

EMPLOYMENT OBJECTIVES  
EQUAL EMPLOYMENT OPPORTUNITY

DAA  
(LEGAL)

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**Note:** This policy addresses the prohibition against discrimination in hiring and discharging employees. For legally referenced material relating to prohibited discrimination, harassment, and retaliation with respect to compensation, terms, conditions, or privileges of employment, see DIA(LEGAL).

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**Unlawful Hiring and Discharge**

It is an unlawful employment practice for a district to fail or refuse to hire or to discharge any individual because of such individual's:

1. Race, color, or national origin;
2. Religion;
3. Sex;
4. Age;
5. Disability; or
6. Genetic information [see DAB].

Federal Law

Section 1981 of the Civil Rights Act of 1866 (Section 1981)—race. *42 U.S.C. 1981*

Title VII of the Civil Rights Act of 1964 (Title VII)—race, color, religion, sex, and national origin. *42 U.S.C. 2000e et seq.*

Age Discrimination in Employment Act of 1967 (ADEA)—age, over 40. *29 U.S.C. 621 et seq.*

Section 504 of the Rehabilitation Act of 1973 (Section 504)—disability in programs receiving federal funds. *29 U.S.C. 794*

Title I of the Americans with Disabilities Act of 1990 (ADA)—disability. *42 U.S.C. 12101 et seq.*

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)—genetic information. *42 U.S.C. 2000ff et seq.*

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**Note:** Title VII, the ADA, and GINA do not apply to employers unless the employer has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. *42 U.S.C. 2000e(b); 42 U.S.C. 12111(5); 42 U.S.C. 2000ff(2)(B)*

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State Law

Texas Commission on Human Rights Act (TCHRA)—race, color, disability, religion, sex, national origin, age, and genetic information. *Labor Code 21.051, .402*

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	State policy on employment of persons with disabilities. <i>Human Resources Code 121.003(f)</i>
<b>Discriminatory Practices</b>	Title VII proscribes employment practices that are overtly discriminatory (disparate treatment), as well as those that are fair in form but discriminatory in practice (disparate impact). <u><i>Wards Cove Packing Co. v. Atonio</i></u> , 490 U.S. 642 (1989)
Disparate Treatment	Disparate treatment (intentional discrimination) occurs when members of a protected group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. 29 C.F.R. 1607.11
Disparate Impact	Disparate impact occurs when an employer uses a particular employment practice that causes a disparate (disproportionate) impact on a protected group and the employer fails to demonstrate that the challenged practice is job-related and consistent with business necessity. 42 U.S.C. 2000e-2(k)(1)(A); Labor Code 21.115, .122
<b>Limited Exception—Bona Fide Job Qualification</b>	A district may take employment actions based on religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification. 42 U.S.C. 2000e-2(e); 29 U.S.C. 623(f); Labor Code 21.119
<b>Prohibition on Retaliation</b>	A district may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. 29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 42 U.S.C. 12203 (ADA); Labor Code 21.055 [See DIA]
<b>Notices</b>	A district shall post in conspicuous places upon its premises a notice setting forth the information the Equal Employment Opportunity Commission deems appropriate to effectuate the purposes of the anti-discrimination laws. 29 U.S.C. 627; 42 U.S.C. 2000e-10
Section 504 Notice	<p>A district that employs 15 or more persons shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability.</p> <p>The notice shall state:</p> <ol style="list-style-type: none"><li>1. That the district does not discriminate in employment in its programs and activities; and</li><li>2. The identity of the district's 504 coordinator.</li></ol>

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Methods of notification may include:

1. Posting of notices;
2. Publication in newspapers and magazines;
3. Placing notices in district publications; and
4. Distributing memoranda or other written communications.

If a district publishes or uses recruitment materials containing general information that it makes available to applicants or employees, it shall include in those materials a statement of its nondiscrimination policy.

*34 C.F.R. 104.8*

Employment  
Postings

A district shall not print or publish any notice or advertisement relating to district employment that indicates any preference, limitation, specification, or discrimination based on race, color, religion, sex, disability, or national origin, unless the characteristic is a bona fide occupational qualification. *42 U.S.C. 2000e-3(b); Labor Code 21.059*

**Religious  
Discrimination**

The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless a district demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship to the district's business. "Undue hardship" means more than a *de minimus* (minimal) cost. *42 U.S.C. 2000e(j); 29 C.F.R. 1605.2; Labor Code 21.108*

Unlawful Inquiry into  
Religious Affiliation

A person employed or maintained to obtain or aid in obtaining positions for public school employees may not directly or indirectly ask about, orally or in writing, the religion or religious affiliation of anyone applying for employment in a public school of this state. A violation of this provision is a Class B misdemeanor. A person who violates this provision is subject to civil penalties. *Education Code 22.901*

**Sex Discrimination**  
Pregnancy

The prohibition against discrimination because of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. A district shall treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees for all employment-related purposes, including receipt of benefits under fringe benefit programs. *42 U.S.C. 2000e(k); 29 C.F.R. 1604.10; Labor Code 21.106*

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Gay and Transgender	The prohibition against discrimination because of sex includes discrimination on the basis of an individual being gay or transgender. <u>Bostock v. Clayton County, Georgia</u> , 17-1618, 2020 WL 3146686, (U.S. June 15, 2020)
Gender Stereotypes	A district may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. <u>Price Waterhouse v. Hopkins</u> , 490 U.S. 228 (1989)
<b>Age Discrimination</b>	The prohibition against discrimination on the basis of age applies only to discrimination against an individual 40 years of age or older. 29 U.S.C. 631; <i>Labor Code 21.101</i>
Bona Fide Employee Benefit Plan	A district may take an employment action on the basis of age pursuant to a bona fide seniority system or a bona fide employee benefit plan. However, a bona fide employee benefit plan shall not excuse the failure to hire any individual and no such benefit plan shall require or permit the involuntary retirement of any individual because of age. 29 U.S.C. 623(f); <i>Labor Code 21.102</i>
<b>Disability Discrimination</b>	<p>A district may not discriminate against a qualified individual on the basis of disability in job application procedures, hiring, advancement, or discharge of employees, compensation, job training, and other terms, conditions, and privileges of employment. 42 U.S.C. 12112(a); 29 C.F.R. 1630.4(b); <i>Labor Code 21.051</i></p> <p>In addition, each district that receives assistance under the Individuals with Disabilities Education Act (IDEA) must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted by the IDEA. 34 C.F.R. 300.177(b)</p> <p>[See DIA]</p>
<b>Other Forms of Discrimination</b>	
Military Service	A district shall not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service. A district shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed Services Employment and Re-employment Rights Act (USERRA). 38 U.S.C. 4311 [See also DECB]
Bankruptcy Discrimination	A district may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under federal bankruptcy laws, solely because the bankrupt or debtor is or has been a debtor under federal bankruptcy laws; was insolvent before the commencement of a bankruptcy case or during the case but before the debtor was

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	granted or denied a discharge; or has not paid a debt that is dischargeable in the bankruptcy case or that was discharged under the bankruptcy laws. <i>11 U.S.C. 525(a)</i>
Student Loan Repayment	<p>A district that issues a license may not take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract including by:</p> <ol style="list-style-type: none"><li>1. Denying the person's application for a license or license renewal;</li><li>2. Suspending the person's license; or</li><li>3. Taking other disciplinary action against the person.</li></ol> <p><i>Occupations Code 56.001, .003</i></p>

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**Criminal History  
Reviews**

Definitions

"Criminal history clearinghouse" (clearinghouse) means the electronic clearinghouse and subscription service established by the Department of Public Safety (DPS) to provide criminal history record information to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the criminal history record information requested must consent to the release of the information. *Gov't Code 411.0845(a), (h)*

"Criminal history record information" (CHRI) means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. *Gov't Code 411.082(2)*

"National criminal history record information" (NCHRI) means criminal history record information obtained from DPS under Government Code Chapter 411, Subchapter F, and the Federal Bureau of Investigation (FBI) under Government Code 411.087. *Education Code 22.081(2)*

"Request for CHRI" is the processing and entry of a person's complete set of fingerprints in DPS's tenprint database and the comparison of those prints to DPS's latent print database and if authorized the entry into FBI's tenprint and comparison to the FBI's latent print database. *37 TAC 27.172*

Participation in the  
Criminal History  
Clearinghouse

The purpose of the clearinghouse is to:

1. Provide authorized entities with the Texas and FBI fingerprint-based criminal history results.
2. Provide authorized entities with subscription and notification service to disseminate updated criminal history information.

