ORE CITY ISD EMPLOYMENT POLICIES

Note: This policy summarizes the Family and Medical Leave Act (FMLA) and implementing regulations, including FML for an employee seeking leave because of a relative's military service. For provisions on leaves in general, see DEC. For provisions addressing leave for an employee's military service, see DECB.

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General Provisions

Covered Employer

All public elementary and secondary schools are "covered employers" under the FMLA, without regard to the number of employees employed. The term "employer" includes any person who acts directly or indirectly in the interest of a district to any of the district's employees. *29 U.S.C. 2611(4), 2618(a); 29 C.F.R. 825.104(a)*

Eligible Employee

"Eligible employee" means an employee who:

1. Has been employed by a district for at least 12 months. The 12 months need not be consecutive;
2. Has been employed by a district for at least 1,250 hours of service during the 12-months immediately preceding the commencement of leave; and
3. Is employed at a worksite where 50 or more employees are employed by the district within 75 miles of that worksite.

29 U.S.C. 2611(2); 29 C.F.R. 825.110

[A district that has no eligible employees must comply with the requirements at General Notice, below.]

Qualifying Reasons for Leave

A district shall grant leave to eligible employees:

1. For the birth of a son or daughter, and to care for the newborn child;
2. For placement with the employee of a son or daughter for adoption or foster care [For the definitions of "adoption" and "foster care," see 29 C.F.R. 825.122.];
3. To care for the employee's spouse, son or daughter, or parent with a serious health condition;
4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job [For the definition of "serious health condition," see 29 C.F.R. 825.113.];
5. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty) [For the definition of "military member," see 29 C.F.R. 825.126(b). For the definition of "covered active duty" and "call to covered active duty status," see 29 C.F.R. 825.102.]; and
6. To care for a covered service member with a serious injury or illness incurred in the line of duty if the employee is the spouse, son, daughter, parent, or next of kin of the service

member. [For the definitions of "covered service member" and "serious injury or illness," see 29 C.F.R. 825.102, .122.]

29 U.S.C. 2612(a); 29 C.F.R. 825.112

For provisions regarding treatment for substance abuse, see 29 C.F.R. 825.119.

Qualifying Exigency

An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

1. Short-notice deployment.
2. Military events and related activities.
3. Childcare and school activities.
4. Financial and legal arrangements.
5. Counseling.
6. Rest and recuperation.
7. Post-deployment activities.
8. Parental care.
9. Additional activities, provided that the district and employee agree that the leave shall qualify as an exigency and agree to both the timing and duration.

29 C.F.R. 825.126

Pregnancy or Birth

Both parents are entitled to FMLA leave to be with a healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. In addition, the expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health-care provider during the absence and even if the absence does not last for more than three consecutive calendar days. A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated, during her prenatal care, or following the birth of a child if the spouse has a serious health condition. [For the definition of "needed to care for," see 29 C.F.R. 825.124.] *29 C.F.R. 825.120*

Definitions

"Equivalent Position"

An "equivalent position" is one that is virtually identical to the employee's former position in terms of pay, benefits, and working conditions, including privileges, perquisites, and status. It must involve the same or substantially similar duties and responsibilities, which

must entail substantially equivalent skill, effort, responsibility, and authority. *29 C.F.R. 825.215(a)*

"Next of Kin"

"Next of kin of a covered service member" (for purposes of military caregiver leave) means:

1. The blood relative specifically designated in writing by the covered service member as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. The designated individual shall be deemed to be the covered service member's only next of kin; or
2. When no such designation has been made, the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority:
    a. Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions,
    b. Brothers and sisters,
    c. Grandparents,
    d. Aunts and uncles, and
    e. First cousins.

    If there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously.

29 C.F.R. 825.127(d)(3)

"Parent"

"Parent" (for purposes of family, medical, and qualifying exigency leave) means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents "in law." *29 C.F.R. 825.122*

For the definition of "parent of a covered service member" for purposes of military caregiver leave, see 29 C.F.R. 825.127(d)(2).

"Son or Daughter"

"Son or daughter" (for purposes of family and medical leave) means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence. *29 C.F.R. 825.122*

For the definition of "son or daughter on active duty or call to active duty status" for purposes of qualifying exigency leave, see 29 C.F.R. 825.122.

For the definition of "son or daughter of a covered service member" for purposes of military caregiver leave, see 29 C.F.R. 825.127(d)(1).

"Spouse"

"Spouse" means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state.

This definition includes an individual in a same-sex or common law marriage that either:

1. Was entered into in a state that recognizes such marriages; or
2. If entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

29 C.F.R. 825.102, .122

Leave Entitlement and Use

Amount of Leave

Except in the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during a 12-month period for any one or more of the qualifying reasons.

Spouses who are employed by the same district may be limited to a combined total of 12 weeks of FMLA leave during any 12-month period if leave is taken for the birth of a son or daughter, the placement of a child for adoption or foster care, or to care for a parent with a serious health condition.

29 U.S.C. 2612(a), (f); 29 C.F.R. 825.120(a)(3), .200, .201

Determining the 12-Month Period

Except with respect to military caregiver leave, a district may choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement occurs:

1. The calendar year;
2. Any fixed 12-month "leave year," such as a fiscal year or a year starting on an employee's "anniversary" date;
3. The 12-month period measured forward from the date any employee's first FMLA leave begins; or

4. A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

29 C.F.R. 825.200(b)

Military Caregiver Leave

In the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a "single 12-month period." The "single 12-month period" is measured forward from the date an employee's first FMLA leave to care for the covered service member begins, regardless of the method used by a district to determine the 12-month period for other FMLA leaves. During the "single 12-month period," an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. *29 C.F.R. 825.200(f), (g)*

Spouses who are employed by the same district may be limited to a combined total of 26 weeks of FMLA leave during the "single 12-month period" if leave is taken as military caregiver leave, for the birth of a son or daughter, for the placement of a child for adoption or foster care, or to care for a parent with a serious health condition. *29 C.F.R. 825.127(e)(3)*

Summer Vacation and Other Extended Breaks

If a district's activity temporarily ceases and employees generally are not expected to report for work for one or more weeks (e.g., a school closing for two weeks for the Christmas/New Year holiday), those days do not count against the employee's FMLA leave entitlement. Similarly, the period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. *29 C.F.R. 825.200(h), .601(a)*

Intermittent or Reduced Leave Schedule

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. "Intermittent leave" is FMLA leave taken in separate blocks of time due to a single qualifying reason. A "reduced leave schedule" is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

For leave taken because of the employee's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or military caregiver leave, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. Leave due to a qualifying exigency may also be taken on an intermittent or reduced schedule basis.

When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may

take leave intermittently or on a reduced leave schedule only if the district agrees.

29 U.S.C. 2612(b); 29 C.F.R. 825.102, .202

Transfer to Alternative Position

If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, a district may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. *29 U.S.C. 2612(b)(2); 29 C.F.R. 825.204*

Calculating Leave Use

When an employee takes leave on an intermittent or reduced schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. A district must account for intermittent or reduced schedule leave using an increment no greater than the shortest period of time that the district uses to account for use of other forms of leave, provided the increment is not greater than one hour. *29 C.F.R. 825.205*

Special Rules for Instructional Employees

Special rules apply to certain employees of school districts. These special rules affect leave taken intermittently or on a reduced schedule, or taken near the end of an academic term (semester) by instructional employees.

"Instructional employees" are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

29 C.F.R. 825.600

Failure to Provide Notice of Foreseeable Leave

If an instructional employee does not give required notice of foreseeable leave to be taken intermittently or on a reduced schedule, a district may require the employee to take leave of a particular duration or to transfer temporarily to an alternative position. Alternatively, a district may require the employee to delay the taking of leave until the notice provision is met. *29 C.F.R. 825.601(b)*

20 Percent Rule

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered service member, or for the employee's own serious health condition; the leave is foreseeable based on planned medical treatment; and the employee would be on leave for more than 20 percent of the total

number of working days over the period the leave would extend, a district may require the employee to choose:

1. To take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

2. To transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

"Periods of a particular duration" means a block or blocks of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave. If an employee chooses to take leave for "periods of a particular duration" in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

29 U.S.C. 2618(c); 29 C.F.R. 825.601, .603

Leave at the End of a Semester

As a rule, a district may not require an employee to take more FMLA leave than the employee needs. The FMLA recognizes exceptions where instructional employees begin leave near the end of a semester. As set forth below, the district may in certain cases require the employee to take leave until the end of the semester.

The school semester, or "academic term," typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of the FMLA.

