neglect;
2. Applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including:
    a. Family Code 261.302 and 261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and

b. Family Code 261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator.

3. Immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;

4. 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; and

6. The prohibition under Education Code 26.0091 [see Psychotropic Drugs and Psychological Testing, above].

19 TAC 61.1051(b)(2)

The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator before making a report to one of the agencies listed above.

The policies must:

1. Include the current toll-free number for DFPS;

2. Provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by DFPS; and

3. Include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.

19 TAC 61.1051(b)(5)–(b)(8)

Annual Distribution and Staff Development

The policies required by these provisions and adopted by the board shall be distributed to all personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by a board. *19 TAC 61.1051(c)* [See also DH and GRA]

[For training requirements under these provisions, see DMA.]

Required Poster

Using a format and language that is clear, simple, and understandable to students, each public school shall post, in English and in Spanish:

1. The current toll-free DFPS Abuse Hotline telephone number;

2. Instructions to call 911 for emergencies; and

3. Directions for accessing the DFPS Texas Abuse Hotline website[1] for more information on reporting abuse, neglect, and exploitation.

A district shall post the information specified above at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number should be in bold print.

Education Code 38.0042; 19 TAC 61.1051(e)–(f)

[1] Texas Abuse Hotline website: https://www.txabusehotline.org/

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Note: The following legal provisions address dating violence and sexual harassment. For legal provisions addressing discrimination on the basis of disability, sex, and other protected characteristics, see FB.

Dating Violence

Policy Requirements

A district shall adopt and implement a dating violence policy to be included in the district improvement plan.

A dating violence policy must include:

1. A definition of dating violence that includes the intentional use of physical, sexual, verbal, or emotional abuse by a person to harm, threaten, intimidate, or control another person in a dating relationship, as defined by Family Code 71.0021;
2. A clear statement that dating violence is not tolerated at school; and
3. Reporting procedures and guidelines for students who are victims of dating violence, including a procedure for immediately notifying the parent or guardian of a student about a report received by the district identifying the student as an alleged victim or perpetrator of dating violence.

A dating violence policy must also address safety planning, enforcement of protective orders, school-based alternatives to protective orders, training for teachers and administrators at each district campus that instructs students in grade 6 or higher, counseling for affected students, and awareness education for students and parents.

Education Code 37.083, .0831 [See BQ]

Student Resources

To the extent possible, a district shall make available to students age-appropriate educational materials that include information on the dangers of dating violence and resources to students seeking help. *Education Code 37.0831(c)*

Note: References to Title IX, part, or subpart in the following legal provisions refer to Title IX and its corresponding regulations.

The U.S. Department of Education's Office for Civil Rights has issued a formal interpretation that discrimination on the basis of sex under Title IX includes discrimination on the basis of sexual orientation and gender identity.

Sexual Harassment

A district may develop and implement a sexual harassment policy to be included in the district improvement plan. *Education Code 37.083* [See BQ]

Sexual abuse of a student by an employee, when there is a connection between the physical sexual activity and the employee's duties and obligations as a district employee, violates a student's constitutional right to bodily integrity. Sexual abuse may include fondling, sexual assault, or sexual intercourse. *U.S. Const. Amend. 14; Doe v. Taylor Indep. Sch. Dist., 15 F.3d 443 (5th Cir. 1994)*

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. *20 U.S.C. 1681 (Title IX)*

A district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX. *34 C.F.R. 106.45; 20 U.S.C. 1681* [See also FB regarding Title IX]

Designation of Title IX Coordinator

A district must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX, which employee must be referred to as the "Title IX Coordinator."

Parties Entitled to Notice

The district must notify applicants for admission and employment, students, parents or legal guardians, employees, and all professional organizations holding professional agreements with the district ("Parties Entitled to Notice") of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.

34 C.F.R. 106.8(a)

Reporting

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during nonbusiness hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

Notification of Policy

A district must notify the Parties Entitled to Notice, above, that the district does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner. The notification must state

that the requirement not to discriminate in the education program or activity extends to employment, and that inquiries about the application of Title IX to such district may be referred to the district's Title IX Coordinator, to the assistant secretary for civil rights of the Department of Education, or both.

34 C.F.R. 106.2(d), .8(b)(1)

Publication Requirements

A district must prominently display the contact information required to be listed for the Title IX Coordinator and the nondiscrimination policy described at Notification of Policy, above, on its website, if any, and in each handbook that it makes available to the Parties Entitled to Notice, above.

A district must not use or distribute a publication stating that the district treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX.

34 C.F.R. 106.8(b)(2)

Note: To distinguish the process described below from the district's general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of Title IX sexual harassment in an education program or activity and against a person in the United States as the district's "Title IX formal complaint process."

Adopting and Publishing Complaint Procedures

A district must adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX and a Title IX formal complaint process that complies with 34 C.F.R. 106.45 for formal complaints as defined below.

A district must provide notice to the Parties Entitled to Notice, above, of the district's procedures and Title IX formal complaint process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the district will respond.

The requirements of this provision apply only to sex discrimination occurring against a person in the United States.

34 C.F.R. 106.8(c)–(d)

Response to Sexual Harassment

Definitions

"Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to a district's Title IX Coordinator or any official of the district who has authority to institute corrective measures on behalf of the district, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the district with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the district. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

"Consent" is not defined by the Title IX regulations, nor do the regulations require districts to adopt a particular definition of consent with respect to sexual assault.

"Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the district with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the district. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the district) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party to a Title IX formal complaint, and must comply with the requirements of the Title IX formal complaint process, including the informal resolution process.

"Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

"Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or

3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

"Supportive measures" means nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or district-provided housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

34 C.F.R. 106.2, .30(a)

Deliberate Indifference

A district with actual knowledge of sexual harassment in an education program or activity of the district against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A district is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

Education Program or Activity

For the purposes of 34 C.F.R. 106.30 [see Definitions, above] and 106.45 [see Process for Title IX Formal Complaint, below], "education program or activity" includes locations, events, or circumstances over which the district exercised substantial control over

both the respondent and the context in which the sexual harassment occurs.

34 C.F.R. 106.44(a)

Title IX Coordinator Response

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Title IX Coordinator must respond in this manner with or without a formal complaint. *34 C.F.R. 106.44(b)(1)*

Supportive Measures Required

A district's response must treat complainants and respondents equitably by offering supportive measures and by following a process that complies with 34 C.F.R. 106.45 [see Process for Title IX Formal Complaint, below] before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. [For Emergency Removal procedures, see below.]

Constitutional Restrictions

The Department of Education may not deem a district to have satisfied the district's duty to not be deliberately indifferent under Title IX based on the district's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

34 C.F.R. 106.44(a)

Response to a Formal Complaint

In response to a formal complaint, a district must follow a process that complies with 34 C.F.R. 106.45 [see Process for Title IX Formal Complaint, below]. *34 C.F.R. 106.44(b)(1)*

Emergency Removal

The Title IX regulations do not preclude a district from removing a respondent from the district's education program or activity on an emergency basis, provided that the district:

1. Undertakes an individualized safety and risk analysis;
2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
3. Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

34 C.F.R. 106.44(c)

Administrative Leave

The Title IX regulations do not preclude a district from placing a nonstudent employee respondent on administrative leave during the pendency of a Title IX formal complaint. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act. *34 C.F.R. 106.44(d)*

Process for Title IX Formal Complaint

For the purpose of addressing formal complaints of sexual harassment, a district's process must comply with the following requirements. Any provisions, rules, or practices other than those required by this provision that a district adopts as part of its process for handling formal complaints of sexual harassment must apply equally to both parties. *34 C.F.R. 106.45(b)*

A district's Title IX formal complaint process must:

1. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a process that complies with the Title IX regulations before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the district's education program or activity. Such remedies may include the same individualized services described as supportive measures; however, remedies need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent;

2. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;

3. Require that any individual designated by a district as a Title IX Coordinator, investigator, decision-maker, or any person designated by a district to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A district must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training

on the definition of sexual harassment, the scope of the district's education program or activity, how to conduct an investigation and Title IX formal complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A district must ensure that decision-makers receive training on any technology to be used at a live hearing, if any, and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. [See Hearings, below] A district also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. [See Investigation of a Formal Complaint, below] Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

4. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process;

5. Include reasonably prompt time frames for conclusion of the Title IX formal complaint process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the district offers informal resolution processes, and a process that allows for the temporary delay of the Title IX formal complaint process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;

6. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the district may implement following any determination of responsibility;

7. State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints

against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;

8. Include the procedures and permissible bases for the complainant and respondent to appeal;

9. Describe the range of supportive measures available to complainants and respondents; and

10. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

34 C.F.R. 106.45(b)(1)

Notice of Allegations

Upon receipt of a formal complaint, a district must provide the following written notice to the parties who are known:

1. Notice of the district's Title IX formal complaint process, including any informal resolution process.

2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:

   a. The identities of the parties involved in the incident, if known;

   b. The conduct allegedly constituting sexual harassment; and

   c. The date and location of the alleged incident, if known.

   The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and may inspect and review evidence [see Investigation of a Formal Complaint, below]. The written notice must inform the parties of any provision in the district's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the Title IX formal complaint process.

If, in the course of an investigation, the district decides to investigate allegations about the complainant or respondent that are not

included in the Notice of Allegations, above, the district must provide notice of the additional allegations to the parties whose identities are known.

34 C.F.R. 106.45(b)(2)

Dismissal of a Formal Complaint

The district must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the district's education program or activity, or did not occur against a person in the United States, then the district must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of the district's code of conduct.

The district may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the district; or specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted pursuant to 34 C.F.R. 106.45(b)(3), the district must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Consolidation of Formal Complaints

A district may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a Title IX formal complaint process involves more than one complainant or more than one respondent, references in this provision to the singular "party," "complainant," or "respondent" include the plural, as applicable.

34 C.F.R. 106.45(b)(3)–(4)

Investigation of a Formal Complaint

When investigating a formal complaint and throughout the Title IX formal complaint process, a district must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the district and not on the parties provided that the district cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or

paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the district obtains that party's voluntary, written consent to do so for a Title IX formal complaint (if a party is not an "eligible student," as defined in 34 C.F.R. 99.3 then the district must obtain the voluntary, written consent of a "parent," as defined in 34 C.F.R. 99.3) [see FL(LEGAL) at Education Records];

2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

4. Provide the parties with the same opportunities to have others present during any Title IX formal complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or Title IX formal complaint proceeding; however, the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the district does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the district must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report. The

district must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

7. Create an investigative report that fairly summarizes relevant evidence and, at least ten days prior to a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

34 C.F.R. 106.45(b)(5)

Hearings

The district's Title IX formal complaint process may, but need not, provide for a hearing. With or without a hearing, after the district has sent the investigative report to the parties pursuant to 34 C.F.R. 106.45(b)(5)(vii) [see Investigation of a Formal Complaint, above] and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant. *34 C.F.R. 106.45(b)(6)(ii)*

Determination Regarding Responsibility

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the district must apply the standard of evidence described at Process for Title IX Formal Complaint, above.

The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment;

2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any

notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

3. Findings of fact supporting the determination;

4. Conclusions regarding the application of the district's code of conduct to the facts;

5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant; and

6. The district's procedures and permissible bases for the complainant and respondent to appeal.

The district must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the district provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

34 C.F.R. 106.45(b)(7)(i)–(ii)

Implementation of Remedies

The Title IX Coordinator is responsible for effective implementation of any remedies. *34 C.F.R. 106.45(b)(7)(iv)*

Appeals

A district must offer both parties an appeal from a determination regarding responsibility, and from a district's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;

2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A district may offer an appeal equally to both parties on additional bases.