Districts shall only submit a request for CHRI on a person who has authorized the access of their information.

Districts may subscribe to a person in the clearinghouse, if the entity has the authority to view the record. Entities shall unsubscribe from a person when it no longer has authority to view a record.

Districts shall validate their subscriptions in accordance with DPS policies. "Validation" is a process whereby the subscriber reviews a subscription to determine whether they are still authorized to receive CHRI on that individual and updates the subscription accordingly. Validations are required on a yearly basis.

Districts shall maintain compliance with the FBI Criminal Justice Information Services Security Policy. Districts shall allow DPS and

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the FBI to conduct audits of their clearinghouse accounts to prevent any unauthorized access, use, or dissemination of the information.

37 TAC 27.171, .172(8), .174

Certified Persons

The State Board for Educator Certification (SBEC) shall review the NCHRI of a person who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by a district. *Education Code 22.0831(c)*

Noncertified  
Employees

This section applies to a person who is not an applicant for or holder of a certificate from SBEC and who, on or after January 1, 2008, is offered employment by:

*Applicability*

1. A district; or
2. A shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present.

[For noncertified employees of a district or shared services arrangement hired before January 1, 2008, see All Other Employees, below.]

*Information to  
DPS and TEA*

Before or immediately after employing or securing the services of a person subject to this section, a district shall send or ensure that the person sends to DPS information that DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

A district shall provide the Texas Education Agency (TEA) with the name of a person to whom this section applies. TEA shall examine the CHRI of the person and notify the district if the person may not be hired or must be discharged under Education Code 22.085.

*Employment  
Pending Review*

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

*Criminal History*

A district shall obtain all CHRI that relates to a person subject to this section through the clearinghouse and shall subscribe to the CHRI of that person. A district may require the person to pay any fees related to obtaining the CHRI.

*Education Code 22.0833; 19 TAC 153.1109(d)*

*Districts of  
Innovation*

A prohibition, restriction, or requirement imposed by Education Code Chapter 22, Subchapter C (Criminal History Records) on an

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open-enrollment charter school applies to the same extent to a district of innovation or other charter entity.

The failure of a district of innovation to provide information required under Education Code 22.0832 may result in termination of the district's designation as a district of innovation. [See AF]

*Education Code 22.0815*

Substitute Teachers	This section applies to a person who is a substitute teacher for a district or shared services arrangement.
<i>Applicability</i>	For purposes of the CHRI review requirements, a "substitute teacher" is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.
<i>Information to DPS and TEA</i>	<p>A district shall send or ensure that a person to whom this section applies sends to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.</p> <p>A district shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI and certification records of the person and notify the district if the person:</p> <ol style="list-style-type: none"><li>1. May not be hired or must be discharged as provided by Education Code 22.085; or</li><li>2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.</li></ol>
<i>Employment Pending Review</i>	After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.
<i>Criminal History</i>	<p>A district shall obtain all CHRI that relates to a person to whom this section applies through the clearinghouse. A district may require the person to pay any fees related to obtaining the CHRI.</p> <p><i>Education Code 22.0836; 19 TAC 153.1101(5), .1111(d)</i></p>
Student Teachers	This section applies to a person participating in an internship consisting of student teaching to receive a teaching certificate.
<i>Applicability</i>	
<i>Criminal History</i>	<p>A student teacher may not perform any student teaching until:</p> <ol style="list-style-type: none"><li>1. The student teacher has provided to a district a driver's license or another form of identification containing the person's</li></ol>



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photograph issued by an entity of the United States government; and

2. The district has obtained from DPS all CHRI that relates to a student teacher. A district may also obtain CHRI relating to a student teacher from any other law enforcement agency, criminal justice agency, or private consumer reporting agency. A district may require a student teacher to pay any costs related to obtaining the CHRI.

*Education Code 22.0835*

Coordination of  
Efforts

TEA, SBEC, a district, and a shared services arrangement may coordinate as necessary to ensure that criminal history reviews authorized or required under Education Code Chapter 22, Subchapter C are not unnecessarily duplicated. *Education Code 22.0833(h)*

All Other  
Employees

A district shall obtain CHRI that relates to a person who is not subject to an NCHRI review under Education Code Chapter 21, Subchapter C and who is an employee of:

1. The district; or
2. A shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present.

A district may obtain the CHRI from:

1. DPS;
2. A law enforcement or criminal justice agency; or
3. A private consumer reporting agency [see Consumer Credit Reports, below].

*Education Code 22.083(a), (a-1); Gov't Code 411.097*

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**Note:** For criminal history record provisions regarding volunteers, see GKG. For provisions on employees of entities that contract with a district, see CJA.

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Confidentiality of  
Record

CHRI that a district obtains from DPS, including any identification information that could reveal the identity of a person about whom CHRI is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

1. Is for the exclusive use of the district; and

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2. May be disclosed or used by the district only if, and only to the extent, disclosure is authorized or directed by a statute, rule, or order of a court of competent jurisdiction.

For purposes of these confidentiality provisions, "criminal history record" information does not refer to any specific document provided by DPS, but to the information contained, wholly or partly, in a document's original form or any subsequent form or use.

A district or an individual may not confirm the existence or nonexistence of CHRI to any person who is not eligible to receive the information.

*Gov't Code 411.084*

CHRI obtained by a district, in the original form or any subsequent form, may not be released to any person except the individual who is the subject of the information, TEA, or SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

An employee of a district may request from the district a copy of any CHRI related to that employee that the district has obtained from DPS. The district may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI.

*Gov't Code 411.097(d), (f)*

Destruction of CHRI

A district shall destroy CHRI obtained from DPS on the earlier of:

1. The date the information is used for the authorized purpose; or
2. The first anniversary of the date the information was originally obtained.

*Gov't Code 411.097(d)(3)*

Confidentiality of  
Information  
Obtained from  
Applicant or  
Employee

A district may not release information collected about a person in order to obtain CHRI, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, except:

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);
2. By court order; or
3. With the consent of the person who is the subject of the information.

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In addition, the information is not subject to disclosure under Government Code Chapter 522 (Public Information Act).

The district shall destroy the information not later than the first anniversary of the date the information is received.

*Education Code 22.08391*

Unauthorized  
Disclosure of CHRI

A person commits a Class B misdemeanor if the person knowingly or intentionally:

1. Obtains CHRI in an unauthorized manner, uses the information for an unauthorized purpose, or discloses the information to a person who is not entitled to the information; or
2. Violates a DPS rule adopted under Government Code Chapter 411, Subchapter F.

A person commits a second degree felony if the person:

1. Obtains, uses, or discloses CHRI for remuneration or for the promise of remuneration; or
2. Employs another person to obtain, use, or disclose CHRI for remuneration or for the promise of remuneration.

*Gov't Code 411.085*

Refusal to Hire  
Convicted  
Applicants

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

1. Convicted of or placed on deferred adjudication community supervision for 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 refuse to hire an applicant if the person committed an offense under Title 5, Penal Code and:

1. The date of the offense is more than 30 years before the date the person's employment will begin; and

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2. The applicant for employment satisfied all terms of the court order entered on conviction.

Certification to  
Commissioner

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

Sanctions

SBEC may impose a sanction on an educator who does not refuse to hire an applicant for employment if the educator knew that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with Education Code 21.009(e), or knew or should have known, through a CHRI review, that the applicant has been convicted of or placed on deferred adjudication community supervision for an offense 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 misdemeanor involving moral turpitude that the employee did not disclose to SBEC or to the district. An employee so discharged is considered to have been discharged for misconduct for the purposes of Labor Code 207.044 (unemployment compensation).