If a district requires the employee to take leave until the end of the semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. Any additional leave required by the district to the end of the semester is not counted as FMLA leave; however, the district shall maintain the employee's group health insurance and restore the employee to the same or equivalent job, including other benefits, at the end of the leave.

29 U.S.C. 2618(d); 29 C.F.R. 825.603

More Than Five Weeks Before End of Semester

A district may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave more than five weeks before the end of the semester;

2. The leave will last at least three weeks; and

3. The employee would return to work during the three-week period before the end of the semester.

During Last Five Weeks of Semester

A district may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave during the last five weeks of the semester for any reason other than the employee's own serious health condition or a qualifying exigency;
2. The leave will last more than two weeks; and
3. The employee would return to work during the two-week period before the end of the semester.

During Last Three Weeks of Semester

A district may require an instructional employee to continue taking leave until the end of the semester if the employee begins leave during the three-week period before the end of the semester for any reason other than the employee's own serious health condition or a qualifying exigency.

29 C.F.R. 825.602

Substitution of Paid Leave

Generally, FMLA leave is unpaid leave. However, an employee may choose to substitute accrued paid leave for unpaid FMLA leave. If an employee does not choose to substitute accrued paid leave, a district may require the employee to do so. The term "substitute" means that the paid leave provided by the district, and accrued pursuant to established policies of the district, will run concurrently with the unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the district's normal leave policy. *29 U.S.C. 2612(d); 29 C.F.R. 825.207(a)*

Compensatory Time

If an employee requests and is permitted to use accrued compensatory time to receive pay during FMLA leave, or if a district requires such use, the compensatory time taken may be counted against the employee's FMLA leave entitlement. *29 C.F.R. 825.207(f)*

FMLA and Workers' Compensation

A serious health condition may result from injury to the employee "on or off" the job. If a district designates the leave as FMLA leave, the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, neither the employee nor the district may require the substitution of paid leave. However, a district and an employee may agree, where state law permits, to have paid leave supplement workers' compensation benefits.

If the health-care provider treating the employee for the workers' compensation injury certifies that the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the district's offer of a "light duty job." As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the district may require the use of accrued paid leave.

29 C.F.R. 825.207(e)

Maintenance of Health Benefits

During any FMLA leave, a district must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

An employee may choose not to retain group health plan coverage during FMLA leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as before taking leave without any qualifying period, physical examination, exclusion of pre-existing conditions, and the like.

29 U.S.C. 2614(c); 29 C.F.R. 825.209

Payment of Premiums

During FMLA leave, the employee must continue to pay the employee's share of group health plan premiums. If premiums are raised or lowered, the employee would be required to pay the new premium rates. *29 C.F.R. 825.210*

Failure to Pay Premiums

Unless a district has an established policy providing a longer grace period, a district's obligations to maintain health insurance coverage cease if an employee's premium payment is more than 30 days late. In order to terminate the employee's coverage, the district must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. Coverage for the employee may be terminated at the end of the 30-day grace period, if the required 15-day notice has been provided.

Upon the employee's return from FMLA leave, the district must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. The employee may not be required to meet any qualification requirements imposed by the

plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

29 C.F.R. 825.212

Recovery of Benefit Cost

If an employee fails to return to work after FMLA leave has been exhausted or expires, a district may recover from the employee its share of health plan premiums during the employee's unpaid FMLA leave, unless the employee's failure to return is due to one of the reasons set forth in the regulations. A district may not recover its share of health insurance premiums for any period of FMLA leave covered by paid leave. *29 C.F.R. 825.213*

Right to Reinstatement

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. *29 C.F.R. 825.214, .216(a)*

Moonlighting During Leave

If a district has a uniformly applied policy governing outside or supplemental employment, the policy may continue to apply to an employee while on FMLA leave. A district that does not have such a policy may not deny FMLA benefits on the basis of outside or supplemental employment unless the FMLA leave was fraudulently obtained. *29 U.S.C. 2618(e); 29 C.F.R. 825.216(e)*

Reinstatement of School Employees

A district shall make the determination of how an employee is to be restored to "an equivalent position" upon return from FMLA leave on the basis of established school board policies and practices. The "established policies" must be in writing, must be made known to the employee before the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to "an equivalent position" must provide substantially the same protections as provided in the FMLA. For example, an employee may not be restored to a position requiring additional licensure or certification. *29 C.F.R. 825.604*

Pay Increases and Bonuses

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with a district's policy or practice with respect to other employees on an

equivalent leave status for a reason that does not qualify as FMLA leave.

Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then an employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

29 C.F.R. 825.215(c)

Key Employees

A district may deny job restoration to a key employee if such denial is necessary to prevent substantial and grievous economic injury to the operations of the district. *29 U.S.C. 2614(b); 29 C.F.R. 825.217–.219*

Notices and Medical Certification

Employer Notices

General Notice

Every covered employer must post on its premises a notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints with the Department of Labor's Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. Covered employers must post this general notice even if no employees are eligible for FMLA leave.

If a district has any eligible employees, it shall also:

1. Include the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist; or
2. Distribute a copy of the general notice to each new employee upon hiring.

Electronic posting is sufficient if it meets the other requirements of this section.

If a district's workforce is comprised of a significant portion of workers who are not literate in English, the district shall provide the general notice in a language in which the employees are literate.

A district may use Department of Labor (DOL) form WHD 1420 or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice.

29 C.F.R. 825.300(a)

Eligibility Notice

When an employee requests FMLA leave, or when a district acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the district must notify the employee of the employee's eligibility to take FMLA leave. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.

A district must provide the eligibility notice within five business days, absent extenuating circumstances. Notification of eligibility may be oral or in writing. The district may use DOL form WH-381 to provide such notification to employees. The district shall translate the notice in any situation in which it is required to translate the general notice.

29 C.F.R. 825.300(b)

Rights and Responsibilities Notice

Each time a district provides an eligibility notice to an employee, the district shall also provide a written rights and responsibilities notice. The rights and responsibilities notice must include the information required by the FMLA regulations at 29 C.F.R. 825.300(c)(1).

A district may use DOL form WH-381 to provide such notification to employees. A district may adapt the prototype notice as appropriate to meet these notice requirements. The notice may be distributed electronically if it meets the other requirements of this section. The district shall translate the notice in any situation in which it is required to translate the general notice.

29 C.F.R. 825.300(c)

Designation Notice

When a district has enough information to determine whether leave is being taken for an FMLA-qualifying reason, the district must notify the employee whether the leave will be designated as FMLA leave. If the district determines that the leave will not be designated as FMLA-qualifying, the district must notify the employee of that determination. Absent extenuating circumstances, a district must provide the designation notice within five business days.

A district may use DOL form WH-382 to provide such notification to employees. If the leave is not designated as FMLA leave because it does not meet the requirements of the Act, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

The designation notice must include the information required by the FMLA regulations at 29 C.F.R. 825.300(d)(1) (substitution of paid leave), (d)(3) (fitness for duty certification), and (d)(6) (amount

of leave charged against FMLA entitlement). For further provisions on designation of leave, see 29 C.F.R. 825.301.

29 C.F.R. 825.300(d)

Retroactive Designation

A district may retroactively designate leave as FMLA leave, with appropriate notice to the employee, if the district's failure to timely designate leave does not cause harm or injury to the employee. In addition, a district and an employee may agree that leave will be retroactively designated as FMLA leave. *29 C.F.R. 825.301(d)*

Employee Notice

An employee giving notice of the need for FMLA leave must state a qualifying reason for the leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave, below. The employee does not need to expressly assert rights under the Act or even mention the FMLA. *29 C.F.R. 825.301*

Foreseeable Leave

An employee must provide at least 30 days' advance notice before FMLA leave is to begin if the need for leave is foreseeable based upon an expected birth, placement for adoption or foster care, or planned medical treatment of the employee, a family member, or a covered service member. If 30 days' notice is not practicable, the employee must give notice as soon as practicable. For leave due to a qualifying exigency, the employee must provide notice as soon as practicable regardless of how far in advance the leave is foreseeable.

When planning medical treatment, the employee must consult with the district and make a reasonable effort to schedule the treatment so as not to disrupt unduly the district's operations, subject to the approval of the health-care provider.