As to all appeals, the district must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with the standards in the Title IX regulations regarding conflict of interest and bias [see Process for Formal Title IX Complaint, item 3, above];
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

34 C.F.R. 106.45(b)(8)

Informal Resolution

A district may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with Title IX. Similarly, a district may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the district:

1. Provides to the parties a written notice disclosing:
    a. The allegations;
    b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX formal complaint process with respect to the formal complaint; and
    c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

2. Obtains the parties' voluntary, written consent to the informal resolution process; and

3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

34 C.F.R. 106.45(b)(9)

Recordkeeping

A district must maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the district's education program or activity;

2. Any appeal and the result therefrom;

3. Any informal resolution and the result therefrom; and

4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A district must make these training materials publicly available on its website or if the district does not maintain a website the district must make these materials available upon request for inspection by members of the public.

For each response required under Title IX Coordinator Response, above, a district must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the district must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the district's education program or activity.

If a district does not provide a complainant with supportive measures, then the district must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the district in the future from providing additional explanations or detailing additional measures taken.

34 C.F.R. 106.45(b)(10)

Retaliation Prohibited

No district or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated

or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Complaints alleging retaliation may be filed according to the Process for Title IX Formal Complaint above.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX formal complaint proceeding does not constitute retaliation prohibited by Title IX, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

34 C.F.R. 106.71(a)–(b)

Confidentiality

The district must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. Part 99, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *34 C.F.R. 106.71(a)*

Note: This policy addresses discrimination, including harassment, and retaliation against District students. For provisions regarding discrimination, including harassment, and retaliation against District employees, see DIA. For reporting requirements related to child abuse and neglect, see FFG. Note that FFH shall be used in conjunction with FFI (bullying) for certain prohibited conduct.

Prohibited Conduct

In this policy, the term "prohibited conduct" includes discrimination, harassment, dating violence, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

Prohibited conduct also includes sexual harassment as defined by Title IX. [See FFH(LEGAL)]

Statement of Nondiscrimination

The District prohibits discrimination, including harassment, against any student. Discrimination is defined as treating a student or group of students differently from similarly situated students on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. One type of harassment this policy prohibits is dating violence, as defined below. Retaliation against anyone exercising their rights under this policy is a violation of District policy and is prohibited.

Harassment

Harassment of a student is defined as physical, verbal, or nonverbal conduct based on the student's race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Harassment includes dating violence as defined by law and this policy.

Examples

Examples of prohibited harassment may include offensive or derogatory language directed at another person's religious beliefs or practices, accent, skin color, or need for accommodation; threatening, intimidating, or humiliating conduct; offensive jokes, name call-

ing, slurs, or rumors; cyberharassment; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property.

Title IX Sexual Harassment

As required by law, the District shall follow the procedures below at Response to Title IX Sexual Harassment upon a report of sex-based harassment, including sexual harassment, gender-based harassment, and dating violence, when such allegations, if proved, would meet the definition of sexual harassment in an education program or activity and against a person in the United States under Title IX. [See FFH(LEGAL)]

Other Sexual Harassment

By an Employee

Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. A District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or
2. The conduct is so severe, persistent, or pervasive that it:
    a. Affects the student's ability to participate in or benefit from an educational program or activity, or otherwise adversely affects the student's educational opportunities; or
    b. Creates an intimidating, threatening, hostile, or abusive educational environment.

Romantic or other inappropriate social relationships between students and District employees are prohibited. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See DH]

By Others

Sexual harassment of a student, including harassment committed by another student, includes unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent, or pervasive that it:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or

3. Otherwise adversely affects the student's educational opportunities.

Examples

Examples of sexual harassment of a student may include sexual advances; touching intimate body parts or coercing physical contact that is sexual in nature; jokes or conversations of a sexual nature; and other sexually motivated conduct, contact, or communications, including electronic communication.

Necessary or permissible physical contact such as assisting a child by taking the child's hand, comforting a child with a hug, or other physical contact not reasonably construed as sexual in nature is not sexual harassment.

Gender-Based Harassment

Gender-based harassment includes physical, verbal, or nonverbal conduct based on the student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of masculinity or femininity. For purposes of this policy, gender-based harassment is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;

2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or

3. Otherwise adversely affects the student's educational opportunities.

Examples

Examples of gender-based harassment directed against a student, regardless of the student's or the harasser's actual or perceived sexual orientation or gender identity, may include offensive jokes, name-calling, slurs, or rumors; cyberharassment; physical aggression or assault; threatening or intimidating conduct; or other kinds of aggressive conduct such as theft or damage to property.

Dating Violence

Dating violence occurs when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship. Dating violence also occurs when a person commits these acts against a person in a marriage or dating relationship with the individual who is or was once in a marriage or dating relationship with the person committing the offense.

For purposes of this policy, dating violence is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Examples — Examples of dating violence against a student may include physical or sexual assaults; name-calling; put-downs; or threats directed at the student, the student's family members, or members of the student's household. Additional examples may include destroying property belonging to the student, threatening to commit suicide or homicide if the student ends the relationship, attempting to isolate the student from friends and family, stalking, threatening a student's spouse or current dating partner, or encouraging others to engage in these behaviors.

Reporting Procedures — Any student who believes that he or she has experienced prohibited conduct and any person who believes that a student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, other District employee, or the appropriate District official listed in this policy.

Student Report

Employee Report — Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct shall immediately notify the appropriate District official listed in this policy and take any other steps required by this policy.

Definition of District Officials — For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.

Title IX Coordinator — Reports of discrimination based on sex, including sexual harassment, gender-based harassment, or dating violence, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]

ADA / Section 504 Coordinator — Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator for students. [See FFH(EXHIBIT)]

Superintendent — The Superintendent shall serve as coordinator for purposes of District compliance with all other nondiscrimination laws.

Alternative Reporting Procedures — An individual shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX

coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent.

A report against the Superintendent may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

Timely Reporting

To ensure the District's prompt investigation, reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act.

Notice to Parents

The District official or designee shall promptly notify the parents of any student alleged to have experienced prohibited conduct by a District employee or another adult. [For parental notification requirements regarding an allegation of educator misconduct with a student, see FFF.]

When the District receives a report of prohibited conduct that includes dating violence, the appropriate District official shall immediately notify the parent or guardian of the student who has been identified in the report as the alleged victim or perpetrator.

Investigation of Reports Other Than Title IX

The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. [See FFH(LEGAL)] For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX, including sexual harassment, gender-based harassment, and dating violence, see the procedures below at Response to Title IX Sexual Harassment.

The District may request, but shall not require, a written report. If a report is made orally, the District official shall reduce the report to written form.

Initial Assessment

Upon receipt or notice of a report, the District official shall determine whether the allegations, if proved, would constitute prohibited conduct as defined by this policy. If so, the District shall immediately undertake an investigation, except as provided below at Criminal Investigation.

If the District official determines that the allegations, if proved, would not constitute prohibited conduct as defined by this policy, the District official shall refer the complaint for consideration under FFI.

Interim Action

If appropriate and regardless of whether a criminal or regulatory investigation regarding the alleged conduct is pending, the District shall promptly take interim action calculated to address prohibited conduct or bullying prior to the completion of the District's investigation.

District Investigation

The investigation may be conducted by the District official or a designee, such as the principal, or by a third party designated by the District, such as an attorney. When appropriate, the principal shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

Criminal Investigation

If a law enforcement or regulatory agency notifies the District that a criminal or regulatory investigation has been initiated, the District shall confer with the agency to determine if the District investigation would impede the criminal or regulatory investigation. The District shall proceed with its investigation only to the extent that it does not impede the ongoing criminal or regulatory investigation. After the law enforcement or regulatory agency has finished gathering its evidence, the District shall promptly resume its investigation.

Concluding the Investigation

Absent extenuating circumstances, such as a request by a law enforcement or regulatory agency for the District to delay its investigation, the investigation should be completed within ten District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation.

The investigator shall prepare a written report of the investigation. The report shall include a determination of whether prohibited conduct or bullying occurred. The report shall be filed with the District official overseeing the investigation.

Notification of Outcome

Notification of the outcome of the investigation shall be provided to both parties in compliance with FERPA.

District Action

If the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary action in accordance with the Student Code of Conduct and may take corrective action reasonably calculated to address the conduct.

Prohibited Conduct

Corrective Action

Examples of corrective action may include a training program for those involved in the report, a comprehensive education program for the school community, counseling to the victim and the student who engaged in prohibited conduct, follow-up inquiries to determine if any new incidents or any instances of retaliation have occurred, involving parents and students in efforts to identify problems and improve the school climate, increasing staff monitoring of

areas where prohibited conduct has occurred, and reaffirming the District's policy against discrimination, harassment, and retaliation.

Bullying — If the results of an investigation indicate that bullying occurred, as defined by FFI, the District official shall refer to FFI for appropriate notice to parents and District action. The District official shall refer to FDB for transfer provisions.

Improper Conduct — If the investigation reveals improper conduct that did not rise to the level of prohibited conduct or bullying, the District may take disciplinary action in accordance with the Student Code of Conduct or other corrective action reasonably calculated to address the conduct.

Confidentiality — To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

Appeal — A student or parent who is dissatisfied with the outcome of the investigation may appeal through FNG(LOCAL), beginning at the appropriate level. A student or parent has the right to file a complaint with the United States Department of Education Office for Civil Rights.

Response to Title IX Sexual Harassment — For purposes of the District's response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL).

General Response — When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:

- Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;
- Consider the complainant's wishes with respect to supportive measures; and
- Explain to the complainant the option and process for filing a formal complaint.

The District's response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.

If a formal complaint is not filed or dismissed, the District reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and the Student Code of Conduct. The Title IX coordinator also reserves the right to sign a formal complaint, initiating the Title IX grievance process, if it would be deliberately indifferent not to investigate and respond to the prohibited conduct in accordance with Board policies and the Student Code of Conduct.

Title IX Formal Complaint Process

To distinguish the process described below from the District's general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of sexual harassment as the District's "Title IX formal complaint process."

The Superintendent shall ensure the development of a Title IX formal complaint process that complies with legal requirements. [See FFH(LEGAL)] The formal complaint process shall be posted on the District's website. In compliance with Title IX regulations, the District's Title IX formal complaint process shall address the following basic requirements:

1. Equitable treatment of complainants and respondents;
2. An objective evaluation of all relevant evidence;
3. A requirement that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias;
4. A presumption that the respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process;
5. Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law;
6. A description of the possible disciplinary sanctions and remedies that may be implemented following a determination of responsibility for the alleged sexual harassment;
7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment;
8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a

dismissal of a Title IX formal complaint or any allegations therein;

9. A description of the supportive measures available to the complainant and respondent;

10. A prohibition on using or seeking information protected under a legally recognized privilege unless the individual holding the privilege has waived the privilege;

11. Additional formal complaint procedures in 34 C.F.R. 106.45(b), including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures; and

12. Other local procedures as determined by the Superintendent.

Standard of Evidence

The standard of evidence used to determine responsibility in a Title IX formal complaint of sexual harassment shall be the preponderance of the evidence.

Retaliation

The District prohibits retaliation by a student or District employee against a student alleged to have experienced discrimination or harassment, including dating violence, or another student who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or participates in an investigation. The definition of prohibited retaliation under this policy also includes retaliation against a student who refuses to participate in any manner in an investigation under Title IX. In the absence of a formal complaint, allegations of retaliation shall be investigated under Investigation of Reports Other Than Title IX, above.

Examples

Examples of retaliation may include threats, intimidation, coercion, rumor spreading, ostracism, assault, destruction of property, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances.

False Claim

A student who intentionally makes a false claim or offers false statements in a District investigation regarding discrimination or harassment, including dating violence, shall be subject to appropriate disciplinary action in accordance with law.

Records Retention

The District shall retain copies of allegations, investigation reports, and related records regarding any prohibited conduct in accordance with the District's records control schedules, but for no less than the minimum amount of time required by law. [See CPC]

[For Title IX recordkeeping and retention provisions, see FFH(LEGAL) and the District's Title IX formal complaint process.]

Access to Policy and Procedures

Information regarding this policy and any accompanying procedures shall be distributed annually in the employee and student handbooks. Copies of the policy and procedures shall be posted on the District's website, to the extent practicable, and readily available at each campus and the District's administrative offices.