*Education Code 22.085; 19 TAC 249.15(b)(12), (14) [See DF]*

**Pre-employment  
Affidavit**

An applicant for a certified or licensed position [see Professional Personnel at DBA(LEGAL)] with a school district, including a district of innovation, must submit, using a form adopted by TEA, a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.

An applicant who answers affirmatively concerning an inappropriate relationship with a minor must disclose in the affidavit all relevant facts pertaining to the charge, adjudication, or conviction, including, for a charge, whether the charge was determined to be true or false.

An applicant is not precluded from being employed based on a disclosed charge if the district determines based on the information disclosed in the affidavit that the charge was false.

A determination that an employee failed to disclose required information is grounds for termination of employment.

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SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant for a position described by Education Code 21.003(a) or (b) despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.

*Education Code 21.009*

**Do Not Hire Registry**

TEA shall develop and maintain an internet portal through which required reports may be confidentially and securely filed and TEA makes available:

1. The registry of persons who are not eligible to be employed in public schools; and
2. Information indicating that a person is under investigation.

*Education Code 22.095*

TEA shall maintain and make available through its internet portal a registry of persons who are not eligible to be employed by a district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement.

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 the registry.

The registry must list:

1. An employee of an open enrollment charter school determined by TEA under Education Code 22.0832 as a person who would not be eligible for educator certification based on their NCHRI;
2. A noncertified person determined by TEA to be not eligible for employment based on the person's CHRI, as provided by Education Code 22.0833 [see DBAA];
3. A person who is not eligible for employment based on CHRI received by TEA under Education Code 21.058(b) indicating that a certified employee is required to register as a sex offender;
4. A person whose certification or permit is revoked by SBEC on a finding that the person engaged in misconduct described by Education Code 21.006(b)(2)(A) or (A-1) [see DHB]; and

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5. A noncertified person who is determined by the commissioner under Education Code 22.094 to have engaged in misconduct described by Education Code 22.093(c)(1)(A) or (B) [see DHC].

*Education Code 22.092*

**Commercial Driver  
License Drug and  
Alcohol  
Clearinghouse**

The U.S. Department of Transportation (DOT) operates and maintains a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators in order to improve compliance with DOT's alcohol and controlled substances testing program applicable to commercial motor vehicle operators [see DHE] and to enhance the safety of roadways by reducing accidents and injuries involving the misuse of alcohol or use of controlled substances by operators of commercial motor vehicles. *49 U.S.C. 31306a*

Pre-employment  
Query Required

A district must not employ a driver subject to controlled substances and alcohol testing under 49 C.F.R. Part 382 to perform a safety-sensitive function without first conducting a pre-employment query of the federal Drug and Alcohol Clearinghouse to obtain information about the driver's previous test results.

Annual Query  
Required

A district must conduct a query of the federal Drug and Alcohol Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under 49 C.F.R. Part 382 to determine whether information exists about those employees.

Prohibition

A district may not allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a prohibited test result.

Recordkeeping  
Required

A district must retain for three years a record of each query and all information received in response to each query made under this section.

*49 C.F.R. 382.701*

**Consumer Credit  
Reports**

Definitions

"Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

"Consumer report" includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person's eligibility for employment.

"Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or

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evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

"Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

*15 U.S.C. 1681a*

Obtaining Reports

A district may not procure a consumer report for employment purposes unless:

1. The district has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and
2. The applicant or employee has authorized in writing the procurement of the consumer report.

Adverse Action

Before taking any adverse action based on the consumer report, a district shall provide the applicant or employee a copy of the consumer report and a written description of the person's rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

*15 U.S.C. 1681b(b)(2)*

Address  
Discrepancies

"Notice of address discrepancy" means a notice sent to a user by a consumer reporting agency that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

A district must develop and implement reasonable policies and procedures designed to enable the district, when it receives a notice of address discrepancy, to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report.

If a district regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, the district must also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which the district has reasonably confirmed is accurate, to the consumer reporting agency.

*16 C.F.R. 641.1*

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Disposal of Records     A district must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

"Dispose" includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

16 C.F.R. 682.3



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**Disqualifying  
Offenses**

The District shall obtain criminal history record information on final candidates for employment. All District positions have the potential for contact with students. The District shall disqualify from employment a person whose criminal history indicates that the person poses a threat to students or employees. Consistent with business necessity, the District shall also disqualify from employment a person whose criminal history is otherwise inconsistent with the job duties of the position for which the person is being considered.

**Individualized  
Assessment**

The District shall perform an individualized assessment of criminal history record information when determining a person's eligibility for employment in a specific position. The District shall take into account a variety of factors, including the following:

1. The nature of the offense;
2. The age of the person when the crime was committed;
3. The date of the offense and how much time has elapsed;
4. The adjudication of the offense (e.g., whether the person was found guilty by a trier of fact, pled guilty, entered a no contest plea, or received deferred adjudication);
5. The nature and responsibilities of the job sought;
6. The accuracy of the person's disclosure of his or her criminal history during the selection process;
7. The effect of the conduct on the overall educational environment; and
8. Any further information provided by the person concerning his or her criminal history record.

**Arrests**

The fact of an arrest alone does not establish that criminal conduct has occurred, and the District shall not disqualify a person based solely on an arrest. The District may make an employment decision based on the conduct underlying the arrest if the conduct makes the person unfit for the position in question.

**SBEC Notification**

If a candidate for a position has a reported criminal history, and the candidate is certified by the State Board for Educator Certification (SBEC), the District shall report the criminal history to SBEC.

**Credit History**

The District shall obtain credit history information on a candidate for employment only when the credit history is related to the position for which the person is being considered. The District shall comply with the Fair Credit Reporting Act before obtaining a job-related credit history. [See DBAA(LEGAL)]

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**Prohibited Activities  
by Public Servants—  
State Law**

“Public servant” means a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government, even if the person has not yet qualified for office or assumed his or her duties. *Penal Code 1.07(a)(41)(A), (E)*

**Bribery**

A person commits an offense if the person intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another, any benefit:

1. As consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant;
2. As consideration for a violation of a duty imposed by law on a public servant; or
3. That is a political contribution as defined by Election Code Title 15 or an expenditure made and reported in accordance with Government Code Chapter 305 (regarding registration of lobbyists), if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion, if such exercise of official discretion would not have been taken or withheld but for the benefit.

“Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

*Penal Code 36.01(3), .02*

**Illegal Gifts**

A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the public servant’s discretion. *Penal Code 36.08(d)*

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under the provisions above may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt charitable organization formed for educational, religious, or scientific purposes. *Penal Code 36.08(d), (i)*

**Exceptions**

Illegal Gifts does not apply to:

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1. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which the public servant gives legitimate consideration in a capacity other than as a public servant;
2. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
3. A benefit to a public servant required to file a statement under Government Code Chapter 572 or a report under Election Code Title 15 that is derived from a function in honor or appreciation of the recipient if:
  - a. The benefit and the source of any benefit in excess of \$50 is reported in the statement; and
  - b. The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;
4. A political contribution as defined by Election Code Title 15;
5. An item with a value of less than \$50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;
6. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or
7. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

*Penal Code 36.10*

Honoraria and  
Expenses

A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the person's official position or duties. This provision does not prohibit a public servant from accepting transportation and lodging expenses or meals in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent those services are more than merely perfunctory. *Penal Code 36.07*

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**Abuse of Official  
Capacity**

A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly violates a law relating to the public servant's office or employment, or misuses government property, services, personnel, or any other thing of value, belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment. *Penal Code 39.02(a)*

"Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant or governs the conduct of the public servant. *Penal Code 39.01(1)*

"Misuse" means to deal with property contrary to:

1. An agreement under which the public servant holds the property;
2. A contract of employment or oath of office of a public servant;
3. A law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
4. A limited purpose for which the property is delivered or received.

*Penal Code 39.01(2)*

**Misuse of Official  
Information**

A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person's office or employment and that has not been made public, the person:

1. Acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
2. Speculates or aids another to speculate on the basis of the information; or
3. As a public servant, including as a school administrator, coerces another into suppressing or failing to report that information to a law enforcement agency.