29 C.F.R. 825.302

Unforeseeable Leave

When the approximate timing of leave is not foreseeable, an employee must provide notice to a district as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the district's usual and customary notice requirements applicable to such leave. *29 C.F.R. 825.303*

Compliance with District Requirements

A district may require an employee to comply with its usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied. *29 C.F.R. 825.302(d), .303(c)*

Certification of Leave

A district may require that an employee's FMLA leave be supported by certification, as described below. The district must give notice of a requirement for certification each time certification is required. At the time the district requests certification, the district must advise the employee of the consequences of failure to provide adequate certification. *29 C.F.R. 825.305(a)*

Timing

In most cases, a district should request certification at the time the employee gives notice of the need for leave or within five business days thereafter or, in the case of unforeseen leave, within five business days after the leave commences. The district may request certification at a later date if the district later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the district within 15 calendar days after the district's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. *29 C.F.R. 825.305(b)*

Incomplete or Insufficient Certification

A district shall advise an employee if it finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. The district must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent, good faith efforts) to cure any such deficiency.

A certification is "incomplete" if one or more of the applicable entries have not been completed. A certification is "insufficient" if it is complete, but the information provided is vague, ambiguous, or non-responsive. A certification that is not returned to the district is not considered incomplete or insufficient, but constitutes a failure to provide certification.

29 C.F.R. 825.305(c)

Medical Certification of Serious Health Condition

When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, a district may require the employee to obtain medical certification from a health-care provider. A district may use DOL optional form WH-380-E when the employee needs leave due to the employee's own serious health condition and optional form WH-380-F when the employee needs leave to care for a family member with a serious health condition. A district may not require information beyond that specified in the FMLA regulations.

An employee may choose to comply with the certification requirement by providing the district with an authorization, release, or waiver allowing the district to communicate directly with the health-care provider.

For the definition of "health-care provider," see 29 C.F.R. 825.125.

29 C.F.R. 825.306

Genetic Information

A district subject to the Genetic Information Nondiscrimination Act (GINA) shall comply with the GINA rules with respect to a request for medical information. 29 C.F.R. 1635.8(b)(1)(i)(A) [See DAB]

Authentication and Clarification

If an employee submits a complete and sufficient certification signed by the health-care provider, a district may not request additional information from the health-care provider. However, the district may contact the health-care provider for purposes of clarification and authentication of the certification after the district has given the employee an opportunity to cure any deficiencies, as set forth above. To make such contact, a district must use a health-care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances may the employee's direct supervisor contact the employee's health-care provider.

"Authentication" means providing the health-care provider with a copy of the certification and requesting verification that the information on the form was completed and/or authorized by the health-care provider who signed the document; no additional medical information may be requested.

"Clarification" means contacting the health-care provider to understand the handwriting on the certification or to understand the meaning of a response. A district may not ask the health-care provider for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule must be satisfied when individually identifiable health information of an employee is shared with a district by a HIPAA-covered health-care provider.

29 C.F.R. 825.307(a)

Second and Third Opinions

If a district has reason to doubt the validity of a medical certification, the district may require the employee to obtain a second opinion at the district's expense. If the opinions of the employee's and the district's designated health-care providers differ, the district may require the employee to obtain certification from a third health-care provider, again at the district's expense. *29 C.F.R. 825.307(b), (c)*

Foreign Medical Certification

If the employee or a family member is visiting another country, or a family member resides in another country, and a serious health condition develops, the district shall accept medical certification as well as second and third opinions from a health-care provider who practices in that country. If the certification is in a language other

than English, the employee must provide the district with a written translation of the certification upon request. *29 C.F.R. 825.307(f)*

Recertification

A district may request recertification no more often than every 30 days and only in connection with an absence by the employee, except as set forth in the FMLA regulations. The district must allow at least 15 calendar days for the employee to provide recertification.

As part of the recertification for leave taken because of a serious health condition, the district may provide the health-care provider with a record of the employee's absence pattern and ask the health-care provider if the serious health condition and need for leave is consistent with such a pattern.

29 C.F.R. 825.308

Certification—Qualifying Exigency Leave

The first time an employee requests leave because of a qualifying exigency, a district may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the covered military member's covered active duty service.

A district may also require that the leave be supported by a certification that addresses the information at 29 C.F.R. 825.309(b). The district may use DOL optional form WH-384, or another form containing the same basic information, for this certification. The district may not require information beyond that specified in the regulations.

29 C.F.R. 825.309

Certification—Military Caregiver Leave

When an employee takes military caregiver leave, a district may require the employee to obtain a certification completed by an authorized health-care provider of the covered service member. In addition, the district may request that the employee and/or covered service member address in the certification the information at 29 C.F.R. 825.310(c). The district may also require the employee to provide confirmation of a covered family relationship to the seriously injured or ill service member.

A district may use DOL optional form WH-385, or another form containing the same basic information, for this certification. The district may not require information beyond that specified in the regulations. A district must accept as sufficient certification "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill service member at his or her bedside.

A district may seek authentication and/or clarification of the certification under the procedures described above. Second and third opinions, and recertifications, are not permitted for leave to care for a covered service member.

29 C.F.R. 825.310

Intent to Return to Work

A district may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The district's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation. *29 C.F.R. 825.311*

Fitness for Duty Certification

As a condition of restoring an employee who took FMLA leave due to the employee's own serious health condition, a district may have a uniformly applied policy or practice that requires all similarly situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health-care provider that the employee is able to resume work. A district may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. *29 C.F.R. 825.312*

Failure to Provide Certification

If the employee fails to provide the district with a complete and sufficient certification, despite the opportunity to cure, or fails to provide any certification, the district may deny the taking of FMLA leave. This provision applies in any case where a district requests a certification, including any clarifications necessary to determine if certifications are authentic and sufficient. *29 C.F.R. 825.305*

For failure to provide timely certification of foreseeable leave, see 29 C.F.R. 825.313(a). For failure to provide timely certification of unforeseeable leave, see 29 C.F.R. 825.313(b). For failure to provide timely recertification, see 29 C.F.R. 825.313(c). For failure to provide timely fitness-for-duty certification, see 29 C.F.R. 825.313(d).

Miscellaneous Provisions

Records

A district shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act (FLSA) and the FMLA regulations. A district shall keep these records for no less than three years and make them available for inspection, copying, and transcription by representatives of the DOL upon request.

If the district is preserving records electronically, the district must comply with 29 C.F.R. 825.500(b). A district that has eligible employees must maintain records with the data set forth at 29 C.F.R. 825.500(c). A district that has no eligible employees must maintain

just the data at 29 C.F.R. 825.500(c)(1). For districts in a joint employment situation, see 29 C.F.R. 825.500(e).

Records and documents relating to certifications, recertifications, or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files.

If the Genetic Information Nondiscrimination Act (GINA) is applicable, records and documents created for purposes of FMLA leave that contain family medical history or genetic information shall be maintained in accordance with the confidentiality requirements of GINA (see 29 C.F.R. 1635.9), which permit such information to be disclosed consistent with the requirements of the FMLA. [For information regarding GINA, see DAB(LEGAL).]

If the Americans with Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements [see 29 C.F.R. 1630.14(c)(1)], except as set forth in this section of the regulations.

29 C.F.R. 825.500

Prohibition Against Discrimination and Retaliation

The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. *29 U.S.C. 2615; 29 C.F.R. 825.220*

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 FML 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) if:

1. 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 a district (unless notice is precluded by military necessity or is otherwise unreasonable or impossible);
2. The cumulative length of the absence and of all previous absences from a position of employment with the district does not exceed five years; and
3. The person reports to or submits an application for reemployment to the district and complies with the appropriate procedural requirements that apply under the circumstances.

For purposes of federal military leave, "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; and any other category of persons designated by the President in time of war or emergency.

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.

Exception

A district is not required to reemploy a person if:

1. The district's circumstances have so changed as to make reemployment impossible or unreasonable;
2. The reemployment of such person would impose an undue hardship on the district; 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. 4301, et. seq.

State Leave for Member of Military or Rescue Team

Leave of Absence

An employee of a district who is a member of the state military forces, a reserve component of the United States Armed Forces, or a member of a state or federally authorized Urban Search and Rescue team shall be granted a paid leave of absence from the employee's duties without loss of time, efficiency rating, vacation time, personal time, sick leave, or salary on all days during which the employee is engaged in authorized training or duty ordered or authorized by proper authority. Such leave shall not exceed 15 workdays in a fiscal year.

On employment, a district shall provide written notice of the number of workdays of paid leave to which an employee is entitled each fiscal year under Government Code 437.202(a).

On request, a district shall provide to an employee a statement that contains the number of workdays for which the employee claimed paid leave under Government Code 437.202(a) in that fiscal year.

An employee of a district 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.