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UIL Rules and District Policies

A student enrolled in a district or who participates in an extracurricular activity or a University Interscholastic League (UIL) competition is subject to district policy and UIL rules regarding participation only when the student is under the direct supervision of an employee of the school or district in which the student is enrolled or at any other time specified by resolution of a board. *Education Code 33.081(b)* [See FO regarding additional standards of conduct for extracurricular activities]

Athletic Activities

UIL Forms

Each student participating in an extracurricular athletic activity must complete the UIL forms entitled "Preparticipation Physical Evaluation—Medical History" and "Acknowledgement of Rules." Each form must be signed by both the student and the student's parent or guardian. *Education Code 33.203(a)*

Notices

Each school that offers an extracurricular athletic activity shall:

1. Prominently display at its administrative offices the telephone number and electronic mail address that the commissioner of education maintains for reporting violations of Education Code Chapter 33, Subchapter F; and
2. Provide each student participant and the student's parent or guardian a copy of the text of Education Code 33.201–33.207 and a copy of the UIL's parent information manual. The document may be provided in an electronic format unless otherwise requested.

Education Code 33.207(b), .208

Records

A superintendent shall maintain complete and accurate records of the district's compliance and the district shall make available to the public proof of compliance for each person enrolled in the district who is required to receive safety training.

A campus that is determined by the superintendent to be out of compliance with the safety training requirements or the requirements regarding unsafe practices and safety precautions (see below) shall be subject to the range of penalties determined by the UIL.

Education Code 33.206

Unsafe Practices

A coach, trainer, or sponsor for an extracurricular athletic activity may not encourage or permit a student participant to engage in any unreasonably dangerous athletic technique that unnecessarily endangers the health of a student, including using a helmet or any other sports equipment as a weapon. *Education Code 33.204*

Safety Precautions

A coach, trainer, or sponsor for an extracurricular athletic activity shall at each athletic practice or competition ensure that:

1. Each student participant is adequately hydrated;
2. Any prescribed asthma medication for a student participant is readily available to the student;
3. Emergency lanes providing access to the practice or competition area are open and clear; and
4. Heatstroke prevention materials are readily available.

If a student participating in a practice or competition becomes unconscious during the activity, the student may not:

1. Return to the activity during which the student became unconscious; or
2. Participate in any extracurricular athletic activity until the student receives written authorization for such participation from a physician.

Education Code 33.205

Concussions

"Interscholastic athletic activity" includes practice and competition, sponsored or sanctioned by a district, including a home-rule district, or a public school, including any school for which a charter has been granted under Education Code Chapter 12, or the UIL. *Education Code 38.152*

"Concussion" means a complex pathophysiological process affecting the brain caused by a traumatic physical force or impact to the head or body, which may include temporary or prolonged altered brain function resulting in physical, cognitive, or emotional symptoms or altered sleep patterns, and involve loss of consciousness. *Education Code 38.151(4)*

Concussion Oversight Team

The board of a district with students enrolled who participate in an interscholastic athletic activity shall appoint or approve a concussion oversight team. *Education Code 38.153(a)*

Each concussion oversight team must include at least one physician and, to the greatest extent practicable, considering factors including the population of the metropolitan statistical area in which the district is located, district enrollment, and the availability of and access to licensed health-care professionals in the district or charter school area, must also include one or more of the following: an athletic trainer, an advanced practice nurse, a neuropsychologist, or a physician assistant. If a district employs an athletic trainer, the athletic trainer must be a member of the concussion oversight

team. If a district employs a school nurse, the school nurse may be a member of the district concussion oversight team if requested by the school nurse.

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

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 healthcare 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*

Return to Play

A student removed from an interscholastic athletics practice or competition under Education Code 38.156 may not be permitted to practice or compete again following the force or impact believed to have caused the concussion until:

1. The student has been evaluated, using established medical protocols based on peer-reviewed scientific evidence, by a treating physician chosen by the student or the student's parent or guardian or another person with legal authority to make medical decisions for the student;

2. The student has successfully completed each requirement of the return-to-play protocol established under Education Code 38.153 necessary for the student to return to play;

3. The treating physician has provided a written statement indicating that, in the physician's professional judgment, it is safe for the student to return to play; and

4. The student and the student's parent or guardian or another person with legal authority to make medical decisions for the student have acknowledged that the student has completed the requirements of the return-to-play protocol necessary for the student to return to play, have provided the treating physician's written statement to the person responsible for compliance with the return-to-play protocol and the person who has supervisory responsibilities, and have signed a consent form indicating that the person signing:

    a. Has been informed concerning and consents to the student participating in returning to play in accordance with the return-to-play protocol;

    b. Understands the risks associated with the student returning to play and will comply with any ongoing requirements in the return-to-play protocol;

    c. Consents to the disclosure to appropriate persons, consistent with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, of the treating physician's written statement and, if any, the return-to-play recommendations of the treating physician; and

    d. Understands the immunity provisions under Education Code 38.159.

A coach of an interscholastic athletics team may not authorize a student's return to play.

The superintendent or designee shall supervise an athletic trainer or other person responsible for compliance with the return-to-play protocol. The person who has supervisory responsibilities may not be a coach of an interscholastic athletics team.

Education Code 38.157

Immunity

These provisions do not:

1. Waive any immunity from liability of a district or of district officers or employees;

2. Create any liability for a cause of action against a district or against district officers or employees;

3. Waive any immunity from liability under Civil Practice and Remedies Code 74.151; or

4. Create any cause of action or liability for a member of a concussion oversight team arising from the injury or death of a student participating in an interscholastic athletics practice or competition, based on service or participation on the concussion oversight team.

Education Code 38.159

Football Helmet Safety Requirements

A district may not use a football helmet that is 16 years old or older in the district's football program. A district shall ensure that each football helmet used in the district's football program that is 10 years old or older is reconditioned at least once every two years.

A district shall maintain and make available to parents of students enrolled in the district documentation indicating the age of each football helmet used in the district's football program and the dates on which each helmet is reconditioned.

Education Code 33.094(a)–(c)

Steroid Testing

The UIL shall adopt rules for the annual administration of a steroid testing program under which high school students participating in an athletic competition sponsored or sanctioned by the league are tested at multiple times throughout the year for the presence of steroids [see FNF].

Results of such steroid tests are confidential and, unless required by court order, may be disclosed only to the student and the student's parent and the activity directors, principal, and assistant principals of the school attended by the student.

Education Code 33.091(d)–(e)

Cardiac Assessment

A district must provide a district student who is required under UIL rule or policy to receive a physical examination before being allowed to participate in an athletic activity sponsored or sanctioned by the UIL, information about sudden cardiac arrest and electrocardiogram testing and notification of the option of the student to request the administration of an electrocardiogram, in addition to the physical examination.

A student may request an electrocardiogram from any health-care professional, including a health-care professional provided through a district program, provided that the health-care professional is ap-

propriately licensed in Texas and authorized to administer and interpret electrocardiograms under the health-care professional's scope of practice, as establish by the health-care professional's Texas licensing act.

Immunity

These provisions do not create a cause of action or liability or a standard of care, obligation, or duty that provides a basis for a cause of action or liability against a health-care professional described in the provision, the UIL, a district, or a district officer or employee for:

1. The injury or death of a student participating in or practicing for an athletic activity sponsored or sanctioned by the UIL based on or in connection with the administration or interpretation of or reliance on an electrocardiogram; or
2. The content or distribution of the information required under these provisions or the failure to distribute the required information.

Education Code 33.096

Interscholastic Athletic Competition Based on Biological Sex

An interscholastic athletic team sponsored or authorized by a district may not allow a student to compete in an interscholastic athletic competition sponsored or authorized by the district that is designated for the biological sex opposite to the student's biological sex as correctly stated on the student's official birth certificate, as described below, or if the student's official birth certificate is unobtainable, another government record.

Exception

An interscholastic athletic team sponsored or authorized by a district may allow a female student to compete in an interscholastic athletic competition that is designated for male students if a corresponding interscholastic athletic competition designated for female students is not offered or available.

Birth Certificate Statement

For purposes of this provision, a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex only if the statement was entered at or near the time of the student's birth or modified to correct any type of scrivener or clerical error in the student's biological sex.

Education Code 33.0834

Rodeos

This section applies only to a primary or secondary school that sponsors, promotes, or otherwise is associated with a rodeo in which children who attend the school are likely to participate.

	"Rodeo" means an exhibition or competition, without regard to whether the participants are compensated, involving activities related to cowboy skills, including: 1. Riding a horse, with or without a saddle, with the goal of remaining on the horse while it attempts to throw off the rider; 2. Riding a bull; 3. Roping an animal, including roping as part of a team; 4. Wrestling a steer; and 5. Riding a horse in a pattern around preset barrels or other obstacles.
Educational Program	A primary or secondary school to which this section applies shall, before the first rodeo associated with the school in each school year, conduct a mandatory educational program on safety, including the proper use of protective gear, for children planning to participate in the rodeo, in accordance with 25 Administrative Code 104.4. The educational program may consist of an instructional video, subject to the Department of State Health Services approval.
Restriction on Participation	A child may not participate in a rodeo associated with the child's school during a school year unless the child has completed the educational program not more than one year before the first day of the rodeo.
Protective Gear for Bull Riding	A child may not engage in bull riding, including engaging in bull riding outside a rodeo for the purpose of practicing bull riding, unless the child is wearing a protective vest and bull riding helmet in accordance with 25 Administrative Code 104.3. *Health and Safety Code 768.001(6), .003; 25 TAC 104.2–.4*
Eligibility	A student otherwise eligible to participate in an extracurricular activity or a UIL competition is not ineligible because the student is enrolled in a course offered for joint high school and college credit, or in a course offered under a concurrent enrollment program, regardless of the location at which the course is provided. *Education Code 33.087*
Military Dependents	The district shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified. *Education Code 162.002 art. VI, § B* [See FDD]

Attendance and Participation

The State Board of Education (SBOE) by rule shall limit participation in and practice for extracurricular activities during the school day and the school week.

The board of a district may adopt a policy establishing the number of times a student who is otherwise eligible to participate in an extracurricular activity may be absent from class to participate in an extracurricular activity sponsored or sanctioned by the district, UIL, or an organization sanctioned by board resolution. The policy must permit a student to be absent from class at least ten times during the school year, and the policy prevails over any conflicting policy adopted by the SBOE.

Education Code 33.081(a), .0811

SBOE Rules

The following provisions apply to any UIL activity.

Other organizations requiring student participation that causes a student to miss a class may request sanction from a board. If sanctioned by resolution of the board, student participation in the organization's activities shall be subject to all provisions of statute and to 19 Administration Code 76.1001. If a board does not grant sanction, any absences incurred by a student while participating with that organization's activities shall be subject to the attendance provisions of the Education Code. *19 TAC 76.1001(f)* [See FEB]

Extracurricular Activities

An extracurricular activity is an activity sponsored by the UIL, a board, or an organization sanctioned by board resolution. The activity is not necessarily directly related to instruction of the essential knowledge and skills but may have an indirect relation to some areas of the curriculum.

Extracurricular activities include, but are not limited to, public performances, contests, demonstrations, displays, and club activities. In addition, an activity is subject to this policy if any one of the following criteria applies:

1. The activity is competitive;
2. The activity is held in conjunction with another activity that is considered extracurricular;
3. The activity is held off-campus, except in a case in which adequate facilities do not exist on campus;
4. The general public is invited; or
5. An admission is charged.

Exceptions

Public Performances

A student ineligible to participate in an extracurricular activity, but who is enrolled in a state-approved course that requires demonstration of the mastery of the essential knowledge and skills in a public performance, may participate in the performance if:

1. The general public is invited; and
2. The requirement for student participation in public is stated in the essential knowledge and skills of the course.