A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, the public servant discloses or uses information for a nongovernmental purpose that:

1. The person has access to by means of the person's office or employment; and

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2. Has not been made public.

"Information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Government Code Chapter 552 (the Public Information Act).

*Penal Code 39.06(a), (b), (d)*

**Instructional  
Materials Violations  
— Commissions**

An administrator or teacher commits an offense if the person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated. *Education Code 31.152(a)*

**Instructional  
Materials Violations  
— Conflict**

An administrator or teacher commits an offense if the person accepts a gift, favor, or service that:

1. Is given to the person or the person's school;
2. Might reasonably tend to influence the person in the selection of instructional materials or technological equipment; and
3. Could not be lawfully purchased with state instructional material funds.

"Gift, favor, or service" does not include staff development, in-service, or teacher training; or ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

*Education Code 31.152(b)–(d)*

**Instructional  
Materials Violations  
— Purchase and  
Distribution**

A person commits a Class C misdemeanor offense if the person knowingly violates any law providing for the purchase or distribution of free instructional materials for the public schools. *Education Code 31.153*

**Holding Civil Office**

No person shall hold or exercise at the same time more than one civil office of emolument, except for offices listed in the constitutional provision, unless otherwise specifically provided. *Tex. Const., Art. XVI, Sec. 40(a)*

A position in or membership in the Texas military forces is not considered to be a civil office of emolument. *Gov't Code 437.203*

Individuals who receive all or part of their compensation either directly or indirectly from funds of the state of Texas and who are not state officers shall not be barred from serving as members of the governing bodies of school districts (other than those in which they are employed), cities, towns, or other local governmental districts. Such individuals may not receive a salary for serving as members of such governing bodies, except that a schoolteacher, retired

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schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district created under Section 59, Article XVI, or Section 52, Article III. *Tex. Const., Art. XVI, Sec. 40(b)*

**Conflicts Disclosure  
Statement**

A local government officer shall file a conflicts disclosure statement with respect to a vendor if the vendor enters into a contract with the district or the district is considering entering into a contract with the vendor; and the vendor:

1. Has an employment or other business relationship with the local government officer or a family member of the officer, and the business relationship results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:
  - a. A contract between the district and the vendor has been executed; or
  - b. The district is considering entering into a contract with the vendor;
2. Has given to the local government officer or a family member of the officer one or more gifts, as defined by law, and the gift or gifts have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
  - a. A contract between the district and the vendor has been executed; or
  - b. The district is considering entering into a contract with the vendor; or
3. Has a family relationship with the local government officer.

A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is a political contribution as defined by Title 15, Election Code, or food accepted as a guest.

*Local Gov't Code 176.003(a)–(a-1)*

**Definitions**

“Local government officer” means a member of the board; the superintendent; or an agent (including an employee) of the district who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Local Gov't Code 176.001(1), (4)*

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"Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. *Local Gov't Code 176.001(2-b)*

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**Note:** For additional provisions and definitions relating to conflict disclosure statements, see BBFA(LEGAL).

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**Personal Services  
Performed by  
Superintendent**

A superintendent of a school district may not receive any financial benefit for personal services performed by the superintendent for any business entity that conducts or solicits business with the district. Any financial benefit received by a superintendent for performing personal services for any other entity, including a school district, open-enrollment charter school, regional education service center, or public or private institution of higher education, must be approved by the board on a case-by-case basis in an open meeting. The receipt of reimbursement for a reasonable expense is not considered a financial benefit. *Education Code 11.201(e)*

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**Note:** See also CBB for requirements when federal funds are involved.

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**Note:** For conflicts of interest and gifts and gratuities related to federal grants and awards, see CB and CBB.

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**Disclosure—General  
Standard**

An employee shall disclose to his or her immediate supervisor a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a potential conflict of interest with the proper discharge of assigned duties and responsibilities or with the best interest of the District.

**Specific Disclosures**  
Substantial Interest

The Superintendent shall file an affidavit with the Board President disclosing a substantial interest, as defined by Local Government Code 171.002, in any business or real property that the Superintendent or any of his or her relatives in the first degree may have.

Any other employee who is in a position to affect a financial decision involving any business entity or real property in which the employee has a substantial interest, as defined by Local Government Code 171.002, shall file an affidavit with the Superintendent; however, the employee shall not be required to file an affidavit for the substantial interest of a relative.

Interest in Property

The Superintendent shall be required to file an affidavit disclosing interest in property in accordance with Government Code 553.002.

Annual Financial  
Management  
Report

The Superintendent, as the executive officer of the District, shall provide to the District in a timely manner information necessary for the District's annual financial management report.

[See BBFA]

**Gifts**

An employee shall not accept or solicit any gift, favor, service, or other benefit that could reasonably be construed to influence the employee's discharge of assigned duties and responsibilities. [See CAA, CB, and CBB]

**Endorsements**

An employee shall not recommend, endorse, or require students to purchase any product, material, or service in which the employee has a financial interest or that is sold by a company that employs or retains the District employee during nonschool hours. No employee shall require students to purchase a specific brand of school supplies if other brands are equal and suitable for the intended instructional purpose.

**Sales**

An employee shall not use his or her position with the District to attempt to sell products or services.



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**Nonschool  
Employment**

An employee shall disclose in writing to his or her immediate supervisor any outside employment that in any way creates a potential conflict of interest with the proper discharge of assigned duties and responsibilities or with the best interest of the District.

Private Tutoring

An employee shall disclose in writing to his or her immediate supervisor any private tutoring of District students for pay.

- Employment Policies** A board shall adopt a policy providing for the employment and duties of district personnel. The policy shall provide that:
1. A board employs and evaluates the superintendent;
  2. A superintendent has sole authority to make recommendations to a board regarding the selection of all personnel, except that the board may delegate final authority for those decisions to the superintendent [see Superintendent Recommendation, below];
  3. Each principal must approve each teacher or staff appointment to the principal's campus as provided by Education Code 11.202 [see DK and DP];
  4. Notice will be provided of vacant positions [see Posting of Vacancies, below]; and
  5. Each employee has the right to present grievances to the board. [See Grievances, below]

*Education Code 11.1513*

- Tax Identifier** A board shall adopt a policy prohibiting the use of social security numbers as employee identifiers other than for tax purposes [see Social Security Numbers, below]. *Education Code 11.1514* [See DBA]
- Contract Positions** A board shall establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply. *Education Code 21.002(c)* [See DCB and DCC]
- Delegation of Authority** A district's employment policy may specify the terms of district employment or delegate to the superintendent the authority to determine the terms of employment with the district. *Education Code 11.1513(c)* [For nepotism implications, see BBFB and DBE]
- Availability** A district shall post on its internet website, if the district has a website, the employment policy adopted by the board under Education Code 11.1513(a) and the full text of any regulations referenced in the policy.
- A district shall make available any forms referenced in its employment policy on an intranet website that is maintained by the district and accessible to district employees, or at a district administrative office designated by the district if the district does not maintain an intranet website.

*Education Code 11.1513(k)*

**Internal Auditor**

If a district employs an internal auditor, the board shall select the internal auditor and the internal auditor shall report directly to the board. *Education Code 11.170* [See CFC]

**Superintendent  
Recommendation**

A board may accept or reject a superintendent's recommendation regarding the selection of district personnel and shall include the board's acceptance or rejection in the minutes of the board's open meeting, in the certified agenda or tape recording of a closed meeting, or in the recording required under Government Code 551.125 or 551.127, as applicable. If a board rejects a superintendent's recommendation, the superintendent shall make alternative recommendations until the board accepts a recommendation. *Education Code 11.1513(b)*

**Posting of Vacancies**

A district's employment policy must provide that not later than the tenth school day before the date on which a district fills a vacant position for which a certificate or license is required as provided by Education Code 21.003 [see DBA], other than a position that affects the safety and security of students as determined by the board, the district must provide to each current district employee:

1. Notice of the position by posting the position on:
  - a. A bulletin board at:
    - (1) A place convenient to the public in the district's central administrative office, and
    - (2) The central administrative office of each campus during any time the office is open; or
  - b. The district's internet website, if the district has a website; and
2. A reasonable opportunity to apply for the position.