Gov't Code 437.202(a), (d), (e)–(f)

Called to Duty

A service member of the Texas military forces who is ordered to state active duty or training and other duty by the governor or other proper authority under state law is entitled to the same benefits and protections provided to persons performing service in the uniformed services under 38 U.S.C. 4301–4313 and 4316–4319 (USERRA) and to persons in the military service of the United States under 50 U.S.C. 3901-3959, 3991, and 4011-4026. *Gov't Code 437.213*

Reemployment

After Authorized Training or Duty

A 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 em-

ployee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment. *Gov't Code 437.204*

After Active Military Service

Any employee, other than a temporary employee, who leaves a position with a district to enter active military service is entitled to be reemployed by the district in the same position held 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. *Gov't Code 613.001(3), .002*

An employee who cannot perform the duties of the position because of a disability sustained during military service is entitled to reemployment in a district 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*

To be reemployed, a veteran of the military must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service. Application must be made in writing to the superintendent 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*

A person reemployed after active military service shall not be discharged without cause before the first anniversary of the date of the reemployment. *Gov't Code 613.005*

"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)*

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 22003(d), (e)

Note: For a detailed treatment of termination and nonrenewal of educator contracts, see policies DFAA and DFAB (Probationary Contracts), and DFBA and DFBB (Term Contracts).

Withholding Information

An attempt by any district employee to encourage or coerce a child to withhold information from the child's parent is grounds for discharge or suspension under Education Code 21.104 (probationary contracts) and 21.211 (term contracts). *Education Code 26.008(b)*

Registry of Persons Not Eligible for Employment

A district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement shall discharge or refuse to hire a person listed on TEA's registry of persons who are not eligible to be employed. [See DBAA] *Education Code 22.092*

Discharge of Convicted Employees

A district shall discharge or refuse to hire an employee or applicant for employment if the district obtains information through a criminal history record information (CHRI) review that the employee or applicant has been:

1. Convicted of or placed on deferred adjudication community supervision for an offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
2. Convicted of:
    a. A felony under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed; or
    b. An offense under the laws of another state or federal law that is equivalent to an offense under item 1 or 2a, above.

Exception

However, a district is not required to discharge an employee if the person committed an offense under Title 5, Penal Code, and:

1. The date of the offense is more than 30 years before the date the person's employment will begin; and
2. The employee satisfied all terms of the court order entered on conviction.

Certification to Commissioner

Each school year, a superintendent shall certify to the commissioner that the district has complied with the above provisions.

Sanctions

The State Board for Educator Certification (SBEC) may impose a sanction on an educator who does not discharge an employee when the employee was employed in a public school and on the

registry of persons who are not eligible to be employed under Education Code 22.092 [see DBAA], if the educator knew that the employee had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with Education Code 21.009(e), or when the person knew or should have known, through a CHRI review, that the employee has been convicted of or placed on deferred adjudication community supervision for an offense described above.

SBEC may impose a sanction on a superintendent who falsely or inaccurately certified to the commissioner that the district had complied with Education Code 22.085. [See Certification to Commissioner, above]

Termination for Failure to Disclose

A district may discharge an employee if the district obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to SBEC or the district. An employee so discharged is considered to have been discharged for misconduct for purposes of Labor Code 207.044 (unemployment compensation).

Education Code 22.085; 19 TAC 249.15(b)(12), (14) [See DBAA for Refusal to Hire Convicted Applicants]

Certain Offenses Against Students

Mandatory Termination

If a district receives notice that SBEC has revoked the certificate of a person based on conviction of or placement on deferred adjudication community supervision for an offense for which the person is required to register as a sex offender under Code of Criminal Procedure, Chapter 62, or a conviction of a felony under Penal Code Title 5 if the victim of the offense was under 18 years of age at the time the offense was committed, the district shall:

1. Immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and
2. If the person is employed under a probationary or term contract, with the approval of the board or its designee:
    a. Suspend the person without pay;
    b. Provide the person with written notice that the person's contract is void [see Notice to Employee, below]; and
    c. Terminate the employment of the person as soon as practicable.

Education Code 21.058(a), (c)

Discretionary Termination

If a district becomes aware that a person employed by the district under a probationary or term contract has been convicted of or received deferred adjudication for a felony offense, and the person is not subject to the mandatory termination provision above, the district may, with the approval of the board or its designee:

1. Suspend the person without pay;
2. Provide the person with written notice that the person's contract is void [see Notice to Employee, below]; and
3. Terminate the employment of the person as soon as practicable.

Education Code 21.058(c-1)

Notice to Employee

A person's probationary or term contract is void if, with the approval of the board or its designee, the district provides written notice to the person, under the mandatory or discretionary termination provisions above, that the person's contract is void. *Education Code 21.058(c-2)*

No Appeal

Action taken by a district under the mandatory or discretionary terminations provisions above is not subject to appeal under Education Code Chapter 21 and the notice and hearing requirements of Chapter 21 do not apply to the action. *Education Code 21.058(e)*

Invalid or Expired Certification

An employee's probationary or term contract is void if the employee:

1. Does not hold a valid certificate or permit issued by SBEC;
2. Fails to fulfill the requirements necessary to renew or extend the employee's temporary, probationary, or emergency certificate or any other certificate or permit issued under Education Code Chapter 21, Subchapter B; or
3. Fails to comply with any requirement under Education Code Chapter 22, Subchapter C [criminal history review, see DBAA], if the failure results in suspension or revocation of the employee's certificate.

Education Code 21.0031(a)

A certificate or permit is not considered to have expired if:

1. The employee has completed the requirements for renewal of the certificate or permit;
2. The employee submitted the request for renewal before the expiration date; and

3. The date the certificate or permit would have expired is before the date SBEC takes action to approve the renewal of the certificate or permit.

Education Code 21.0031(f)

District's Options

If a district has knowledge that an employee's contract is void under Education Code 21.0031(a), the district may:

1. Terminate the employee;
2. Suspend the employee with or without pay; or
3. Retain the employee for the remainder of the school year on an at-will employment basis in a position that does not require a contract under Education Code 21.002, at the employee's existing rate of pay or at a reduced rate.

The employee is not entitled to the minimum salary prescribed by Education Code 21.402.

Education Code 21.0031(b)

Exception

A district may not terminate or suspend an employee under 21.0031(b) because of the employee's lack of a valid certificate or permit, or failure to renew or extend a certificate or permit, if:

1. The employee requests an extension from SBEC to renew, extend, or otherwise validate the employee's certificate or permit; and
2. Not later than the tenth day after the date the contract is void, the employee takes necessary measures to renew, extend, or otherwise validate the employee's certificate or permit, as determined by SBEC.

Education Code 21.0031(b-1)

No Appeal or Chapter 21 Hearing

A school district's decision under Education Code 21.0031(b) is not subject to appeal under Education Code Chapter 21, and the notice and hearing requirements of that chapter do not apply to the decision. *Education Code 21.0031*

Applicability

These void contract provisions do not affect the rights and remedies of a party in an at-will employment relationship and do not apply to a certified teacher assigned to teach a subject for which the teacher is not certified. *Education Code 21.0031; Nunez v. Simms, 341 F.3d 385 (5th Cir. 2003)*

Report to SBEC

A superintendent shall report the educator's termination to SBEC if the conditions set forth at Education Code 21.006 exist. [See DHB]

Report to Superintendent

A principal shall report the educator's termination to the superintendent if the conditions set forth at Education Code 21.006 exist. [See DP]

Falsification of Military Record

A district may discharge an employee, regardless of whether the employee is employed under an employment contract, if the district determines, based on a reasonable factual basis, that the employee, in obtaining the employee's employment or any benefit relating to the employee's employment, falsified or otherwise misrepresented any information regarding the employee's military record in a manner that would constitute an offense under Penal Code 32.54.

An employment contract entered into by a district with an employee discharged by the employer under Labor Code Chapter 105 is void and unenforceable as against public policy. [See DF series]

Labor Code Ch. 105

PROBATIONARY CONTRACTS
SUSPENSION/TERMINATION DURING CONTRACT

DFAA
(LEGAL)

Discharge

Any probationary contract employee may be discharged at any time for good cause as determined by the board. "Good cause" is the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state. *Education Code 21.104(a)*

[See DHB regarding circumstances in which a certified employee's dismissal must be reported to the State Board for Educator Certification (SBEC).]