State-Approved Music Courses

A student ineligible to participate in an extracurricular activity, but who is enrolled in a state-approved music course that participates in UIL Concert and Sight-Reading Evaluation, may perform with the ensemble during the UIL evaluation performance.

19 TAC 76.1001(a)

Limits on Participation and Practice

Limitations on practice, rehearsal, and student participation during the school week shall be as follows:

During the School Week

1. For any given extracurricular activity, a student may not participate in more than one activity per school week, excluding holidays, except as provided in item 2, below.
2. A student may also participate in a tournament or post-district contest, as well as a contest postponed by weather or public disaster that may determine advancement to a post-district level of competition.
3. For each extracurricular activity, a district must limit students to a maximum of eight hours of practice and rehearsal outside the school day per school week.
4. The commissioner recommends that districts avoid scheduling extracurricular activities or public performances on the day or evening immediately preceding the day on which the statewide student assessment program is scheduled for grades 3–11.

19 TAC 76.1001(d); Education Code 33.081(a)

During the School Day

Limitations on practice and rehearsal during the school day shall be as follows:

1. A district must limit a student to one period of practice during the regularly scheduled school day for practice of extracurricular activities, such as athletics, drill team, or cheerleading.
2. The limit in item 1 does not prohibit a student from enrolling in any state-approved class. A student who is enrolled in a state-approved class that includes essential knowledge and skills that relate to the preparation for an extracurricular activity

may practice that extracurricular activity for no more than one period during the school day.

3. A student may not be permitted to miss a scheduled academic class to practice for an unrelated extracurricular activity.

4. A district must limit extracurricular practice during the school day to ensure that class periods for extracurricular practice do not exceed the time allotted for other class periods.

5. Regardless of the schedule type in place (traditional or nontraditional), a school may elect to practice extracurricular activities daily, provided the total minutes allowed for the extracurricular practice is not greater than 300 minutes during the school week.

19 TAC 76.1001(e); Education Code 33.081(a)

Record of Absences

A district shall maintain an accurate record of extracurricular absences for each student in the district each school year. *19 TAC 76.1001(c)*

Students Receiving Outpatient Mental Health Services

A district may not adopt or enforce policies that restrict participation in UIL activities by a student who receives outpatient mental health services from a mental health facility and is enrolled in the district or otherwise receives public education services from a district based solely on the student's receipt of outpatient mental health services from a mental health facility or the student's absence during instructional time while receiving outpatient mental health services from a mental health facility.

This provision does not exempt a student to whom this section applies from any eligibility requirement for participation in UIL activities other than an eligibility requirement based solely on the criteria of receipt of outpatient mental health services from a mental health facility.

Education Code 33.0832(c)–(d)

Participation by Homeschooled Students

A public school that participates in an activity sponsored by UIL may provide a non-enrolled student, who otherwise meets UIL eligibility standards to represent that school in a UIL activity, with the opportunity to participate in the activity on behalf of the school in the same manner that the school provides the opportunity to participate to students enrolled in the school.

"Non-enrolled student" means a student who receives instruction as a homeschooled student as described by Education Code 29.916(a)(1) from a nonpublic school [see EK].

Relevant Policies

A non-enrolled student who seeks to participate or participates in a UIL activity on behalf of a school is subject to the following relevant policies that apply to students enrolled in the school:

1. Registration for UIL activities;
2. Age eligibility;
3. Fees;
4. Insurance;
5. Transportation;
6. Physical condition;
7. Qualifications;
8. Responsibilities;
9. Event schedules;
10. Standards of behavior; and
11. Performance.

Residency Requirements

A non-enrolled student may only participate in a UIL activity for the school in the district that the student would be eligible to attend based on the student's residential address. A non-enrolled student who seeks to participate in a UIL activity on behalf of a school shall be required to establish minimum proof of residency acceptable to the district in the same manner as an applicant to attend a school in the district under Education Code 25.001 [see FD].

Academic Requirements

The parent or person standing in parental relation to a non-enrolled student is responsible for oversight of academic standards relating to the student's participation in a UIL activity. As a condition of eligibility to participate in a UIL activity during the first six weeks of a school year, a non-enrolled student must demonstrate grade-level academic proficiency on any nationally recognized, norm-referenced assessment instrument, such as the Iowa Test of Basic Skills, Stanford Achievement Test, California Achievement Test, or Comprehensive Test of Basic Skills. A non-enrolled student demonstrates the required academic proficiency by achieving a composite, core, or survey score that is within the average or higher than average range of scores, as established by the applicable testing service. A district shall accept assessment results administered or reported by a third party.

A non-enrolled student's demonstration of academic proficiency is sufficient for the school year in which the student achieves the required score and the subsequent school year.

After the first six weeks of a school year, the parent or person standing in parental relation to a non-enrolled student participating in a UIL activity on behalf of a public school must periodically, in accordance with the school's grading calendar, provide written verification to the school indicating that the student is receiving a passing grade in each course or subject being taught.

Previous Enrollment in Public School

A non-enrolled student is not authorized by this section to participate in a UIL activity during the remainder of any school year during which the student was previously enrolled in a public school.

Prohibitions

With respect to a non-enrolled student's education program, nothing in these provisions shall be construed to permit an agency of this state, a public school district, or any other governmental body to exercise control, regulatory authority, or supervision over a non-enrolled student or a parent or person standing in parental relation to a non-enrolled student beyond the control, regulatory authority, or supervision required to participate in a UIL activity.

Subject only to eligibility requirements, the curriculum or assessment requirements, performance standards, practices, or creed of the education program provided to a non-enrolled student may not be required to be changed in order for the non-enrolled student to participate in a UIL activity. Subject only to eligibility requirements, for a non-enrolled student participating in an education program on January 1, 2021, the education program provided to that student may not be required to comply with any state law or agency rule relating to that education program unless the law or rule was in effect on January 1, 2021.

Education Code 33.0832

Suspension from Extracurricular Activities

A student shall be suspended from participation in any extracurricular activity sponsored or sanctioned by a district or the UIL after a grade evaluation period in which the student received a grade lower than the equivalent of 70 on a scale of 100 in any academic class other than a course described below at Exempt Courses.

Length of Suspension

A suspension continues for at least three school weeks and is not removed during the school year until the conditions of Reinstatement, described below, are met. A suspension shall not last beyond the end of a school year.

Grade Evaluation Period

“Grade evaluation period” means:

1. The six-week grade reporting period; or

2. The first six weeks of a semester and each grade reporting period thereafter, in the case of a district with a grade reporting period longer than six weeks.

Education Code 33.081(c)

School Week

The school week is defined as beginning at 12:01 a.m. on the first instructional day of the calendar week and ending at the close of instruction on the last instructional day of the calendar week, excluding holidays. *19 TAC 76.1001(b)*

Exempt Courses

The suspension and reinstatement provisions of Education Code 33.081(c) and (d) do not apply to an advanced placement or international baccalaureate course, or to an honors or dual credit course in the subject areas of English language arts, mathematics, science, social studies, economics, or a language other than English. *Education Code 33.081(d-1)*

Honors classes for purposes of eligibility to participate in extracurricular activities are listed at 19 Administrative Code 74.30(a).

Districts may identify additional honors courses in the subject areas of English language arts, mathematics, science, social studies, or a language other than English for the purposes of extracurricular eligibility but must identify such courses before the semester in which any exemptions related to extracurricular activities occur.

Districts are neither required to nor restricted from considering courses as honors for the purpose of grade point average calculation.

19 TAC 74.30

Students with Disabilities

In the case of a student with a disability that significantly interferes with the student's ability to meet regular academic standards, suspension must be based on the student's failure to meet the requirements of the student's individualized education program (IEP). The determination of whether the disability substantially interferes with the student's ability to meet the requirements of the student's IEP must be made by the admission, review, and dismissal (ARD) committee.

For the purposes of this provision, "student with a disability" means a student who is eligible for a district's special education program under Education Code 29.003(b).

Education Code 33.081(e)

Practice or Rehearsal

A student suspended under Education Code 33.081 may practice or rehearse with other students for an extracurricular activity but may not participate in a competition or other public performance.

This provision does not apply to a student prohibited from participation for certain conduct involving extracurricular officials [see below]. *Education Code 33.081(f)*

Reinstatement

Until the suspension is removed or the school year ends, a district shall review the grades of a student at the end of each three-week period following the date on which the suspension began. At the time of a review, the suspension is removed if the student's grade in each class, other than a course described above at Exempt Courses, is equal to or greater than the equivalent of 70 on a scale of 100. The principal and each of the student's teachers shall make the determination concerning the student's grades. *Education Code 33.081(d)*

Suspension for Certain Conduct Involving Extracurricular Officials

A student who is enrolled in a district in Texas or who participates in a UIL competition shall be prohibited from participation in any future extracurricular activity sponsored or sanctioned by the district or the UIL if the state executive committee of the league determines that the student intentionally, knowingly, or recklessly causes bodily injury to a person serving as referee, judge, or other official of an extracurricular activity in retaliation for or as a result of the person's actions taken in performing the duties of a referee, judge, or other official of the extracurricular activity.

Reinstatement After Conduct

A student prohibited from participation may submit to the UIL a request that the student be permitted to participate in future extracurricular activities sponsored or sanctioned by the UIL. The request must be submitted at least one year after the date the student engaged in the conduct that resulted in the prohibition if the student was enrolled in eighth grade or below at the time of the conduct or two years after the date the student engaged in the conduct that resulted in the prohibition if the student was enrolled in ninth grade or above at the time of the conduct.

Education Code 33.081(e-1)–(e-2)

Parental Notice and Consent

A parent is entitled to full information regarding the school activities of a parent's child except as provided by Education Code 38.004 (child abuse investigations). *Education Code 26.008(a)*

Anonymous Evaluations

Anonymous evaluations of a student that determine whether the student may participate in a school-related program do not provide full information about the student's school activities. A district may by policy establish the parameters for parental contact with evaluating teachers, taking into account the type of evaluation, the information elicited in the evaluation, and scheduling and workload requirements of the teachers. *Byard v. Clear Creek Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 020-R5-1001 (June 17, 2002)*

Videotaping and Recording	A district employee 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. *Education Code 26.009(b)(2)*
Discriminatory Club	An extracurricular activity sponsored or sanctioned by a district, including an athletic event or an athletic team practice, may not take place at an athletic club located in the United States that denies any person full and equal enjoyment of equipment or facilities provided by the athletic club because of the person's race, color, religion, creed, national origin, or sex. "Athletic club" means an entity that provides sports or exercise equipment or facilities to its customers or members or to the guests of its customers or members. *Education Code 33.082*
Special Olympics Recognition	If a district allows high school students to earn a letter for academic, athletic, or extracurricular achievements, the district must allow high school students to earn a letter on the basis of a student's participation in a Special Olympics event. *Education Code 33.093*
Student Election Clerks	Unless applied toward instructional requirements [see EIA], a student who is appointed as a student election clerk under Election Code 32.0511 or as a student early voting clerk under Election Code 83.012, may apply the time served toward a service requirement for participation in a school-sponsored extracurricular activity at the discretion of the school sponsor. *Education Code 33.092*
Before-School and After-School Programs	The board may establish before-school or after-school programs for students enrolled in elementary or middle school grades. A program established under this section may operate before, after, or before and after school hours. A student is eligible to participate in the district's before-school or after-school program if the student is enrolled in a public or private school or resides within the boundaries of the district. A district shall conduct a request for proposals procurement process to enable the district to determine if contracting with a child-care facility that provides a before-school or after-school program, as defined by Human Resources Code 42.002, to provide the district's before-school or after-school program would serve the district's best interests. Following the request for proposals procurement process, the district may enter into a contract with a child-care facility or implement a before-school or after-school program operated by the district. If the district enters into a contract with a

child-care facility, the contract must comply with the requirements of Education Code 44.031 and may not exceed a term of three years.

The board may adopt rules in accordance with Education Code 11.165 [see BAA] to provide access to school campuses before or after school hours for the purpose of providing a before-school or after-school program.