*Education Code 11.1513(d)*

**Exception**

If, during the school year, a district must fill a vacant position held by a teacher, as defined by Education Code 21.201 [see DCB], in less than ten school days, the district must provide notice of the position in the manner described above as soon as possible after the vacancy occurs. However, a district is not required to provide the notice for ten school days before filling the position or to provide a reasonable opportunity to apply for the position. *Education Code 11.1513(e)*

**Grievances**

A district's employment policy must provide each employee with the right to present grievances to the board. The policy may not restrict the ability of an employee to communicate directly with a member of the board regarding a matter relating to the operation of

a district, except that the policy may prohibit ex parte communication relating to:

1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and
2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the board.

*Education Code 11.1513(i)–(j) [See DGBA]*

**Transfers**

A district's employment policy may include a provision for providing each current district employee with an opportunity to participate in a process for transferring to another school in or position with the district. *Education Code 11.1513(c)(3) [See DK]*

**Contract Employees**

A district shall employ each classroom teacher, principal, librarian, nurse, or school counselor under a probationary contract, a continuing contract, or a term contract. A district is not required to employ a person other than these listed employees under a probationary, continuing, or term contract. *Education Code 21.002*

**Classroom Teacher**

"Classroom teacher" means an educator who is employed by a district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting. The term does not include a teacher's aide or a full-time administrator. *Education Code 5.001(2)*

**Minimum Length of Contract**

A contract between a district and an educator must be for a minimum of ten months of service. An educator employed under a ten-month contract must provide a minimum of 187 days of service. *Education Code 21.401(a), (b)*

*Proportionate Reduction*

If a district anticipates providing less than 180 days of instruction for students during a school year, as indicated by the district's academic calendar, the district may reduce the number of days of service proportionately. A reduction by the district does not reduce an educator's salary. *Education Code 21.401(c-1)*

*Commissioner Waiver*

The commissioner of education may reduce the number of days of service if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools. A reduction by the commissioner does not reduce an educator's salary. *Education Code 21.401(c), 25.081(b)*

**Educational Aides**

A board shall establish a plan to encourage the hiring of educational aides who show a willingness to become certified teachers. *Education Code 54.363(f)*

**Employment of  
Retirees**

A district shall file a monthly certified statement of employment of a retiree in the form and manner required by TRS. A district shall inform TRS of changes in status of the district that affect the district's reporting responsibilities.

The certified statement must include information regarding:

1. Employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003, and are performing duties or providing services on behalf of or for the benefit of the district that employees of the district would otherwise perform or provide; and
2. Retirees who retired within twelve full, consecutive calendar months of the month of the monthly certified statement and are performing duties or providing services for or on behalf of the district that employees of the district would otherwise perform or provide, and are:
  - a. Waiving, deferring, or forgoing compensation for the services or duties;
  - b. Performing the duties or providing the services as an independent contractor; or
  - c. Serving as a volunteer without compensation and performing the same duties or providing the same services for a reporting entity that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

A district that fails to attain a completed status for the monthly certified statement as required by 34 Administrative Code 31.2 shall pay to TRS, in addition to the required employer surcharges and any applicable penalty interest on the unpaid amounts, the late fee established in 34 Administrative Code 31.2(d) for each business day that the monthly certified statement fails to attain a completed status.

An administrator of a district who is responsible for filing the statement, and who knowingly fails to file the statement, commits an offense.

*Gov't Code 824.6022, 825.403(k); 34 TAC 31.2*

**Former Board  
Member Employment**

A board member is prohibited from accepting employment with the district until the first anniversary of the date the board member's membership on a board ends. *Education Code 11.063* [See BBC]

**New Hires  
I-9 Forms**

A district shall ensure that an employee properly completes section 1—"Employee Information and Verification"—on Form I-9 at the time of hire.

A district must verify employment eligibility, pursuant to the Immigration Reform and Control Act, and complete Form I-9 by the following dates:

1. Within three business days of initial hiring. If a district hires an individual for employment for a duration of less than three business days, the district must verify employment at the time of hire. A district shall not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times. When a district rehires an individual, the district may, in lieu of completing a new I-9, inspect a previously completed I-9 executed within three years of the date of rehire, to determine whether the individual is still eligible to work.
2. For an individual whose employment authorization expires, not later than the date of expiration.

*8 C.F.R. 274a.2(b)(1)(ii), (iii), (vii), (viii)*

**New Hire Reporting**

A district shall furnish to the Directory of New Hires (Texas Attorney General's Office) a report that contains the name, address, and social security number of each newly hired employee. The report shall also contain a district's name, address, and employer identification number.

A district may also provide, at its option, the employee's date of hire, date of birth, expected salary or wages, and the district's payroll address for mailing of notice to withhold child support.

A district shall report new hire information on a Form W-4 or an equivalent form, by first class mail, telephonically, electronically, or by magnetic media, as determined by the district and in a format acceptable to the attorney general.

*Deadline*

New hire reports are due:

1. Not later than 20 calendar days after the date a district hires the employee; or
2. In the case of a district transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

	<p>New hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.</p>
<i>Penalties</i>	<p>A district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105.</p> <p><i>42 U.S.C. 653a(b), (c); Family Code 234.101–.105; 1 TAC 55, Subch. I</i></p>
<b>Donations for Supplemental Educational Staff</b>	<p>A district shall accept from a parent-teacher organization or association recognized by the district a donation designated to fund supplemental educational staff positions at a school campus and spend the donation accepted for the designated purpose at the direction of and within the time period specified by the school campus for which the donation was designated. This provision expires September 1, 2025. <i>Education Code 11.156(c), (d)</i></p>
<b>Social Security Numbers</b>	<p>A board shall adopt a policy prohibiting the use of the social security number of an employee of the district as an employee identifier other than for tax purposes. <i>Education Code 11.1514 [See DBA]</i></p>
Federal Law	<p>A district shall not deny to any individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number.</p>
<i>Exceptions</i>	<p>The federal law does not apply to:</p> <ol style="list-style-type: none"><li>1. Any disclosure that is required by federal statute. The United States Internal Revenue Code provides that the social security number issued to an individual for purposes of federal income tax laws shall be used as the identifying number for taxpayers;</li><li>2. Any disclosure to a district maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual; or</li><li>3. Any use for the purposes of establishing the identity of individuals affected by any tax, general public assistance, driver's license, or motor vehicle registration law within a district's jurisdiction.</li></ol>
Statement of Uses	<p>A district that requests disclosure of a social security number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it.</p> <p><i>Privacy Act of 1974, Pub. L. No. 93-579, Sec. 7, 88 Stat. 1896, 1897 (1974)</i></p>

**Employment  
Assistance  
Prohibited**

Federal Law

A district that receives Title I funds shall have regulations or policies that prohibit any individual who is a school employee, contractor, or agent, or a district, from assisting a school employee in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or district knows, or has probable cause to believe, that such school employee engaged in sexual misconduct regarding a minor or student in violation of the law.

This requirement shall not apply if the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the implementing regulations under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations; and:

1. The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee engaged in sexual misconduct regarding a minor or student in violation of the law;
2. The school employee has been charged with and acquitted or otherwise exonerated of the alleged misconduct; or
3. The case or investigation remains open and there have been no charges filed against, or indictment of, the school employee within four years of the date on which the information was reported to a law enforcement agency.

*20 U.S.C 7926 [See also CJ]*

State Law

SBEC may suspend or revoke a certificate, impose other sanctions against the person, or refuse to issue a certificate to the person if:

1. The person assists another person in obtaining employment at a school district, private school, or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and
2. The person knew that the other person has previously engaged in sexual misconduct with a minor or student in violation of the law.



The commissioner may require a school district to revoke or decline to issue a school district teaching permit under Education Code 21.055 issued to or requested by a person subject to SBEC action above.