Suspension

A district may, for good cause as defined above, suspend an employee without pay in lieu of discharge or pending discharge. The period of suspension may not extend beyond the end of the current school year. *Education Code 21.104(b)*

Notice

Before any probationary contract employee is dismissed or suspended without pay for good cause, the employee shall be given reasonable notice in writing of the charges against him or her and an explanation of a district's evidence, set out in sufficient detail to fairly enable the employee to show any error that may exist. *Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985)*

Hearing

If the employee is protesting proposed action to suspend or terminate a probationary contract for good cause, under Education Code 21.104, the employee is entitled to a hearing before an independent hearing examiner under Education Code Chapter 21, Subchapter F [see DFD].

Exception

If the employee is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a financial exigency declared under Education Code 44.011 [see CEA], the employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F, as determined by the board.

Education Code 21.1041

PROBATIONARY CONTRACTS
SUSPENSION/TERMINATION DURING CONTRACT

DFAA
(LOCAL)

Suspension with Pay A probationary contract employee may be suspended with pay and placed on administrative leave by the Superintendent during an investigation of alleged misconduct by the employee or at any time the Superintendent determines that the District's best interest will be served by the suspension.

PROBATIONARY CONTRACTS
TERMINATION AT END OF YEAR

DFAB
(LEGAL)

Grounds for Termination

The Board may terminate a probationary contract at the end of the contract period if in the Board's judgment such termination will serve the best interests of the District.

Notice

The Board shall give the employee notice of its decision to terminate the employment not later than the tenth day before the last day of instruction required under the contract.

The notice must be delivered personally by hand delivery on the campus at which the employee is employed. If the employee is not present on the campus on the date that hand delivery is attempted, the notice must be mailed by prepaid certified mail or delivered by express delivery service to the employee's address of record with the District. Notice that is postmarked on or before the tenth day before the last day of instruction is considered timely for these purposes.

No Appeal

The Board's decision to terminate a probationary contract at the end of a contract period is final and may not be appealed.

Education Code 21.103(a)

Failure to Notify

If the Board fails to give notice of its decision to terminate a probationary contract within the time prescribed, the Board must employ the employee for the following school year in the same capacity under:

1. A probationary contract, if the person has been employed under a probationary contract for less than three consecutive school years; or
2. A continuing or term contract, according to District policy, if the person has been employed under a probationary contract for three consecutive school years.

Education Code 21.103(b)

PROBATIONARY CONTRACTS
RETURN TO PROBATIONARY STATUS

DFAC
(LEGAL)

Upon Change in Professional Capacity

An employee may be employed under a probationary contract if the employee voluntarily accepts an assignment in a new professional capacity that requires a different class of certificate under Education Code Chapter 21, Subchapter B than the class of certificate held by the employee in the professional capacity in which the employee was previously employed.

This provision does not apply to an employee who is returned by the District to a professional capacity in which the employee was employed by the District before the District employed the employee in the new professional capacity. The employee is entitled to be employed in the original professional capacity under the same contractual status as the status held by the employee during the previous employment by the District in that capacity.

Education Code 21.102(a-1) [See 19 TAC 230.33(b) for list of certificate classes]

In Lieu of Discharge, Termination, or Nonrenewal

In lieu of discharging a continuing contract employee, terminating a term contract employee, or not renewing a term contract, the District may, with written consent of the employee, return the employee to probationary contract status. *Education Code 21.106(a)*

After Board Proposal

Except as provided below, an employee may agree to be returned to probationary status only after receiving written notice that the Board has proposed discharge, termination, or nonrenewal. [See DF series] *Education Code 21.106(b)*

After Notice from Superintendent

An employee may agree to be returned to probationary contract status after receiving written notice of the Superintendent's intent to recommend discharge, termination, or nonrenewal.

Notice

The notice must inform the employee of the District's offer to return the employee to probationary contract status, the period during which the employee may consider the offer, and the employee's right to seek counsel. The District must provide the employee at least three business days after the employee receives the notice to agree to be returned to probationary contract status. This provision does not require the Superintendent to provide notice of intent to recommend discharge, termination, or nonrenewal.

Education Code 21.106(d)

New Probationary Period

An employee returned to probationary status must serve a new probationary period as provided by Education Code 21.102 as if the employee were employed by the District for the first time. *Education Code 21.106(c)*

Suspension Without Pay

A board may, for good cause as determined by the board, suspend an employee without pay:

1. Pending discharge, or
2. In lieu of termination.

The suspension may not extend beyond the end of the school year.

Education Code 21.211(b)

Back Pay

If an employee is not discharged after being suspended without pay pending discharge, the employee is entitled to back pay for the period of suspension. *Education Code 21.211(c)*

Grounds for Dismissal

A board may terminate a term contract and discharge a term contract employee at any time for:

1. Good cause as determined by the board; or
2. A financial exigency that requires a reduction in personnel.

Education Code 21.211(a)

Notice

Before any term contract employee is dismissed for good cause, the employee shall be given reasonable notice in writing of the charges against him or her and an explanation of a district's evidence, set out in sufficient detail to fairly enable the employee to show any error that may exist. *Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985)*

Hearing

If a term contract employee desires a hearing before an independent hearing examiner, the employee must file a written request with the commissioner of education not later than the 15th day after the date the employee receives notice of the proposed termination or suspension without pay. The employee must provide a district with a copy of the request and must provide the commissioner with a copy of the notice.

The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing.

Education Code 21.251(a), .253 [See DFD]

Financial Exigency

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the board in writing not later than the tenth day after the date the employee receives notice of the proposed action. The employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract

[see DFBB] or a hearing under Education Code Chapter 21, Subchapter F, as determined by the board. *Education Code 21.159*

Report by Principal

The principal of a district, including a district of innovation, must notify the superintendent not later than the seventh business day after the date of an educator's termination of employment following an alleged incident of misconduct described by Education Code 21.006(b) [see DP]. *Education Code 21.006(b-2); 19 TAC 249.14(e)*

TERM CONTRACTS
SUSPENSION/TERMINATION DURING CONTRACT

DFBA
(LOCAL)

Suspension with Pay A term contract employee may be suspended with pay and placed on administrative leave by the Superintendent during an investigation of alleged misconduct by the employee or at any time the Superintendent determines that the District's best interest will be served by the suspension.

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TERM CONTRACTS
NONRENEWAL

DFBB
(LEGAL)

Grounds for Nonrenewal

The Board may terminate a term contract for a financial exigency that requires a reduction in personnel. *Education Code 21.211(a)* [See CEA]

Reasons

The Board shall establish by policy reasons for nonrenewal at the end of a school year. *Education Code 21.203(b)*

Evaluations

Before making a decision not to renew a term contract, the Board shall consider the most recent evaluations if the evaluations are relevant to the reason for the Board's action. *Education Code 21.203(a)*

In the case of a classroom teacher, the District shall use the teacher's consecutive appraisals from more than one year, if available, in making employment decisions. *Education Code 21.352(e)*

[See DNA and DNB]

Notice

Not later than the tenth day before the last day of instruction in a school year, the Board shall notify in writing each employee whose contract is about to expire whether the Board proposes to renew or not renew the contract.

The notice must be delivered personally by hand delivery to the employee on the campus at which the employee is employed. If the employee is not present on the campus on the date that hand delivery is attempted, the notice must be mailed by prepaid certified mail or delivered by express delivery service to the employee's address of record with the District. Notice that is postmarked on or before the tenth day before the last day of instruction is considered timely for these purposes.

Failure to Provide Timely Notice

The Board's failure to give timely notice of a proposed renewal or nonrenewal constitutes an election to employ the contract employee in the same professional capacity for the following school year.

Education Code 21.206

Request for Hearing

If the employee desires a hearing after receiving notice of the proposed nonrenewal, the employee shall notify the Board in writing not later than the 15th day after:

1. The date the employee receives hand delivery of the notice of proposed nonrenewal; or
2. The date the notice is delivered to the employee's address of record with the District, if the notice is mailed by prepaid certified mail or delivered by express delivery service.

The Board shall provide for a hearing to be held not later than the 15th day after receiving written notice from the employee requesting a hearing unless the parties agree in writing to a different date. The hearing shall be closed unless the employee requests an open hearing and shall be conducted in accordance with rules adopted by the Board.

Education Code 21.207(a)

Board Hearing

At the hearing before the Board, the employee may:

1. Be represented by a representative of the employee's choice;
2. Hear the evidence supporting the reason for nonrenewal;
3. Cross-examine adverse witnesses; and
4. Present evidence.