Education Code 33.9031

First Amendment

A district shall take no action respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition a board for a redress of grievances. *U.S. Const. Amend. I*

Freedom of Speech

Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. At school and school events, students have First Amendment rights, applied in light of the special characteristics of the school environment.

Student expression that is protected by the First Amendment may not be prohibited absent a showing that the expression will materially and substantially interfere with the operation of the school or the rights of others.

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969)
[See also FNCI]

The special characteristics of the school environment and the governmental interest in stopping student drug abuse allow a district to restrict student expression that it reasonably regards as promoting illegal drug use. *Morse v. Frederick, 551 U.S. 393 (2007)*

When a student threatens violence against a student body, such specific threatening speech to a school or its population is unprotected by the First Amendment: school officials may punish such speech without first collecting evidence sufficient to prove a reasonable belief that disruption would occur as a result of the speech. *Ponce v. Socorro Indep. Sch. Dist., 508 F.3d 765 (5th Cir. 2007)*

The inculcation of fundamental values necessary to the maintenance of a democratic society is part of the work of the school. The First Amendment does not prevent school officials from determining that particular student expression is vulgar and lewd, and therefore contrary to the school's basic educational mission. *Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986)*

Public schools may have a special interest in regulating some off-campus student speech, however, the interest must be sufficient to overcome the student's interest in free expression. Circumstances that may implicate a school's regulatory interests include serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices. *Mahanoy Area School District v. B.L., 141 S.Ct. 2038 (2021)*

Prayer at School Activities

A public school student has an absolute right to individually, voluntarily, and silently pray or meditate in school in a manner that does not disrupt the instructional or other activities of the school. A student shall not be required, encouraged, or coerced to engage in or refrain from such prayer or meditation during any school activity. *Education Code 25.901*

Nothing in the Constitution as interpreted by the U.S. Supreme Court prohibits any public school student from voluntarily praying at any time before, during, or after the school day. But the religious liberty protected by the Constitution is abridged when a district affirmatively sponsors the particular religious practice of prayer.

A district shall not adopt a policy that establishes an improper majoritarian election on religion and has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events.

Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000) (addressing school-sponsored, student-led prayer delivered over the public address system at high school football games) [For invocations and benedictions at commencement, see FMH.]

Federal Funds

As a condition of receiving federal funds under the Elementary and Secondary Education Act (ESEA), a district shall certify in writing to TEA that no policy of the district prevents, or otherwise denies participation in, constitutionally protected prayer in public schools, as detailed in the guidance from the United States secretary of education regarding constitutionally protected prayer. The certification shall be provided by October 1 of each year.

By November 1 of each year, TEA shall report to the secretary a list of districts that have not filed the certification or against which complaints have been made to TEA that the district is not in compliance with this section. The secretary may issue and secure compliance with rules or orders with respect to a district that fails to certify, or is found to have certified in bad faith, that no policy of the district prevents, or otherwise denies participation in, constitutionally protected prayer in public schools.

20 U.S.C. 7904

Expression of Religious Viewpoints

A district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject. *Education Code 25.151*

Policies

A district shall adopt and implement a local policy regarding a limited public forum and voluntary student expression of religious viewpoints. If a district voluntarily adopts and follows the model policy governing voluntary religious expression in public schools at Education Code 25.156, the district is in compliance with the provisions of Education Code Chapter 25, Subchapter E covered by the model policy.

A district shall adopt a policy that includes the establishment of a limited public forum for student speakers at all school events at which a student is to publicly speak. The policy regarding the limited public forum must also require a district to:

1. Provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject;
2. Provide a method, based on neutral criteria, for the selection of student speakers at school events and graduation ceremonies;
3. Ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and
4. State, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the district.

Student expression on an otherwise permissible subject may not be excluded from the limited public forum because the subject is expressed from a religious viewpoint.

Disclaimer

The disclaimer required by item 4, above, must be provided at all graduation ceremonies. A district must continue to provide the disclaimer at any other event in which a student speaks publicly for as long as a need exists to dispel confusion over the district's nonsponsorship of the student's speech.

Education Code 25.152, .155

Class Assignments

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Homework and classroom assignments must be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by a district. Students may not be penalized or rewarded on account of the religious content of their work. *Education Code 25.153*

[For information on the study of religion, see EMI. For information on student religious groups and activities, see FNAB.]

Patriotic Observances

A district may officially encourage students to express love for the United States by reciting historical documents or singing official anthems that contain religious references; such patriotic or ceremonial occasions do not constitute a school-sponsored religious exercise. *Engel v. Vitale, 370 U.S. 421 (1962)*

A district shall not, however, compel students to participate in patriotic observances. *West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (holding unconstitutional a requirement that students salute the United States flag and recite the Pledge of Allegiance)*

Winter Celebrations

A district may educate students about the history of traditional winter celebrations, and allow students and district staff to offer traditional greetings regarding the celebrations, including:

1. "Merry Christmas";
2. "Happy Hanukkah"; and
3. "Happy holidays."

A district may display on school property scenes or symbols associated with traditional winter celebrations, including a menorah or a Christmas image such as a nativity scene or Christmas tree, if the display includes a scene or symbol of more than one religion or one religion and at least one secular scene or symbol.

A display relating to a traditional winter celebration may not include a message that encourages adherence to a particular religious belief.

Education Code 29.920

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.

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 district.

Education Code 37.006(a)

Exception — Removal to a DAEP for school-related misconduct is not required if the student is expelled for the same conduct. *Education Code 37.006(m)*

Retaliation — 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. *Education Code 37.006(b)*

Conduct Unrelated to School — In addition to the circumstances listed above, a student shall be removed from class and placed in a DAEP based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

1. The student receives deferred prosecution under Family Code 53.03 for conduct defined as a felony offense in Penal Code Title 5 or the felony offense of aggravated robbery under Penal Code 29.03;

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]

Title 5 Felonies — The following are felony offenses listed in Penal Code, Title 5, Offenses Against the Person.

1. Murder. *Penal Code 19.02*
2. Capital Murder. *Penal Code 19.03*
3. Manslaughter. *Penal Code 19.04*
4. Criminally Negligent Homicide. *Penal Code 19.05*
5. Unlawful Restraint, if:
    a. The person restrained was younger than 17 years of age; or
    b. The actor recklessly exposes the victim to a substantial risk of serious bodily injury; restrains an individual the actor knows is a public servant while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty; or while in custody restrains any other person. *Penal Code 20.02*
6. Kidnapping. *Penal Code 20.03*
7. Aggravated Kidnapping. *Penal Code 20.04*
8. Smuggling of Persons. *Penal Code 20.05*
9. Continuous Smuggling of Persons. *Penal Code 20.06*
10. Trafficking of Persons. *Penal Code 20A.02*
11. Continuous Trafficking of Persons. *Penal Code 20A.03*
12. Continuous Sexual Abuse of Young Child or Disabled Individual. *Penal Code 21.02*
13. Bestiality. *Penal Code 21.09*
14. Indecency with a Child. *Penal Code 21.11*
15. Improper Relationship between Educator and Student. *Penal Code 21.12*
16. Invasive Visual Recording. *Penal Code 21.15*
17. Unlawful Disclosure or Promotion of Intimate Visual Material. *Penal Code 21.16*
18. Voyeurism, if the victim was younger than 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. *Penal Code 22.01*

21. Sexual Assault. *Penal Code 22.011*
22. Aggravated Assault. *Penal Code 22.02*
23. Aggravated Sexual Assault. *Penal Code 22.021*
24. Injury to a Child, Elderly Individual, or Disabled Individual. *Penal Code 22.04*
25. Abandoning or Endangering a Child. *Penal Code 22.041*
26. Deadly Conduct, if the person knowingly discharges a firearm at or in the direction of one or more individuals, or at or in the direction of a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied. *Penal Code 22.05*
27. Terroristic Threat, if the actor threatens to commit any offense involving violence to any person or property with intent to:
    a. Place any person in fear of imminent serious bodily injury if the actor knows the person is a peace officer or judge;
    b. Prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or other public place if the prevention or interruption causes pecuniary loss of $1,500 or more to the owner;
    c. Cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;
    d. Place the public or a substantial group of the public in fear of serious bodily injury; or
    e. Influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision. *Penal Code 22.07*
28. Aiding Suicide, if the conduct causes suicide or attempted suicide that results in serious bodily injury. *Penal Code 22.08*
29. Tampering with Consumer Product. *Penal Code 22.09*
30. Harassment by Persons in Certain Facilities or of Public Servant. *Penal Code 22.11*

Sexual Assault of Another Student

A student shall be removed from class and placed in a DAEP or juvenile justice alternative education program (JJAEP) if:

1. The student was convicted of, received adjudication for, or was placed on probation for sexual assault of another student who was a young child or disabled individual while the students were assigned to the same campus, regardless of whether the assault occurred on or off school property;
2. The parent of the victim of the assault has requested that the student be transferred to a campus other than that to which the victim is assigned; and
3. There is only one campus in a district serving the grade level in which the student is enrolled.

Education Code 25.0341, 37.0051(a) [See FDE at Sexual Assault Transfer—Transfer of Assailant]

A limitation imposed by Education Code Chapter 37 on the length of placement in a DAEP or a JJAEP does not apply to a placement under this provision. *Education Code 37.0051(b)*

Permissive Removal

Non-Title 5 Felony

A student may be removed from class and placed in a DAEP based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

1. The superintendent or designee has a reasonable belief [see Reasonable Belief, above] that the student has engaged in conduct defined as a felony offense other than aggravated robbery under Penal Code 29.03, or those offenses listed in Penal Code Title 5 [see above at Title 5 Felonies]; and
2. The continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

Education Code 37.006(d)–(e)

Bullying

A student may be removed from class and placed in a DAEP if the student:

1. Engages in bullying that encourages a student to commit or attempt to commit suicide;
2. Incites violence against a student through group bullying; or
3. Releases or threatens to release intimate visual material of a minor or student who is 18 years of age or older without the student's consent.

Nothing in this provision exempts a school from reporting a finding of intimate visual material of a minor.

Definitions

Bullying — "Bullying" has the meaning assigned by Education Code 37.0832. [See FFI]

Intimate Visual Material — "Intimate visual material" has the meaning assigned by Civil Practice and Remedies Code 98B.001.

Education Code 37.0052

One Year After Conduct — A principal or other appropriate administrator may, but is not required to, remove a student to a DAEP for off-campus conduct, for which removal would otherwise be required, if the principal or other appropriate administrator did not have knowledge of the conduct before the first anniversary of the date the conduct occurred. *Education Code 37.006(n)*

Certain Organization and Gang Membership and Solicitation — A board or an educator shall recommend placing in DAEP any student who commits the misdemeanor offenses described in Education Code 37.121(a) and (c), regarding membership in or solicitation to join a public school fraternity, sorority, secret society, or gang [see FNCC]. *Education Code 37.121(b)*

Older Students — A person who is 21 years of age or older and is admitted by a district for the purpose of completing the requirements for a diploma is not eligible for placement in a DAEP if the person engages in conduct that would require or authorize such placement for a student under the age of 21. If the student engages in such conduct, the district shall revoke the student's admission. *Education Code 25.001(b-1)*

Placement of Younger Students — A student who is younger than 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. *Education Code 37.006(f), .007(e)* [See FOD]

Students Younger Than Six — Notwithstanding any other provision of the Education Code, a student who is younger than six years of age may not be removed from class and placed in a DAEP, except that a student younger than six years of age who has been expelled pursuant to the Gun Free Schools Act [see FOD] shall be provided educational services in a DAEP. *Education Code 37.006(l), .007(e)(2)*

Process for Removal

Conference — Not later than the third class day after a student is removed by a teacher or by the school principal or other appropriate administrator, the campus behavior coordinator (CBC) or other appropriate administrator shall schedule a conference among the CBC or other appropriate administrator, the student's parent or guardian, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the re-

moval, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular class pending the conference.