*Education Code 21.0581; 19 TAC 249.15(b)(13)*

EMPLOYMENT PRACTICES

DC  
(LOCAL)

<b>Personnel Duties</b>	The Superintendent shall define the qualifications, duties, and responsibilities of all positions and shall ensure that job descriptions are current and accessible to employees and supervisors.
<b>Posting Vacancies</b>	The Superintendent or designee shall establish guidelines for advertising employment opportunities and posting notices of vacancies. These guidelines shall advance the Board's commitment to equal opportunity employment and to recruiting well-qualified candidates. Current District employees may apply for any vacancy for which they have appropriate qualifications.
<b>Applications</b>	<p>All applicants shall complete the application form supplied by the District. Information on applications shall be confirmed before a contract is offered for a contractual position and before hiring or as soon as possible thereafter for a noncontractual position.</p> <p>[For information related to the evaluation of criminal history records, see DBAA.]</p>
<b>Employment of Contractual Personnel</b>	<p>The Superintendent has sole authority to make recommendations to the Board regarding the selection of contractual personnel.</p> <p>The Board retains final authority for employment of contractual personnel. [See DCA, DCB, DCC, and DCE as appropriate]</p>
<b>Employment of Noncontractual Personnel</b>	The Board delegates to the Superintendent final authority to employ and dismiss noncontractual employees on an at-will basis. [See DCD]
<b>Employment Assistance Prohibited</b>	No District employee shall assist another employee of the District or of any school district in obtaining a new job if the employee knows, or has probable cause to believe, that the other employee engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition. [See CJ for prohibitions relating to contractors and agents and DH(EXHIBIT) for the Educators' Code of Ethics.]

EMPLOYMENT PRACTICES  
PROBATIONARY CONTRACTS

DCA  
(LEGAL)

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**Note:** The Board has adopted an innovation plan<sup>1</sup> that affects application of provisions in this legally referenced policy.

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**Persons Under  
Probationary  
Contracts**

Except as provided below, each of the following persons shall be employed under a probationary contract when the person is employed by the District for the first time or if the person has not been employed by the District for two consecutive school years subsequent to August 28, 1967:

1. Principal.
2. Supervisor.
3. Classroom teacher.
4. School counselor.
5. Other full-time professional employee who is required to hold a certificate issued under Education Code Chapter 21, Subchapter B [see DK(EXHIBIT)].
6. Nurse.

**Exclusions**

Education Code Chapter 21, Subchapter C (relating to probationary contracts) does not apply to the Superintendent or a person who is not entitled to a probationary, continuing, or term contract under Education Code 21.002 [see DC(LEGAL) at CONTRACT EMPLOYEES], an existing contract, or District policy.

*Education Code 21.101, .102(a)*

**Exceptions**

*Rehires*

A person who previously was employed as a teacher by the District, and after at least a two-year lapse in District employment returns to District employment, may be employed under a probationary contract. *Education Code 21.102(a)*

*Principal or  
Classroom  
Teacher*

The District may employ a person as a principal or classroom teacher under a term contract if the person has experience as a public school principal or classroom teacher, respectively, regardless of whether the person is being employed by the District for the first time or whether a probationary contract would otherwise be required under Education Code Section 21.102. *Education Code 21.202(b)*

*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.

EMPLOYMENT PRACTICES  
PROBATIONARY CONTRACTS

DCA  
(LEGAL)

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]

**Term of Contract**

A probationary contract may not be for a term exceeding one school year.

**Maximum**

A probationary contract may be renewed for two additional one-year periods, for a maximum permissible probationary contract period of three school years, except that the probationary period may not exceed one year for a person who has been employed as a teacher in public education for at least five of the eight years preceding employment by the District.

*Exception*

A probationary contract period may be extended beyond the third consecutive year of employment if, during the third year of the probationary period, the Board determines that it is doubtful whether a continuing contract or a term contract should be given. If the Board makes such a determination, the District may make a probationary contract for a term ending with the fourth consecutive school year.

*Education Code 21.102*

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<sup>1</sup> Innovation Plan:

[http://www.ocisd.net/docs/District\\_of\\_Innovation\\_2017.pdf](http://www.ocisd.net/docs/District_of_Innovation_2017.pdf)

EMPLOYMENT PRACTICES  
PROBATIONARY CONTRACTS

DCA  
(LOCAL)

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**Note:** This local policy has been revised in accordance with the District's innovation plan.<sup>1</sup>

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**Maximum  
Probationary  
Contract Period**

In accordance with the District's innovation plan, the District is exempt from the state law regarding the maximum length of time an experienced teacher may be employed on a probationary contract. At the recommendation of the Superintendent, a probationary contract may be renewed for up to two additional one-year periods for a person who has been employed as a teacher in public education for at least five of the eight years preceding employment by the District.

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<sup>1</sup> Innovation Plan:

[http://www.ocisd.net/docs/District\\_of\\_Innovation\\_2017.pdf](http://www.ocisd.net/docs/District_of_Innovation_2017.pdf)

EMPLOYMENT PRACTICES  
TERM CONTRACTS

DCB  
(LEGAL)

**Term Contracts**

Unless employed under a probationary contract [see DCA] or a continuing contract [see DCC], a school district shall employ each classroom teacher, principal, librarian, nurse, or school counselor under a term contract as provided by Education Code Chapter 21, Subchapter E. *Education Code 21.002(a)*

**Definition**

In this policy, "teacher" means:

1. A superintendent;
2. A principal;
3. A supervisor;
4. A classroom teacher;
5. A school counselor;
6. Any other full-time professional employee who is required to hold a certificate issued under Education Code Chapter 21, Subchapter B [see DK(EXHIBIT)]; or
7. A nurse.

**Exclusions**

In this policy, the term "teacher" does not include a person who is not entitled to a probationary, continuing, or term contract under Education Code 21.002, an existing contract, or district policy.

*Education Code 21.201(1)*

**District-Required  
Certification**

If a district requires a person, by policy, job description, or contract, to hold a certificate issued under Education Code Chapter 21, Subchapter B, the district is required to employ the person under a term contract as provided by Education Code Chapter 21, Subchapter E. *Fields v. Alief Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 006-R10-10-2014 (2015)*

**Probationary  
Contract Required**

Before a teacher may be employed under a term contract, the teacher must be employed under a probationary contract for the period provided by Education Code Chapter 21, Subchapter C [see DCA]. *Education Code 21.202(a)*

**Exception**

The district may employ a person as a principal or classroom teacher under a term contract if the person has experience as a public school principal or classroom teacher, respectively, regardless of whether the person is being employed by the district for the first time or whether a probationary contract would otherwise be required under Education Code 21.102. *Education Code 21.202(b)*

**Contract Terms**

A term contract must be in writing and include the terms of employment prescribed by Education Code Chapter 21, Subchapter E. The board may include other provisions in a term contract that are

EMPLOYMENT PRACTICES  
TERM CONTRACTS

DCB  
(LEGAL)

consistent with that subchapter. Each term contract is subject to the approval of the board.

The board shall provide each term contract employee with a copy of the employee's contract.

*Education Code 21.204(a)–(d)*

**Maximum Duration**

Once an employee has completed the probationary contract period, the duration of a term contract may not exceed five school years. *Education Code 21.205*

**Employment Policies**

If the district has a website, the district shall place the board's employment policies on that website. At each school in the district, the board shall make a copy of the employment policies available for inspection at a reasonable time on request.

On request, the board shall also provide each term contract employee with a copy of the employment policies.

*Education Code 21.204(d)*

**Property Interest**

An employee does not have a property interest in a term contract beyond its term. *Education Code 21.204(e)*

EMPLOYMENT PRACTICES  
TERM CONTRACTS

DCB  
(LOCAL)

**Contracts Required  
by Law**

After any applicable probationary contract period required by the District, term contracts governed by Chapter 21 of the Education Code (educator term contracts) shall be provided to:

1. Any employees in positions required by statute to receive such contracts, including SBEC-certified employees serving full-time as principals, assistant principals, teachers, school counselors, diagnosticians, librarians, and athletic directors;
2. Full-time professional employees in other positions for which the District requires current SBEC certification; and
3. Full-time nurses.