Education Code 21.207(c)

Board Decision

To evaluate the evidence put before it, the Board shall use the preponderance of the evidence standard of review. *Whitaker v. Marshall Indep. Sch. Dist., Tex. Comm'r. of Educ. Decision No. 112-R1-598 (1998)*

Following the hearing, the Board shall take the appropriate action and notify the employee in writing of that action within 15 days following the conclusion of the hearing. *Education Code 21.208*

Hearing Examiner

The Board may use the process described at DFD. *Education Code 21.207(b)*

No Hearing

If the employee fails to request a hearing, the Board shall take the appropriate action and notify the employee in writing of that action not later than the 30th day after the date the notice of proposed nonrenewal was sent. *Education Code 21.208*

Appeals

An employee aggrieved by a decision of the Board to nonrenew a term contract may appeal to the Commissioner for a review of the Board's decision. *Education Code 21.209*

Reasons

The recommendation to the Board and its decision not to renew a contract under this policy shall not be based on an employee's exercise of Constitutional rights or based unlawfully on an employee's race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. Reasons for proposed nonrenewal of an employee's term contract shall be:

1. Deficiencies pointed out in observation reports, appraisals or evaluations, supplemental memoranda, or other communications.
2. Failure to fulfill duties or responsibilities.
3. Incompetency or inefficiency in the performance of duties.
4. Inability to maintain discipline in any situation in which the employee is responsible for the oversight and supervision of students.
5. Insubordination or failure to comply with official directives.
6. Failure to comply with Board policies or administrative regulations.
7. Excessive absences.
8. Conducting personal business during school hours when it results in neglect of duties.
9. Reduction in force because of financial exigency. [See DFFA]
10. Reduction in force because of a program change. [See DFFB]
11. The employee is not retained at a campus in accordance with the provisions of a campus turnaround plan. [See AIC]
12. Drunkenness or excessive use of alcoholic beverages; or possession, use, or being under the influence of alcohol or alcoholic beverages while on District property, while working in the scope of the employee's duties, or while attending any school- or District-sponsored activity.
13. The illegal possession, use, manufacture, or distribution of a controlled substance, a drug, a dangerous drug, hallucinogens, or other substances regulated by state statutes.
14. Failure to meet the District's standards of professional conduct.
15. Failure to report any arrest, indictment, conviction, no contest or guilty plea, or other adjudication for any felony, any crime

involving moral turpitude, or other offense listed at DH(LOCAL). [See DH]

16. Conviction of or deferred adjudication for any felony, any crime involving moral turpitude, or other offense listed at DH(LOCAL); or conviction of a lesser included offense pursuant to a plea when the original charged offense is a felony. [See DH]
17. Failure to comply with reasonable District requirements regarding advanced coursework or professional improvement and growth.
18. Disability, not otherwise protected by law, that prevents the employee from performing the essential functions of the job.
19. Any activity, school-connected or otherwise, that, because of publicity given it, or knowledge of it among students, faculty, or the community, impairs or diminishes the employee's effectiveness in the District.
20. Any breach by the employee of an employment contract or any reason specified in the employee's employment contract.
21. Failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues.
22. A significant lack of student progress attributable to the educator.
23. Behavior that presents a danger of physical harm to a student or to other individuals.
24. Assault on a person on District property or at a school-related function, or on an employee, student, or student's parent regardless of time or place.
25. Use of profanity in the course of performing any duties of employment, whether on or off school premises, in the presence of students, staff, or members of the public, if reasonably characterized as unprofessional.
26. Falsification of records or other documents related to the District's activities.
27. Falsification or omission of required information on an employment application.
28. Misrepresentation of facts to a supervisor or other District official in the conduct of District business.

29. Failure to fulfill requirements for state licensure or certification, including passing certification or licensing examinations required by state or federal law or by the District, for the employee's assignment.
30. Failure to maintain licensing and certification requirements, including the completion of required continuing education hours, for the employee's assignment.
31. Failure to complete certification or permit renewal requirements, or failure to fulfill the requirements of a deficiency plan, under an Emergency Permit or a Temporary Classroom Assignment Permit.
32. Any attempt to encourage or coerce a child to withhold information from the child's parent or from other District personnel.
33. Any reason that makes the employment relationship void or voidable, such as a violation of federal, state, or local law.
34. Any reason constituting good cause for terminating the contract during its term.

Recommendations from Administration

Administrative recommendations for renewal or proposed nonrenewal of term contracts shall be submitted to the Superintendent. A recommendation for proposed nonrenewal shall be supported by any relevant documentation. The final decision on the administrative recommendation to the Board on each employee's contract rests with the Superintendent.

Superintendent's Recommendation

The Superintendent shall prepare lists of employees whose contracts are recommended for renewal or proposed nonrenewal by the Board. Supporting documentation, if any, and reasons for the recommendation shall be submitted for each employee recommended for proposed nonrenewal.

The Board shall consider such information, as appropriate, in support of recommendations for proposed nonrenewal and shall then act on all recommendations.

Notice of Proposed Nonrenewal

After the Board votes to propose nonrenewal, the Superintendent or designee shall deliver written notice of proposed nonrenewal in accordance with law.

If the notice of proposed nonrenewal does not contain a statement of the reason or all the reasons for the proposed action, and the employee requests a hearing, the District shall give the employee notice of all reasons for the proposed nonrenewal at a reasonable time before the hearing. The initial notice or any subsequent notice shall contain the hearing procedures.

Request for Hearing

If the employee desires a hearing after receiving the notice of proposed nonrenewal, the employee shall notify the Board in writing not later than the 15th day after the date the employee received the notice of proposed nonrenewal.

When a timely request for a hearing on a proposed nonrenewal is received by the presiding officer, the hearing shall be held not later than the 15th day after receipt of the request, unless the parties mutually agree to a delay. The employee shall be given notice of the hearing date as soon as it is set.

Hearing Procedures

Unless the employee requests that the hearing be open, the hearing shall be conducted in closed meeting with only the members of the Board, the employee, the Superintendent, their representatives, and such witnesses as may be called in attendance. Witnesses may be excluded from the hearing until called to present evidence. The employee and the administration may choose a representative. Notice, at least five days in advance of the hearing, shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

The conduct of the hearing shall be under the presiding officer's control and shall generally follow the steps listed below:

1. After consultation with the parties, the presiding officer shall impose reasonable time limits for presentation of evidence and closing arguments.
2. The hearing shall begin with the administration's presentation, supported by such proof as it desires to offer.
3. The employee may cross-examine any witnesses for the administration.
4. The employee may then present such testimonial or documentary proof, as desired, to offer in rebuttal or general support of the contention that the contract be renewed.
5. The administration may cross-examine any witnesses for the employee and offer rebuttal to the testimony of the employee's witnesses.
6. Closing arguments may be made by each party.

A record of the hearing shall be made so that a certified transcript can be prepared, if required.

Board Decision

The Board may consider only evidence presented at the hearing. After all the evidence has been presented, if the Board determines

that the reasons given in support of the recommendation to not renew the employee's contract are lawful, supported by the evidence, and not arbitrary or capricious, it shall so notify the employee by a written notice not later than the 15th day after the date on which the hearing is concluded. This notice shall also include the Board's decision on renewal, which decision shall be final.

No Hearing

If the employee fails to request a hearing, the Board shall take the appropriate action and notify the employee in writing of that action not later than the 30th day after the date the notice of proposed nonrenewal was sent.

Table of Contents

Exhibit A—Notice of Proposed Term Contract Nonrenewal

Exhibit B—Documentation of Delivery: Notice of Proposed Nonrenewal

Exhibit C—Notice of Term Contract Nonrenewal

Note: The forms on the following pages are provided to assist the District in notifying employees of term contract nonrenewal.

Exhibit A—Notice of Proposed Term Contract Nonrenewal

Date of notice: _____

Employee name: _____

On _____ *(date of meeting)*, the Board voted to propose nonrenewal of your employment contract for the following reasons:

[List all applicable reasons from DFBB(LOCAL).
Attach an additional sheet of paper if necessary.]

_____

_____

_____

Attached is a copy of the District's DFBB(LOCAL) policy regarding nonrenewal of term contracts.

To request a hearing on the Board's proposed nonrenewal of your employment contract, you must submit a written request to the Board not later than the 15th day after the date you receive this notice. The hearing will be conducted by the Board.

If you do not request a hearing within 15 days of receiving this notice, the Board will vote to nonrenew your contract.

Please direct questions regarding the proposed nonrenewal of your contract to the Superintendent.

_____
Signature

_____
Printed name

_____
Title

Exhibit B—Documentation of Delivery: Notice of Proposed Nonrenewal

(For office use only. This document to be retained in the employee's personnel file.)

Employee name: _____

(Notice must be delivered personally by hand delivery to the employee on the campus at which the employee is employed.)