Mitigating Factors — Before ordering removal 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 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 — The period of the placement after removal may not exceed one year unless, after a review, a district determines that the student is a threat to the safety of other students or to district employees. *Education Code 37.009(a)*

A board or designee shall set a term for a student's placement in a DAEP. If the period of placement is inconsistent with the guidelines in the Student Code of Conduct, the order must give notice of the inconsistency. The period of placement in a DAEP may not exceed one year unless, after a review, a district determines that the student is a threat to the safety of other students or to district employees or extended placement is in the best interest of the student. *Education Code 37.009(d)*

Beyond Grading Period or 60 Days — If placement in a DAEP is to extend beyond 60 days or the end of the next grading period, whichever is earlier, the student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before a board or designee.

No Appeal

Any decision of a board or designee concerning placement beyond 60 days or the end of the next grading period is final and cannot be appealed.

Education Code 37.009(b)

Beyond End of School Year

Before a student may be placed in a DAEP for a period that extends beyond the end of the school year, a board or designee must determine that:

1. The student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or another individual; or
2. The student has engaged in serious or persistent misbehavior that violates the Student Code of Conduct.

Education Code 37.009(c)

Order of Removal

A board or designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a DAEP. *Education Code 37.009(g)*

Not later than the second business day after the date of the removal conference, a board or designee shall deliver a copy of the order placing the student in a DAEP and any information required under Family Code 52.04 to the authorized officer of the juvenile court in the county in which the juvenile resides. *Education Code 37.010(a)*

Activities

The terms of a placement under Education Code 37.006 must prohibit the student from attending or participating in school-sponsored or school-related activities. *Education Code 37.006(g)*

In addition to any notice required under Code of Criminal Procedure 15.27 [see GRAA], a principal or designee shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in conduct for which DAEP placement must or may be ordered.

Each educator shall keep the information confidential from any person not entitled to the information, except that the educator may share the information with the student's parent or guardian as provided by state or federal law. An educator's certificate may be suspended or revoked for intentional failure to keep such information confidential.

Education Code 37.006(o)

Completion of Proceedings Upon Withdrawal

If a student withdraws from a district before an order for placement in a DAEP is entered, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student re-enrolls in the district the same or subsequent school year, the district may enforce the order at that time except for any period of the placement that has been served by the student in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order. *Education Code 37.009(i)*

Enrollment in Another District

If a student placed in a DAEP enrolls in another district before the expiration of the placement, a board shall provide to the district in which the student enrolls a copy of the placement order at the same time it provides other records. The district in which the student enrolls shall inform each educator who will have responsibility for, or will be under the direction and supervision of an educator who will have responsibility for, the instruction of the student of the contents of the placement order. Each educator shall keep the information confidential from any person not entitled to the information, except that the educator may share the information with the student's parent or guardian as provided by state or federal law.

The district in which the student enrolls may continue the placement or allow the student to attend regular classes without completing the period of placement. [See FO] The district in which the student enrolls may take any of these actions if:

1. The student was placed in a DAEP by an open-enrollment charter school and the charter school provides the district a copy of the placement order; or
2. The student was placed in a DAEP by a district in another state and:
    a. The out-of-state district provides a copy of the placement order; and
    b. The grounds for placement are the same as grounds for placement in the enrolling district.

Education Code 37.008(j)

Out-of-State Placement

If a student was placed in a DAEP in another state for more than one year and the enrolling district continues the placement under Education Code 37.008(j), the enrolling district shall reduce the period of placement so that the aggregate period does not exceed one year unless the enrolling district determines that:

1. The student is a threat to the safety of other students or to district employees; or

2. Extended placement is in the best interest of the student.

Education Code 37.008(j-1)

Court-Ordered Placement

Unless a board and the juvenile board for the county in which a district's central administrative office is located have entered into a memorandum of understanding concerning the juvenile probation department's role in supervising and providing other support services for students in DAEP programs:

1. A court may not order a student expelled under Section 37.007 to attend a school district DAEP as a condition of probation;

2. A court may not order a student to attend a DAEP without a district's consent, until the student has successfully completed any sentencing requirements, if the court has ordered the student to attend a DAEP as a condition of probation once during a school year and the student is referred to juvenile court again during that school year.

Education Code 37.010(c)–(d)

School Activities

Any court placement in a DAEP must prohibit the student from attending or participating in school-sponsored or school-related activities. *Education Code 37.010(e)*

Placement After Court Disposition

After the student has successfully completed any court disposition requirements, including conditions of deferred prosecution or conditions required by the prosecutor or probation department, a district may not refuse to admit the student if the student meets the requirements for admission into the public schools. A district may place the student in the DAEP.

Notwithstanding Education Code 37.002(d) [see FOA], the student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

Education Code 37.010(f)

Not Guilty/ Insufficient Evidence/Charges Dropped

The office of the prosecuting attorney or the office or official designated by the juvenile board shall, within two working days, notify the school district that removed a student to a DAEP under Education Code 37.006 if:

1. Prosecution of a student was refused for lack of prosecutorial merit or insufficient evidence, and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

2. A court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

On receipt of the notice, the superintendent or designee shall review the student's placement in the DAEP. The student may not be returned to the regular classroom pending the review. The superintendent or designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third class day after the superintendent or designee receives notice from the office or official designated by the court.

After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or designee may continue the student's placement in the DAEP if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

Education Code 37.006(h); Code of Criminal Procedure 15.27(g)

Appeal After Placement Upheld

The student or the student's parent or guardian may appeal a superintendent's decision to the board. The student may not be returned to the regular classroom pending the appeal. A board shall, at the next scheduled meeting, review the notice provided by the office of the prosecuting attorney or the office or official designated by the juvenile board; receive information from the student, the student's parent or guardian, and the superintendent or designee; and confirm or reverse the superintendent's decision. The board shall make a record of the proceedings.

If a board confirms the decision, the board shall inform the student and the student's parent or guardian of the right to appeal to the commissioner of education. The student may not be returned to the regular classroom pending the appeal to the commissioner.

Education Code 37.006(i)–(j)

120-Day Review of Status

A student placed in a DAEP shall be provided a review of the student's status, including a review of the student's academic status, by a board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress toward meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required to provide a course in the DAEP, except as required by

Education Code 37.008(l). [See FOCA] At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent. *Education Code 37.009(e)*

Additional Proceedings

If, during the term of placement, a student engages in additional conduct for which placement in a DAEP or expulsion is required or permitted, additional proceedings may be conducted and the principal or board, as appropriate, may enter an additional order. *Education Code 37.009(j)*

Reporting

A district may include the number of students removed to a DAEP in its annual performance report. *Education Code 39.306(e)(5)* [See AIB]

Note: See FOF for provisions concerning students with disabilities.

A disciplinary alternative education program (DAEP) is an educational and self-discipline alternative instruction program, adopted by local policy, 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)*

[See board-adopted Student Code of Conduct for information regarding DAEP.]

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)*

Shared Service Arrangements

A district that participates in a shared service arrangement for DAEP services shall ensure that the district improvement plan and each campus-level plan include the performance of the DAEP student group for the district in accordance with 19 Administrative Code 103.1201(b) [see BQ]. *19 TAC 103.1201(b)*

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. *Education Code 37.008(a)(1)*

A DAEP may be located on-campus or off-campus in adherence with requirements of the *Student Attendance Accounting Handbook*. For reporting purposes, the DAEP shall use the county-district-campus number of the student's locally assigned campus (the

campus the student would be attending if the student was not attending the DAEP). *19 TAC 103.1201(c); Education Code 37.008(a)(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.

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 focuses 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 required high school personal graduation plan [see EIF] 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)*

School Day

The school day for a DAEP shall be at least 240 minutes in length each day, including intermissions and recesses. *19 TAC 103.1201(f)(2)*

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.

The assessment instrument:

1. Must be designed to assess at least a student's basic skills in reading and mathematics;
2. May be:
    a. Comparable to any assessment instrument generally administered to students placed in juvenile justice alternative education programs for a similar purpose; or
    b. Based on an appropriate alternative assessment instrument developed by the agency to measure student academic growth; and
3. Is in addition to the required state assessments [see EKB].

Education Code 37.0082

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 for reading and mathematics for the student's assigned grade. The commissioner will publish on the TEA website a list of assessments approved for use in each school year. A district may contact TEA to obtain accommodated versions of particular assessments.

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 school days of the student completing the post-assessment.

Procedures for administering the pre- and post-assessment, including appropriate accommodations as needed, shall be developed and implemented in accordance with local district policy.

A student in the district's DAEP must also be assessed under the required state assessment [see EKB].

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 to Regular Classroom

The transition services established for a student who is exiting a DAEP and returning to the student's locally assigned campus shall be implemented as required by Education Code 37.023.*19 TAC 103.1201(k)*

Definitions

"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.

"Licensed clinical social worker" has the meaning assigned by Occupations Code 505.002.

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;
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 Education Code 25.085 [see FEA].

Education Code 37.023(e)–(f)

Students with Disabilities Under Section 504

A district shall conduct an evaluation in accordance with 34 C.F.R. 104.35(b) before taking any action with respect to any significant change in placement of a student with a disability who needs or is believed to need special education and related services. *34 C.F.R. 104.35(a)*

A district may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability who is currently engaging in the illegal use of drugs or in the use of alcohol to the same extent that the district would take disciplinary action against nondisabled students. The due process procedures afforded under Section 504 do not apply to such disciplinary action. *29 U.S.C. 705(20)(C)(iv)*

Note: The provisions below apply only to students eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA).

Students Receiving Special Education Services

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 (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(a)–(b)*

The methods adopted in the Student Code of Conduct [see FO] for discipline management and for preventing and intervening in student discipline problems must provide that a student who is enrolled in the special education program may not be disciplined 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.

Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of functional behavioral assessments; positive behavioral interventions, strategies, and supports; behavioral intervention plans; and the manifestation determination review [see Manifestation Determination, below].

Education Code 37.004(b)

Behavior Assessment and Intervention

If a district takes a disciplinary action regarding a student with a disability who receives special education services that constitutes a change in placement under federal law, the district shall:

1. Not later than the tenth school day after the change in placement:

a. Seek consent from the student's parent or person standing in parental relation to the student to conduct a functional behavioral assessment of the student, if a functional behavioral assessment has never been conducted on the student or the student's most recent functional behavioral assessment is more than one year old; and

b. Review any previously conducted functional behavioral assessment of the student and any behavior improvement plan or behavioral intervention plan developed for the student based on that assessment; and

2. As necessary, develop a behavior improvement plan or behavioral intervention plan for the student if the student does not have a plan or, if the student has a behavior improvement plan or behavioral intervention plan, revise the student's plan.

Education Code 37.004(b-1)

Change in Placement

For purposes of disciplinary removal of a student with a disability, a change in placement occurs if a student is:

1. Removed from the student's current educational placement for more than 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 telephone calls. The JJAEP may participate in the meeting to the extent that the meeting relates to the student's continued placement in JJAEP.

19 TAC 89.1052

Manifestation

If the district, the parents, and relevant members of the ARD committee determine that the conduct was a manifestation of the student's disability, the ARD committee shall:

1. Conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan (BIP) for the student; or

2. If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

Except as provided at Special Circumstances, below, the ARD committee shall return the student to the placement from which the

student was removed, unless the parent and the district agree to a change in placement as part of the modification of the BIP.

20 U.S.C. 1415(k)(1)(F); 34 C.F.R. 300.530(f)

Special Circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the Texas Education Agency (TEA) or a school district;
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of TEA or a school district; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of TEA or the district.

20 U.S.C. 1415(k)(1)(G); 34 C.F.R. 300.530(g)

The ARD committee shall determine the interim alternative education setting. *20 U.S.C. 1415(k)(2)*

Services During Removal

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting.