EMPLOYMENT PRACTICES  
AT-WILL EMPLOYMENT

DCD  
(LEGAL)

The employment-at-will doctrine is the law of Texas, under which an employer has no duty to an employee regarding continuation of employment. Jones v. Legal Copy, Inc., 846 S.W.2d 922 (Tex. App.—Houston [1st Dist.] 1993, no writ)

The employment-at-will doctrine places no duties on an employer regarding an employee's continued employment and thus bars contract and tort claims based on the decision to discharge an employee. Sabine Pilot Serv., Inc. v. Hauck, 687 S.W.2d 733 (Tex. 1985)

In Texas, at-will employment is presumed unless shown otherwise. Gonzales v. Galveston Ind. Sch. Dist., 865 F.Supp. 1241 (S.D. Tex. 1994)

Employment for an indefinite term may be terminated at-will and without cause, except as otherwise provided by law. Garcia v. Reeves County, Texas, 32 F.3d 200 (5th Cir. 1994); Irby v. Sullivan, 737 F.2d 1418 (5th Cir. 1984); Winters v. Houston Chronicle Pub. Co., 795 S.W.2d 723 (Tex. 1990)

**Exception**

An at-will employee cannot be discharged if the sole reason for the discharge was that the employee refused to perform an illegal act. Sabine Pilot Serv., Inc. v. Hauck, 687 S.W.2d 733 (Tex. 1985) [See DG, DGA, DGB for other exceptions]

**Nepotism**

A superintendent to whom a board has delegated final hiring authority to select personnel is a "public official" with appointment authority for purposes of the nepotism laws. *Atty. Gen. Op. GA-123 (2003)* [See DBE]

**Dismissal Procedure**

An at-will employment relationship, standing alone without benefit of recognized exception, triggers no due process requirement nor right. Mott v. Montgomery County, 882 S.W.2d 635, 638 (Tex. App.—Beaumont 1994, writ denied)

Termination of employment is a condition of work that is a proper subject for the grievance process. Fibreboard Paper Products Corp. v. National Labor Relations Board, 379 U.S. 203 (1984); Sayre v. Mullins, 681 S.W.2d 25 (Tex. 1984) [See DGBA]

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

EMPLOYMENT PRACTICES  
AT-WILL EMPLOYMENT

DCD  
(LOCAL)

Personnel not hired under a contract shall be employed on an at-will basis.

[For information regarding contractual employment, see DCA, DCB, DCC, and DCE, as appropriate]

**Dismissal**

At-will employees may be dismissed at any time for any reason not prohibited by law or for no reason, as determined by the needs of the District. At-will employees who are dismissed shall receive pay through the end of the last day worked.

Appeal of  
Employment  
Actions

A dismissed employee may appeal the dismissal in accordance with DGBA(LOCAL).

EMPLOYMENT PRACTICES  
OTHER TYPES OF CONTRACTS

DCE  
(LEGAL)

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**Note:** This policy applies only to employees whose contracts are not governed by Chapter 21 of the Education Code.

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**Non-Chapter 21  
Contract**

A contract of employment with a district creates a property interest in the position only for the period of time stated in the contract. Such a contract creates no property interest of any kind beyond the period of time stated in the contract. *Perry v. Sindermann*, 408 U.S. 593 (1972); *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972)

**Termination**

End of Contract

A board may decide by vote or inaction not to offer any employee on a contract not governed by Chapter 21 of the Education Code further employment with the district beyond the term of the contract for any reason or no reason. *Perry v. Sindermann*, 408 U.S. 593 (1972); *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972)

Midcontract

An employee may be dismissed for good cause before the completion of the term fixed in his or her contract.

Procedure

Before any employee on a contract not governed by Chapter 21 of the Education Code is dismissed, the employee shall be given reasonable notice of the cause or causes for the termination, set out in sufficient detail to fairly enable him or her to show any error that may exist and the names and the nature of the testimony of the witnesses against him.

*Ferguson v. Thomas*, 430 F.2d 852 (5th Cir. 1970)

Hearing

A board may conduct the hearing in open session or in closed session unless the employee requests a public hearing, in which case the hearing shall be open to the public. *Gov't Code 551.074*

**Suspension**

The employee may be suspended without pay, so long as the suspension is temporary, and the employee receives a due process hearing. *Gilbert v. Homar*, 524 U.S. 924 (1997)

EMPLOYMENT PRACTICES  
OTHER TYPES OF CONTRACTS

DCE  
(LOCAL)

**Non-Chapter 21  
Contracts**

Non-Chapter 21 contracts shall be provided for positions included on the list approved by the Board. A non-Chapter 21 contract shall not be governed by Chapter 21 of the Education Code.

**Appeal of  
Employment Actions**

An employee may appeal discharge during the contract period in accordance with DCE(LEGAL).

An employee whose contract is not reissued at the end of the contract period may appeal in accordance with DGBA(LOCAL).

COMPENSATION AND BENEFITS  
COMPENSATION PLAN

DEA  
(LEGAL)

**Minimum Salary  
Schedule —  
Educators**

A district shall pay each classroom teacher, full-time librarian, full-time school counselor, or full-time nurse not less than the minimum monthly salary, based on the employee's level of experience, specified in Education Code 21.402 and 19 Administrative Code 153.1021.

**Definitions**

*Classroom  
Teacher*

"Classroom teacher" means an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting, focusing on the delivery of the Texas Essential Knowledge and Skills, and who holds the relevant certificate from the State Board for Educator Certification (SBEC). Although noninstructional duties do not qualify as teaching, necessary functions related to the educator's instructional assignment, such as instructional planning and transition between instructional periods, should be applied to creditable classroom time.

*Librarian*

"Librarian" means an educator who provides full-time library services and holds the relevant certificate from SBEC.

*School Counselor*

"School counselor" means an educator who provides full-time counseling and guidance services and holds the relevant certificate from SBEC.

*Nurse*

"Nurse" means an educator employed to provide full-time nursing and health-care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

*Full-Time*

"Full-time" means contracted employment for at least ten months (187 days) for 100 percent of the school day, in accordance with the definitions of school day in Education Code 25.082, employment contract in Education Code 21.002, and school year in Education Code 25.081.

*19 TAC 153.1022(a)*

**Placement on  
Salary Schedule**

The commissioner's rules determine the experience for which a teacher, librarian, school counselor, or nurse is to be given credit in placing the teacher, librarian, school counselor, or nurse on the minimum salary schedule. A district shall credit the teacher, librarian, school counselor, or nurse for each year of experience, whether or not the years are consecutive. *Education Code 21.402(a), .403(c); 19 TAC 153.1022*

**Employees  
Formerly on Career  
Ladder**

A teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary the teacher or librarian received for the 1994–95 school year as long as the teacher or librarian is employed by the same district.

COMPENSATION AND BENEFITS  
COMPENSATION PLAN

DEA  
(LEGAL)

In addition, a teacher or librarian who was on level two or three of the career ladder is entitled, as long as he or she is employed by the same district, to placement on the minimum salary schedule according to the guidelines at Education Code 21.403(d). *Education Code 21.402(f), .403(d)*

**Pay Increases**

A district shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. *Tex. Const. Art. III, Sec. 53*

Public Hearing—  
Contract Employees

A district may not pay an employee or former employee more than an amount owed under a contract with the employee unless the district holds at least one public hearing. Notice of the hearing must be given in accordance with notice of a public meeting under the Texas Open Meetings Act [see BE].

The board must state the following at the public hearing:

1. The source and exact amount of the payment;
2. The reason the payment is being offered including the public purpose that will be served by making the payment; and
3. The terms for distribution of the payment that effect and maintain the public purpose.

*Local Gov't Code 180.007*

Increase in Basic  
Allotment

During any school year for which the maximum amount of the basic allotment provided under Education Code 48.015(a) or (b) is greater than the maximum amount provided for the preceding school year, a district must use at least 30 percent of the district's increased funding to provide compensation increases to full-time district employees other than administrators as follows:

1. 75 percent must be used to increase the compensation paid to classroom teachers, full-time librarians, full-time school counselors certified under Education Code Chapter 21, Subchapter B and full-time school nurses, prioritizing differentiated compensation for classroom teachers with more than five years of experience; and
2. 25 percent may be used as determined by the district to increase compensation paid to full-time district employees.