Hand delivery:

Completed: _____ Attempted: _____ *(check only one)*

Date: _____ By: _____ *(name)*

(If the employee is not present on the campus on the date that hand delivery is attempted, the notice must be mailed by prepaid certified mail or delivered by express delivery service to the employee's address of record with the District.)

Mail or delivery service:

Sent by: Certified mail _____ Express delivery service _____ *(check only one)*

Employee's address of record:

_____

_____

_____

Date: _____ By: _____ *(name)*

Exhibit C—Notice of Term Contract Nonrenewal

(To be used to notify an employee of the Board's final action to nonrenew a term contract. If the employee fails to request a hearing, this notice must be provided not later than the 30th day after the date notice of proposed nonrenewal was sent to the employee.)

Date of notice: _____

Employee name: _____

On _____ *(date of meeting)*, the Board took final action to nonrenew your employment contract. Your employment with the District will end effective the last duty day of the school year.

Please direct questions regarding the nonrenewal of your contract to the Superintendent.

_____
Signature

_____
Printed name

_____
Title

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-R9-0206 (Mar. 5, 2009); Garcia v. Miles Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 055-RI-503 (Nov. 30, 2006).*

Resignation with Consent

The educator may resign, with the consent of the board or the board's designee, at any other time. *Education Code 21.105(b), .160(b), .210(b)*

Sanctions for Abandonment of Contract

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)

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)*

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)

Good Cause

SBEC may consider the following factors 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; or

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.

Mitigating Factors

SBEC may consider the following factors when 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):

1. Educator gave written notice to school district 30 days or more in advance of the first day of instruction for which the educator will not be present;
2. Educator assisted school district in finding a replacement educator to fill the position;
3. Educator continued to work until the school district hired a replacement educator;
4. Educator assisted in training the replacement educator;
5. Educator showed good faith in communications and negotiations with school district; or
6. Educator provided lesson plans for classes following educator's resignation.

19 TAC 249.17(d)

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)*

TERMINATION OF EMPLOYMENT
RESIGNATION

DFE
(LOCAL)

General Requirements	All resignations shall be submitted in writing to the Superintendent or designee. The employee shall give reasonable notice and shall include in the letter a statement of the reasons for resigning. A prepaid certified or registered letter of resignation shall be considered submitted upon mailing.
At-Will Employees	The Superintendent or designee shall be authorized to accept the resignation of an at-will employee at any time.
Contract Employees	The Superintendent or designee shall be authorized to receive a contract employee's resignation effective at the end of the school year or submitted after the last day of the school year and before the penalty-free resignation date. The resignation requires no further action by the District and is accepted upon receipt. The Superintendent or other person designated by Board action shall be authorized to accept a contract employee's resignation submitted or effective at any other time. The Superintendent or other Board designee shall either accept the resignation or submit the matter to the Board in order to pursue sanctions allowed by law.
Withdrawal of Resignation	Once submitted and accepted, the resignation of a contract employee may not be withdrawn without consent of the Board.

AUG 2 6 2019

TERMINATION OF EMPLOYMENT
REDUCTION IN FORCE

DFF
(LEGAL)

Board Authority

A board is charged with the responsibility of governance of a district; governance includes the making of responsible choices in managing the finances and personnel of the district. *Stidham v. Anahuac Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 205-R2-687 (1990) (upholding reduction in force due to financial exigency)*

A district is always free to change its organizational structure as it seeks to increase its efficiency. *Wasserman v. Nederland Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 171-R1-784 (1988)*

Consideration for Open Positions

The commissioner of education has held that, when a position is eliminated due to a necessary reduction in force, a district must transfer the employee to a different position if the teacher meets a district's objective criteria for that position. Objective criteria may include credentials, education, experience, applying for the position, and interviewing for the position. A district need not offer a position to a teacher who refuses to apply and interview for an open position. *Amerson v. Houston Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 022-R2-1202 (2003)*

Probationary Contract

A probationary contract employee may be discharged at any time for good cause as determined by the board. If the employee is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a financial exigency declared under Education Code 44.011 [see CEA], the employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the board. *Education Code 21.104(a), .1041(2)*

A board may terminate a probationary contract at the end of the contract period if in the board's judgment such termination will serve the best interests of the district. *Education Code 21.103(a)*

Term Contract

A board may terminate a term contract and discharge a term contract employee at any time due to a financial exigency that requires a reduction in personnel. *Education Code 21.211(a)*

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the board in writing not later than the tenth day after the date the employee receives notice of the proposed action. The employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner)

[see DFD], as determined by the board. *Education Code 21.159(a), (b)(2)*

Continuing Contract

A teacher employed under a continuing contract may be released and the teacher's employment terminated at the end of a school year because of a necessary reduction of personnel by the district. A necessary reduction of personnel shall be made primarily based upon teacher appraisals administered under Education Code 21.352 in the specific teaching fields and other criteria as determined by the board. *Education Code 21.157*

Before a teacher employed under a continuing contract may be released because of a necessary reduction of personnel, the board must notify the teacher in writing of the proposed action and the grounds for the action. *Education Code 21.158(a)*

If the teacher desires to protest the proposed necessary reduction of personnel, the teacher must notify the board in writing not later than the tenth day after the date the teacher receives notice. *Education Code 21.159(a)*

A teacher who timely notifies the board is entitled to a hearing in a manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or in the manner provided under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the board. *Education Code 21.159(b)*

If the teacher does not timely request a hearing the board shall take the appropriate action and notify the teacher in writing not later than the 30th day after the date the board sent the notice of the proposed necessary reduction in personnel. *Education Code 21.159(c)*

Financial Exigency

A board may adopt a resolution declaring a financial exigency for the district. *Education Code 44.011* [See CEA]

Hearing Examiner

The independent hearing examiner process does not apply to a decision to terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the board has decided to use this hearing process. *Education Code 21.251*

Warn Act

Local governments are not covered by the federal Worker Adjustment and Retraining Notification Act (WARN Act) (plant closings and mass layoffs). *20 C.F.R. 639.3(a)(ii)*

Plan to Reduce Personnel Costs

If the Superintendent determines that there is a need to reduce personnel costs, the Superintendent shall develop, in consultation with the Board as necessary, a plan for reducing costs that may include one or more of the following:

- Salary reductions [see DEA];
- Furloughs [see DEA];
- Reductions in force of contract personnel due to financial exigency, if the District meets the standard for declaring a financial exigency as defined by the commissioner [see CEA and provisions at Reduction in Force Due to Financial Exigency, below];
- Reductions in force of contract personnel due to program change [see DFFB]; or
- Other means of reducing personnel costs.

A plan to reduce personnel costs may include the reduction of personnel employed pursuant to employment arrangements not covered at Applicability, below.

- See DCD for the termination at any time of at-will employment.
- See DFAB for the termination of a probationary contract at the end of the contract period.
- See DFCA for the termination of a continuing contract, if applicable.
- See DCE for the termination at the end of the contract period of a contract not governed by Chapter 21 of the Education Code.

Reduction in Force Due to Financial Exigency

Applicability

The following provisions shall apply when a reduction in force due to financial exigency requires:

1. The nonrenewal or termination of a term contract;
2. The termination of a probationary contract during the contract period; or
3. The termination of a contract not governed by Chapter 21 of the Education Code during the contract period.

Definitions

Definitions used in this policy are as follows:

1. "Nonrenewal" shall mean the termination of a term contract at the end of the contract period.

2. "Discharge" shall mean termination of a contract during the contract period.

General Grounds

A reduction in force may take place when the Superintendent recommends and the Board adopts a resolution declaring a financial exigency. [See CEA] A determination of financial exigency constitutes sufficient reason for nonrenewal or sufficient cause for discharge.

Employment Areas

When a reduction in force is to be implemented, the Superintendent shall recommend the employment areas to be affected.

Employment areas may include, for example:

1. Elementary grades, levels, subjects, departments, or programs.
2. Secondary grades, levels, subjects, departments, or programs, including career and technical education subjects.
3. Special programs, such as gifted and talented, bilingual/ESL programs, special education and related services, compensatory education, or migrant education.
4. Disciplinary alternative education programs (DAEPs) and other discipline management programs.
5. Counseling programs.
6. Library programs.
7. Nursing and other health services programs.
8. An educational support program that does not provide direct instruction to students.
9. Other District-wide programs.
10. An individual campus.
11. Any administrative position, unit, or department.
12. Programs funded by state or federal grants or other dedicated funding.
13. Other contractual positions.