34 C.F.R. 300.530(d)(1)

Appeals

A parent who disagrees with a placement decision or the manifestation determination may request a hearing. A district that believes that maintaining a current placement of a student is substantially likely to result in injury to the student or others may request a hearing. *20 U.S.C. 1415(k)(3)(A); 34 C.F.R. 300.532(a); 19 TAC 89.1151*

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)*

District Knowledge

A district shall be deemed to have knowledge that a student has a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent of the student expressed concern in writing to supervisory or administrative personnel of the district, or to the teacher of the student, that the student was in need of special education and related services;
2. The parent requested an evaluation of the student for special education and related services; or
3. The student's teacher, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the special education director or to other supervisory personnel of the district.

20 U.S.C. 1415(k)(5)(B); 34 C.F.R. 300.534(b)

Exception

A district shall not be deemed to have knowledge that the student had a disability if:

1. The parent has not allowed an evaluation of the student;
2. The parent has refused services; or

3. The student has been evaluated and it was determined that the student did not have a disability.

20 U.S.C. 1415(k)(5)(C); 34 C.F.R. 300.534(c)

If a district does not have knowledge (as described above), before taking disciplinary measures, that a student has a disability, the student may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

20 U.S.C. 1415(k)(5)(D); 34 C.F.R. 300.534(d)

Behavior Management Techniques

It is the policy of the state to treat all students with dignity and respect, including students with disabilities who receive special education services. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities. *Education Code 37.0021(a); 19 TAC 89.1053(j)*

[For restrictions on aversive techniques, see FO.]

Rules on Restraint and Seclusion

The commissioner by rule shall adopt procedures for the use of restraint and time-out by a district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services. The procedures must be consistent with Education Code 37.0021(d). *Education Code 37.0021(d)*

School Peace Officers

This 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 (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).

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)

Note: The Board has adopted an innovation plan[1] that affects application of provisions in this legally referenced policy.

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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*

Tobacco and E-Cigarettes

A board shall prohibit smoking or using e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property. School personnel shall enforce these policies on school property. *Education Code 38.006* [See FNCD for the definition of e-cigarette.]

Smoking in Buildings

A district shall not permit smoking within any indoor facility used for provision of routine or regular kindergarten, elementary, or secondary education or library services to children; or regular or routine health care or day care or early childhood development (Head Start) services to children or for the use of employees who provide such services. *20 U.S.C. 6083; 20 U.S.C. 7183*

Criminal Penalty

A person commits an offense if the person is in possession of a burning tobacco product, smokes tobacco, or operates an e-cigarette in a facility of a public school.

Defense

It is a defense to prosecution that a district does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such place and that an offense is punishable by a fine not to exceed $500.

Facilities for Extinguishment

A district shall be equipped with facilities for extinguishment of smoking materials.

Penal Code 48.01(a)–(c)

Alcohol

A board shall prohibit the use of alcoholic beverages at school-related or school-sanctioned activities on or off school property. *Education Code 38.007(a)* [See FNCF regarding alcohol-free zones.]

Intoxicants

A person commits a Class C misdemeanor if the person possesses an intoxicating beverage for consumption, sale, or distribution while:

1. On the grounds or in a building of a public school; or
2. Entering or inside any enclosure, field, or stadium where any athletic event sponsored or participated in by a public school is being held.

Education Code 37.122 [See also FNCF]

Fireworks

A person may not explode or ignite fireworks within 600 feet of any school unless the person receives authorization in writing from the school. *Occupations Code 2154.251(a)(1)*

Federal Gun-Free School Zones Act

It is unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.

"School zone" means in, or on the grounds of, a school; or within a distance of 1,000 feet from the grounds of a school.

This prohibition does not apply to the possession of a firearm:

1. On private property not part of school grounds;
2. If the individual possessing the firearm is licensed to do so by the state, and the law of the state requires that, before an individual obtains such a license, the law enforcement authorities of the state verify that the individual is qualified under law to receive the license;
3. That is not loaded and in a locked container, or a locked firearms rack that is on a motor vehicle;
4. By an individual for use in a program approved by a school in the school zone;
5. By an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
6. By a law enforcement officer acting in his or her official capacity; or
7. That is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

It is unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm at a place that the person knows is a school zone.

This prohibition does not apply to the discharge of a firearm:

1. On private property not part of school grounds;
2. As part of a program approved by a school in the school zone, by an individual who is participating in the program;
3. By an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or
4. By a law enforcement officer acting in his or her official capacity.

18 U.S.C. 921(a)(25), .922(q)

Possession of Weapons

Unless entitled to a defense or otherwise excepted by Penal Code 46.15, a person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or prohibited weapon [see FNCG]:

1. On the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution;
2. On the premises of a polling place on the day of an election or while early voting is in progress;
3. On the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a firearm, location-restricted knife, club, or prohibited weapon is used in the event;
4. In the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to the OMA, and the entity provided required notice of the meeting.

It is not a defense to prosecution that the person possessed a handgun and was licensed to carry a handgun.

Penal Code 46.03(a)(1), (2), (8), (14), (f)

“Premises” Defined

“Premises,” for purposes of this policy, means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. *Penal Code 46.03(c)(4)*

Notice to Public

A district may provide notice that firearms and other weapons are prohibited under Penal Code 46.03 on the premises or other property, as applicable, by posting a sign at each entrance to the premises or other property that:

1. Includes language that is identical to or substantially similar to the following: “Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property”;
2. Includes the language described above in both English and Spanish;
3. Appears in contrasting colors with block letters at least one inch in height; and

4. Is displayed in a conspicuous manner clearly visible to the public.

Without a sign described above posted prominently at each entrance to the premises or other property, as applicable, a person can assert a defense to prosecution for unlawfully carrying a handgun if the person personally received notice that carrying a firearm was prohibited and promptly departed from the premises or other property.

Penal Code 46.15(m)–(o)

Transportation or Storage of Firearm in School Parking Area

A district may not prohibit a person who holds a license to carry a handgun under Government Code, Chapter 411, Subchapter H, from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other parking area provided by the district, and may not regulate the manner in which the handgun, firearm, or ammunition is stored in the vehicle, provided that the handgun, firearm, or ammunition is not in plain view.

This does not authorize a person to possess, transport, or store a handgun, a firearm, or ammunition in violation of Education Code 37.125, Penal Code 46.03, or other law.

Education Code 37.0815

Volunteer Emergency Services Personnel

A district is not liable in a civil action arising from the discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun under Government Code, Chapter 411, Subchapter H.

The discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun under Subchapter H, Chapter 411, Government Code, is outside the course and scope of the individual's duties as volunteer emergency services personnel.

The district does not waive immunity from suit or liability under the Texas Tort Claims Act or any other law.

“Volunteer emergency services personnel” includes a volunteer firefighter, an emergency medical services volunteer as defined by Health and Safety Code 773.003, and any individual who, as a volunteer, provides services for the benefit of the general public during emergency situations. The term does not include a peace officer or reserve law enforcement officer, as those terms are defined

by Occupations Code 1701.001, who is performing law enforcement duties.

Civ. Prac. & Rem. Code 112.001; Penal Code 46.01(18)

Exhibition of Firearm

A person commits a third degree felony if, in a manner intended to cause alarm or personal injury to another person or to damage school property, the person intentionally:

1. Exhibits or uses a firearm:
    a. In or on any property, including a parking lot, parking garage, or other parking area, that is owned by a private or public school; or
    b. On a school bus being used to transport children to and from school-sponsored activities;
2. Threatens to exhibit or use a firearm in or on property described above or on a bus and was in possession of or had immediate access to the firearm.

A person commits a Class A misdemeanor if the person threatens to exhibit or use a firearm, but was not in possession of or did not have immediate access to the firearm.

Education Code 37.125

Trespass—Concealed Carry of Handgun

A license holder commits an offense if the license holder:

1. Carries a concealed handgun on the property of another without effective consent; and
2. Received notice that entry on the property by a license holder with a concealed handgun was forbidden.

An offense under Penal Code 30.06 is a Class C misdemeanor, except that the offense is a Class A misdemeanor if, after entering the property, the license holder was personally given the notice that entry or remaining on the property with a concealed handgun was forbidden and subsequently failed to depart.

Notice / Sign—Concealed Carry of Handgun

For purposes of Penal Code 30.06, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

“Written communication” means:

1. A card or other document on which is written language identical to the following: “Pursuant to Section 30.06, Penal Code

(trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun"; or

2. A sign posted on the property that includes the language described above in both English and Spanish, appears in contrasting colors with block letters at least one inch in height, and is displayed in a conspicuous manner clearly visible to the public.

Exception

It is an exception to Penal Code 30.06 that the property on which the license holder carries a concealed handgun is owned or leased by a district and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Penal Code 46.03.

Penal Code 30.06 [See also FNCG]

Unauthorized Notice

A district may not take any action, including an action consisting of the provision of notice, by a communication described by Penal Code 30.06 or 30.07 that states or implies that a license holder who is carrying a handgun under the authority of Government Code Chapter 411 is prohibited from entering or remaining on a premises or other place owned or leased by the district unless license holders are prohibited from carrying a handgun on the premises or other place by Penal Code 46.03 or other law. *Gov't Code 411.209*

Trespass—Open Carry of Handgun

A holder of a license to openly carry a handgun commits an offense if the license holder:

1. Openly carries a handgun on property of another without effective consent; and

2. Received notice that entry on the property by a license holder openly carrying a handgun was forbidden.

Notice / Sign—Open Carry of Handgun

For purposes of Penal Code 30.07, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

"Written communication means":

1. A card or other document on which is written language identical to the following: "Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun),

a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly"; or

2. A sign posted on the property that includes the language described above in both English and Spanish, appears in contrasting colors with block letters at least one inch in height, and is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

An offense under Penal Code 30.07 is a Class C misdemeanor, except that the offense is a Class A misdemeanor if, after entering the property, the license holder was personally given the notice by oral communication that entry or remaining on the property with an openly carried handgun was forbidden and subsequently failed to depart.

Exception

It is an exception to Penal Code 30.07 that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Penal Code 46.03.

Penal Code 30.07

Unmanned Aircraft Systems

Note: For provisions applicable to the use of drones for law enforcement purposes, see CKEA

Federal Law

The U.S. Government has exclusive sovereignty of airspace of the United States. *49 U.S.C. 40103*

Small Unmanned Aircraft

"Small unmanned aircraft" means an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.

Small Unmanned Aircraft System

"Small unmanned aircraft system" (small UAS) means a small unmanned aircraft and its associated elements (including communication links and the components that control the small unmanned aircraft) that are required for the safe and efficient operation of the small unmanned aircraft in the national airspace system.

14 C.F.R. 1.1, 107.3

Operation of Small UAS

The registration, airman certification, and operation of civil small UAS within the United States is subject to 14 C.F.R. Part 107. Part 107 does not apply to the following:

1. Air carrier operations;

2. Any aircraft subject to the provisions of 14 C.F.R. Part 101;

3. Any operation that a remote pilot in command elects to conduct pursuant to an exemption issued under 49 U.S.C. 44807, unless otherwise specified in the exemption; or

4. Any operation that a person elects to conduct under 14 C.F.R. Part 91 with a small UAS that has been issued an airworthiness certificate.

14 C.F.R. 107.1

Exception for Limited Recreational Operation

A person may operate a small unmanned aircraft without specific certification or operating authority from the Federal Aviation Administration (FAA) if the operation adheres to all of the following limitations:

1. The aircraft is flown strictly for recreational purposes.

2. The aircraft is operated in accordance with or within the programming of a community-based organization's set of safety guidelines that are developed in coordination with the FAA.

3. The aircraft is flown within the visual line of sight of the person operating the aircraft or a visual observer co-located and in direct communication with the operator.

4. The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft.

5. In Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport, the operator obtains prior authorization from the administrator of the FAA or designee before operating and complies with all airspace restrictions and prohibitions.

6. In Class G airspace, the aircraft is flown from the surface to not more than 400 feet above ground level and complies with all airspace restrictions and prohibitions.

7. The operator has passed an aeronautical knowledge and safety test and maintains proof of test passage to be made available to the FAA or law enforcement upon request.

8. The aircraft is registered and marked in accordance with 49 U.S.C. Chapter 441 and proof of registration is made available to the FAA or law enforcement upon request.

49 U.S.C. 44809(a)

State Law

Regulation Limited

A political subdivision, including a school district, may not adopt or enforce any ordinance, order, or other similar measure regarding the operation of an unmanned aircraft. An ordinance, order, or other similar measure that violates this provision is void and unenforceable. *Gov't Code 423.009(b), (d)*

Exception

A political subdivision may adopt and enforce an ordinance, order, or other similar measure regarding:

1. The use of an unmanned aircraft during a special event;
2. The political subdivision's use of an unmanned aircraft; or
3. The use of an unmanned aircraft near a facility or infrastructure owned by the political subdivision, if the political subdivision:
    a. Applies for and receives authorization from the Federal Aviation Administration to adopt the regulation; and
    b. After providing reasonable notice, holds a public hearing on the political subdivision's intent to apply for the authorization.

"Special event" means a festival, celebration, or other gathering that involves the reservation and temporary use of all or a portion of a public park, road, or other property of a political subdivision; and entertainment, the sale of merchandise, food, or beverages, or mass participation in a sports event; and requires a significant use or coordination of a political subdivision's services.

Gov't Code 423.009(a)(2), (c)

Privacy Law

It is lawful to capture an image using an unmanned aircraft in this state for the reasons listed in Government Code 423.002, including:

1. With the consent of the individual who owns or lawfully occupies the real property captured in the image; or
2. From a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception.

Gov't Code 423.002(a)

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[1] Innovation Plan: https://tx50000620.schoolwires.net/

Prohibited Acts

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:

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;
2. Refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the district;
3. Refuse to grant a benefit to the person; or
4. Impose an unreasonable burden on the person.

Civ. Prac. & Rem. Code 106.001(a)

Right to Preserve Use

A district, like a private property owner, may legally preserve the property under its control for the use to which it is dedicated. *Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384 (1993)*

Forum for Communication

A district may create a public forum of a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37 (1983); Chiu v. Plano Indep. Sch. Dist., 260 F.3d 330 (5th Cir. 2001)*

A district is not required to allow persons to engage in every type of speech when the district establishes a limited public forum; the district may be justified in reserving its forum for certain groups or for the discussion of certain topics. A district shall not discriminate against speech on the basis of viewpoint, and any restriction must be reasonable in light of the purpose served by the forum. *Good News Club v. Milford Cent. Sch., 533 U.S. 98 (2001); Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384 (1993)*

Fees for Use

The board may set and collect rentals, rates, and charges from students and others for the occupancy or use of any of a district's facilities, in the amounts and manner determined by the board. *Education Code 45.033*

Charter Schools

A district may not require a campus or campus program charter that is the result of the conversion of the status of an existing district campus to pay rent for or to purchase a facility in order to use the facility.

A district may not require a campus or campus program charter, or an open-enrollment charter school, to pay for any service provided

by the district under a contract between the district and the campus, campus program, or open-enrollment charter school an amount that is greater than the amount of the actual costs to the district of providing the service.

Education Code 11.1543

Patriotic Societies

If a district has a designated open forum or a limited public forum and receives funds made available through the United States Department of Education, the district shall not deny equal access or a fair opportunity to meet, or to discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in Title 36 of the United States Code (as a patriotic society), that wishes to conduct a meeting within that designated open forum or limited public forum, including denying such access or opportunity or discriminating for reasons based on the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed as a patriotic society.

The United States secretary of education may issue and secure compliance with rules or orders with respect to a district that receives federal funds and that denies equal access, or a fair opportunity to meet, or discriminates, as described above. If a district does not comply with the rules or orders, no funds made available through the Department of Education shall be provided to that district.

[For provisions related to a patriotic society's access to students, see GKE.]

'Youth Group'

"Youth group" means any group or organization intended to serve young people under the age of 21.

Limited Public Forum

For purposes of this policy regarding Patriotic Societies, an elementary school or secondary school has a limited public forum whenever the school grants an offering to, or opportunity for, one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at the school is compulsory.

Sponsorship

Nothing in this policy shall be construed to require a district to sponsor any group officially affiliated with the Boy Scouts of America, or any youth group listed as a patriotic society.

Boy Scouts of America Equal Access Act, 20 U.S.C. 7905

Facilities as Polling Places

A district shall make its buildings available for use as polling places in any election that covers territory in which the buildings are located. If more than one authority requests the use of the buildings

for the same day and simultaneous use is impractical, a district shall determine which authority may use the building. *Election Code 43.031(c)*

No charge, including a charge for personnel, utilities, or other expenses incurred before or after regular business hours, shall be made for the use of a district building for a polling place if the day of the election is a day on which the building is normally open. If the day of an election is a day on which the building is not normally open, a charge may be made only for the reimbursement of actual expenses resulting from use of the building in the election. *Election Code 43.033(a)*

[For provisions related to polling place security, see CKC.]

Political Party Conventions

A district shall not assess a charge for the use of a school building for a precinct, county, or senatorial district convention, except for reimbursement for the actual charges resulting from use of the building for the convention. The district shall provide an itemized statement of expenses to the reimbursing authority. *Election Code 174.0631*

Facilities as Places of Worship

"Disaster" has the meaning assigned by Government Code 418.004.

Definitions

"Governmental entity" includes a political subdivision of this state, including a county, municipality, or special district or authority or an officer, employee, or agent of the entity.

"Person" has the meaning assigned by Government Code 311.005, except the term does not include an employee of a governmental entity acting within the employee's scope of employment or a contractor of a governmental entity acting within the scope of the contract.

"Place of worship" means a building or grounds where religious activities are conducted.

"Public official" means any elected or appointed officer, employee, or agent of this state or any political subdivision, board, commission, bureau, or other public body established by law.

"Religious organization" means an organization open to the public that is a religious organization under Civil Practice and Remedies Code 110.011(b).

Prohibition on Orders Closing Places of Worship

A government agency or public official may not issue an order that closes or has the effect of closing places of worship in this state or in a geographic area of this state.

Essential Activities	Notwithstanding any other law, a religious organization is an essential business at all times in this state, including during a declared state of disaster, and the organization's religious and other related activities are essential activities even if the activities are not listed as essential in an order issued during the disaster. A governmental entity may not at any time, including during a declared state of disaster, prohibit a religious organization from engaging in religious and other related activities or continuing to operate in the discharge of the organization's foundational faith-based mission and purpose or during a declared state of disaster order a religious organization to close or otherwise alter the organization's purposes or activities.
Relief Available	A person may assert a violation of this prohibition as a claim or defense in a judicial or administrative proceeding and obtain injunctive relief; declaratory relief; and court costs and reasonable attorney's fees. A person may commence an action and relief may be granted regardless of whether the person has sought or exhausted available administrative remedies. The attorney general may bring an action for injunctive or declaratory relief against a governmental entity or an officer or employee of a governmental entity to enforce compliance with this provision.
Interpretation	This provision may not be construed to 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. This provision may not be construed to prevent a governmental entity from providing, either directly or through a person who is not seeking protection under this chapter, any benefit or service authorized under state or federal law. *Civ. Prac. & Rem. Code 110.001(a), .0031; Gov't Code 2401.001–.005*

A district shall develop a volunteer program. In developing the program, a district shall consider volunteers a resource that requires advance planning and preparation for effective use. If practicable, a district shall include volunteers in addition to paid staff in planning the implementation of the program. *Gov't Code 2109.003*

Program Requirements and Guidelines

A volunteer program shall include:

1. An effective training program for paid staff and prospective volunteers.
2. The use of paid staff to plan and implement the volunteer program.
3. An evaluation mechanism to assess the performance of volunteers, the cooperation of paid staff with the volunteers, and the overall volunteer program.
4. Follow-up studies to ensure the effectiveness of the program.

Gov't Code 2109.004(a)

A volunteer program may:

1. Establish a program to reimburse volunteers for actual and necessary expenses incurred in the performance of volunteer services.
2. Establish an insurance program to protect volunteers in the performance of volunteer services.
3. Cooperate with private organizations that provide services similar to those provided by a district.
4. Purchase engraved certificates, plaques, pins, and/or other awards of a similar nature that do not exceed $75 per person in value to recognize special achievement and outstanding service of volunteers.

Gov't Code 2109.004(b)

Criminal History Record

A district or shared services arrangement shall obtain from the Texas Department of Public Safety (DPS) and may obtain from any other law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to a volunteer or person who has indicated, in writing, an intention to serve as a volunteer with the district or shared services arrangement. *Gov't Code 22.0835(a)*

The prospective volunteer must provide the district a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government. *Gov't Code 22.0835(c)*

A person may not perform any volunteer duties until these requirements have been satisfied. *Gov't Code 22.0835(d)*

Permissive Exception

A district may, but is not required to, obtain all criminal history record information that relates to a person who volunteers or is applying to volunteer with a district or shared services arrangement if the person:

1. Is the parent, guardian, or grandparent of a child who is enrolled in the district for which the person volunteers or is applying to volunteer;
2. Will be accompanied by a district employee while on a school campus; or
3. Is volunteering for a single event on the school campus.

Gov't Code 22.0835(e), (f)

Costs

A district may require a volunteer or volunteer applicant to pay any costs related to obtaining criminal history record information. *Education Code 22.0835*

[See DBAA(LEGAL) for definitions and provisions regarding confidentiality, records retention, and criminal history record checks of employees.]

Immunity

Generally

A volunteer who is serving as a direct service volunteer in a district is immune from civil liability to the same extent as a district employee under Education Code 22.0511. However, this section of law does not limit the liability of a person for intentional misconduct or gross negligence.

A "volunteer" is a person rendering services for or on behalf of a district on district premises or at a school-sponsored or school-related activity on or off school property who does not receive compensation in excess of reimbursement for expenses.

Education Code 22.053

Extracurricular Activities

A person who volunteers to assist with an extracurricular activity is not liable for civil damages arising out of an act or omission relating to the requirements under Education Code 33.205 regarding safety precautions [see FM(LEGAL)] unless the act or omission is willfully or wantonly negligent. *Education Code 33.211*

Physical Examinations

Subject to Civil Practice and Remedies Code 91.003 (liability insurance requirements), a health-care practitioner who, without compensation or expectation of compensation, conducts a physical examination or medical screening for the purpose of determining the physical health and fitness of the patient to participate in a school-sponsored extracurricular or sporting activity is immune from civil liability for any act or omission resulting in the death of or injury to the patient if:

1. The health care practitioner was acting in good faith and in the course and scope of the health-care practitioner's duties;
2. The health-care practitioner commits the act or omission in the course of conducting the physical examination or medical screening of the patient;
3. The services provided to the patient are within the scope of the license of the health-care practitioner; and
4. Before the health-care practitioner conducts the physical examination or medical screening, the patient signs a written statement that acknowledges:
    a. That the health-care practitioner is conducting a physical examination or medical screening that is not administered for or in expectation of compensation; and
    b. The limitations on the recovery of damages from the health-care practitioner in connection with the physical examination or medical screening being performed.

    If the patient is a minor or is otherwise legally incompetent, the patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of the patient must sign the written statement.

Civ. Prac. & Rem. Code 91.002

Immunity for Shelter Workers

A district volunteer is not civilly liable for an act performed in the discharge of duty if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by disaster. *Gov't Code 418.006*

Training – Concussion Oversight Team

A licensed health care professional who serves on a volunteer basis on a district's concussion oversight team [see FM] 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. In addition, the professional shall, at least once every two years, take a course in the subject matter of concussions approved

by the University Interscholastic League (UIL), the Texas Department of Licensing and Regulation, or the appropriate licensing authority for the profession.

The professional must submit proof of timely completion of an approved course to the superintendent or designee. A licensed health-care professional who is not in compliance with these training requirements may not serve on a concussion oversight team in any capacity.

Education Code 38.154, .158