The Superintendent's recommendation may address whether any employment areas should be:

1. Combined or adjusted (e.g., "elementary programs" and "compensatory education programs" can be combined to identify an employment area of "elementary compensatory education programs"); and/or

2. Applied on a District-wide or campus-wide basis (e.g., "the counseling program at [named elementary campus]").

The Board shall determine the employment areas to be affected.

Criteria for Decision

The Superintendent shall apply the following criteria to the employees within an affected employment area when a reduction in force will not result in the nonrenewal or discharge of all staff in the employment area. The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction in force. For example, if all necessary reductions can be accomplished by applying the first criterion, it is not necessary to apply the second criterion, and so forth.

1. Qualifications for Current or Projected Assignment: Certification, multiple or composite certifications, bilingual certification, licensure, endorsement, and/or specialized or advanced content-specific training or skills for the current or projected assignment.

2. Performance: Effectiveness, as reflected by the most recent formal appraisal and, if available, consecutive formal appraisals from more than one year [see DNA] and any other written evaluative information, including disciplinary information, from the last 36 months. If the Superintendent at his or her discretion decides that the documented performance differences between two or more employees are too insubstantial to rely upon, he or she may proceed to apply the remaining criteria in the order listed below.

3. Extra Duties: Currently performing an extra-duty assignment, such as department or grade-level chair, band director, athletic coach, or activity sponsor.

4. Professional Background: Professional education and work experience related to the current or projected assignment.

5. Seniority: Length of service in the District, as measured from the employee's most recent date of hire.

Superintendent Recommendation

The Superintendent shall recommend to the Board the nonrenewal or discharge of the identified employees within the affected employment areas.

Board Vote

After considering the Superintendent's recommendations, the Board shall determine the employees to be proposed for nonrenewal or discharge, as appropriate.

If the Board votes to propose nonrenewal of one or more employees, the Board shall specify the manner of hearing in accordance with DFBB(LOCAL).

If the Board votes to propose discharge of one or more employees, the Board shall determine whether the hearing will be conducted by a TEA-appointed hearing examiner [see DFD] or will be a local hearing under Education Code 21.207 [see DFBB].

Notice

The Superintendent shall provide each employee written notice of the proposed nonrenewal or discharge, as applicable. The notice shall include:

1. The proposed action, as applicable;
2. A statement of the reason for the proposed action; and
3. Notice that the employee is entitled to a hearing of the type determined by the Board.

Consideration for Available Positions

An employee who has received notice of proposed nonrenewal or discharge may apply for available positions for which he or she wishes to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures.

If the employee meets the District's objective criteria for the position and is the most qualified internal applicant, the District shall offer the employee the position until:

1. Final action by the Board to end the employee's contract, if the employee does not request a hearing.
2. The evidentiary hearing by the independent hearing examiner, the Board, or other person designated in DFBB(LOCAL), if the employee requests a hearing.

Hearing Request

Nonrenewal: Term Contract

An employee receiving notice of proposed nonrenewal of a term contract may request a hearing in accordance with DFBB.

Discharge: Chapter 21 Contract

An employee receiving notice of proposed discharge from a contract governed by Chapter 21 of the Education Code may request a hearing. The hearing shall be conducted in accordance with DFD or the nonrenewal hearing process in DFBB, as determined by the Board and specified in the notice of proposed discharge.

Discharge: Non-Chapter 21 Contract

An employee receiving notice of proposed discharge during the period of an employment contract not governed by Chapter 21 of the Education Code may request a hearing before the Board or its designee in accordance with DCE.

Final Action

Hearing Requested — If the employee requests a hearing, the Board shall take final action after the hearing in accordance with DCE, DFBB, or DFD, as applicable, and shall notify the employee in writing.

No Hearing Requested — If the employee does not request a hearing, the Board shall take final action in accordance with DCE, DFBB, or DFD, as applicable, and shall notify the employee in writing.

REDUCTION IN FORCE
PROGRAM CHANGE

DFFB
(LOCAL)

Applicability

This policy shall apply when a reduction in force due to a program change requires the nonrenewal of a term contract. A program change may be due to, for example, a redirection of resources; efforts to improve efficiency; a change in enrollment; a lack of student response to particular course offerings; legislative revisions to programs; or a reorganization or consolidation of two or more individual schools, departments, or school districts.

Definitions

Definitions used in this policy are as follows:

1. "Program change" shall mean any elimination, curtailment, or reorganization of a program, department, school operation, or curriculum offering, including, for example, a change in curriculum objectives; a modification of the master schedule; the restructuring of an instructional delivery method; or a modification or reorganization of staffing patterns in a department, on a particular campus, or District-wide.
2. "Nonrenewal" shall mean the termination of a term contract at the end of the contract period.

General Grounds

A reduction in force may take place when the Superintendent recommends and the Board approves a program change. A determination of a program change constitutes sufficient reason for nonrenewal.

Employment Areas

When a reduction in force is to be implemented, the Superintendent shall recommend the employment areas to be affected.

Employment areas may include, for example:

1. Elementary grades, levels, subjects, departments, or programs.
2. Secondary grades, levels, subjects, departments, or programs, including career and technical education subjects.
3. Special programs, such as gifted and talented, bilingual/ESL programs, special education and related services, compensatory education, or migrant education.
4. Disciplinary alternative education programs (DAEPs) and other discipline management programs.
5. Counseling programs.
6. Library programs.
7. Nursing and other health services programs.
8. An educational support program that does not provide direct instruction to students.

9. Other District-wide programs.
10. An individual campus.
11. Any administrative position, unit, or department.
12. Programs funded by state or federal grants or other dedicated funding.
13. Other contractual positions.

The Superintendent's recommendation may address whether any employment areas should be:

1. Combined or adjusted (e.g., "elementary programs" and "compensatory education programs" can be combined to identify an employment area of "elementary compensatory education programs"); and/or
2. Applied on a District-wide or campus-wide basis (e.g., "the counseling program at [named elementary campus]").

The Board shall determine the employment areas to be affected.

Criteria for Decision

The Superintendent or designee shall apply the following criteria to the employees within an affected employment area when a program change will not result in the nonrenewal of all staff in the employment area. The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction in force. For example, if all necessary reductions can be accomplished by applying the first criterion, it is not necessary to apply the second criterion, and so forth.

1. Qualifications for Current or Projected Assignment: Certification, multiple or composite certifications, bilingual certification, licensure, endorsement, and/or specialized or advanced content-specific training or skills for the current or projected assignment.
2. Performance: Effectiveness, as reflected by:
    a. The most recent formal appraisal and, if available, consecutive formal appraisals from more than one year [see DNA]; and
    b. Any other written evaluative information, including disciplinary information, from the last 36 months.

    If the Superintendent or designee at his or her discretion decides that the documented performance differences between two or more employees are too insubstantial to rely upon, he

or she may proceed to apply the remaining criteria in the order listed below.

3. Extra Duties: Currently performing an extra-duty assignment, such as department or grade-level chair, band director, athletic coach, or activity sponsor.

4. Professional Background: Professional education and work experience related to the current or projected assignment.

5. Seniority: Length of service in the District, as measured from the employee's most recent date of hire.

Superintendent Recommendation

The Superintendent shall recommend to the Board the nonrenewal of the identified employees within the affected employment areas.

Board Vote

After considering the Superintendent's recommendations, the Board shall determine the employees to be proposed for nonrenewal, as appropriate. If the Board votes to propose nonrenewal of one or more employees, the Board shall specify the manner of hearing in accordance with DFBB(LOCAL).

Notice

The Superintendent or designee shall provide each employee written notice of the proposed nonrenewal. The notice shall include a statement of the reason for the proposed action and notice that the employee is entitled to a hearing of the type determined by the Board.

Consideration for Available Positions

An employee who has received notice of proposed nonrenewal may apply for available positions for which he or she wishes to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures.

If the employee meets the District's objective criteria for the position and is the most qualified internal applicant, the District shall offer the employee the position until:

1. Final action by the Board to end the employee's contract, if the employee does not request a hearing.

2. The evidentiary hearing by the independent hearing examiner, the Board, or other person designated in DFBB(LOCAL), if the employee requests a hearing.

Hearing Request

An employee receiving notice of proposed nonrenewal of a term contract may request a hearing in accordance with DFBB.

Final Action

Hearing Requested

If the employee requests a hearing, the Board shall take final action after the hearing in accordance with DFBB and shall notify the employee in writing.

No Hearing Requested	If the employee does not request a hearing, the Board shall take final action in accordance with DFBB and shall notify the employee in writing.

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 time lines 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

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)

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. and 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*

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)