"Compensation" includes benefits such as insurance premiums.

*Education Code 48.051(c), (d)*

COMPENSATION AND BENEFITS  
COMPENSATION PLAN

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(LEGAL)

Maintenance of  
Salary

An employee who received a salary increase from a district for the 2019–20 school year is, as long as the employee remains employed by the same district and the district is receiving at least the same amount of funding as the amount of funding the district received for the 2019–20 school year, entitled to salary that is at least equal to the salary the employee received for the 2019–20 school year.

This requirement does not apply if the board:

1. Implements a furlough program under Education Code 21.4021 [see Furlough Program, below], a salary reduction under Education Code 21.4022 [see Salary Reduction/Furlough Process, below], and a widespread reduction in salaries under Education Code 21.4032 [see Widespread Salary Reductions, below] in reducing the employee's salary; and
2. Has adopted a resolution declaring a financial exigency for the district under Education Code 44.011. [See CEA]

A reduction in the salary of a district employee described above is subject to the rights granted to the employee under the Education Code.

*Education Code 48.051(c-1), (c-2)*

**Salary Advances and  
Loans**

A district shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. *Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry*, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)

**Designation of  
Compensation for  
Benefits**

An employee who is covered by a cafeteria plan or who is eligible to pay health-care premiums through a premium conversion plan may elect to designate a portion of the employee's compensation to be used as health-care supplementation. The amount designated may not exceed the amount permitted under federal law. *Education Code 22.103*

Use

An employee may use the compensation designated for health-care supplementation for any employee benefit, including depositing the designated amount into a cafeteria plan in which the employee is enrolled or using the designated amount for health-care premiums through a premium conversion plan. *Education Code 22.106*

Annual Election

Each school year, an active employee must elect in writing whether to designate a portion of the employee's compensation to be used as health-care supplementation. The election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. *Education Code 22.105*

COMPENSATION AND BENEFITS  
COMPENSATION PLAN

DEA  
(LEGAL)

Definition

For purposes of the designation of compensation as health-care supplementation, "employee" means an active, contributing member of the Teacher Retirement System (TRS) who:

1. Is employed by a district;
2. Is not a retiree eligible for coverage under Insurance Code Chapter 1575 (retiree group health benefits);
3. Is not eligible for coverage by a group insurance plan under Insurance Code Chapter 1551 (state employee health insurance) or Chapter 1601 (state university employee health insurance); and
4. Is not an individual performing personal services for the district as an independent contractor.

*Education Code 22.101(2)*

**TRS Contributions  
for New Hires**

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

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

On a monthly basis, a district shall:

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

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

*Gov't Code 825.4041*



COMPENSATION AND BENEFITS  
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(LEGAL)

**TRS Surcharge for  
Rehired Retirees**

TRS Fund  
Contributions

During each payroll period for which a retiree is reported, a district shall contribute to the retirement system for each retiree reported an amount based on the retiree's salary equal to the sum of:

1. The current contribution amount that would be contributed by the retiree if the retiree were an active, contributing member; and
2. The current contribution amount authorized by the General Appropriations Act that the state would contribute for that retiree if the retiree were an active, contributing member.

*Gov't Code 825.4092(b)*

Health Insurance  
Contributions

In addition, each payroll period and for each rehired retiree who is enrolled in TRS Care (retiree group health insurance), a district shall contribute to the TRS Care trust fund an amount established by TRS. In determining the amount to be contributed by the district, TRS shall consider the amount a retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program. If more than one employer reports the retiree to TRS during a month, the amount of the required payment shall be prorated among employers. *Gov't Code 825.4092(c); Insurance Code 1575.204(b)*

No Recovery of  
Costs

A district is ultimately responsible for payment of the contributions above. A district may not directly or indirectly pass that cost on to the retiree through payroll deduction, by imposition of a fee, or by any other means designed to recover the cost. *Gov't Code 825.4092(f)*

Exception

A district is not required to contribute these amounts for a retiree who retired from the retirement system before September 1, 2005. *Gov't Code 825.4092(e)*

Temporary  
Exception

A district is not required to contribute these amounts for a retiree who retired from the retirement system after September 1, 2005, and is employed in a position described by Government Code 824.6021(a) performing duties related to the mitigation of student learning loss attributable to the coronavirus disease (COVID-19) pandemic. This provision expires February 1, 2025. *Gov't Code 825.4092(f)*

**Notice Regarding  
Earned Income Tax  
Credit**

Not later than March 1 of each year, a district shall provide employees with information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

1. In person;

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COMPENSATION PLAN

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2. Electronically at the employee's last known email address;
3. Through a flyer included, in writing or electronically, as a pay-roll stuffer; or
4. By first class mail to the employee's last known address.

A district may not satisfy this requirement solely by posting information in the workplace.

In addition, a district may provide employees with IRS publications and forms, or information prepared by the comptroller, relating to the earned income tax credit.

*Labor Code 104.001-.003*

**Decreasing Pay**

The commissioner has held that a district may reduce educator compensation if it gives sufficient warning of a possible reduction in pay when educators can still unilaterally resign from their contracts. A sufficient warning must be both formal enough and specific enough to give educators a meaningful opportunity to decide whether to continue employment with a district. *Brajenovich v. Alief Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 021-R10-1106 (2009)*

**Widespread Salary  
Reductions**

The following provisions apply only to a widespread reduction in the amount of annual salaries paid to classroom teachers in a district based primarily on district financial conditions rather than on teacher performance.

For any school year in which a district has reduced the amount of the annual salaries paid to classroom teachers from the amount paid for the preceding school year, the district shall reduce the amount of the annual salary paid to each district administrator or other professional employee by a percent or fraction of a percent that is equal to the average percent or fraction of a percent by which teacher salaries have been reduced.

*Education Code 21.4032*

A board may not reduce salaries until the district has complied with the requirements at Education Code 21.4022 [see Salary Reduction/Furlough Process, below]. *Education Code 21.4022*

**Furlough Program**

In accordance with district policy [see DFFA], a board may implement a furlough program and reduce the number of days of service otherwise required under Education Code 21.401 [see DC] by not more than six days of service during a school year if the commissioner certifies that the district will be provided with less state and local funding for that year than was provided to the district for the 2010–11 school year. *Education Code 21.4021(a)*

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(LEGAL)

A board may not implement a furlough program until the district has complied with the requirements at Education Code 21.4022 [see Salary Reduction/Furlough Process, below]. *Education Code 21.4022*

*Funding Levels*

Not later than July 1 of each year, the commissioner shall determine for each district whether the estimated amount of state and local funding per student in weighted average daily attendance to be provided to the district under the Foundation School Program for maintenance and operations for the following school year is less than the amount provided to the district for the 2010–11 school year. If the amount estimated to be provided is less, the commissioner shall certify the percentage decrease in funding to be provided to the district. *Education Code 48.010*

*Salaries*

Notwithstanding Education Code 21.402 (minimum salary schedule), a board may reduce the salary of an employee who is furloughed in proportion to the number of days by which service is reduced. Any reduction in the amount of the annual salary must be equally distributed over the course of the employee's current contract with the district.

*Furlough Days*

A furlough program must subject all contract personnel to the same number of furlough days. An educator may not be furloughed on a day that is included in the number of days of instruction required under Education Code 25.081 [see EB]. Implementation of a furlough program may not result in an increase in the number of required teacher workdays. An educator may not use personal, sick, or any other paid leave while the educator is on a furlough.

*Contract  
Resignation*

If a board adopts a furlough program after the date by which a teacher must give notice of resignation from a probationary, term, or continuing contract [see DFE], an employee who subsequently resigns is not subject to sanctions imposed by SBEC.

*No Appeal*

A decision by a board to implement a furlough program is final and may not be appealed and does not create a cause of action or require collective bargaining.

*Education Code 21.4021*

*Salary Reduction /  
Furlough Process*

A board may not implement a furlough program under Education Code 21.4021 or reduce salaries until the district has complied with the requirements below.

*Employee  
Involvement*

A district must use a process to develop a furlough program or other salary reduction proposal, as applicable, that:

1. Includes the involvement of the district's professional staff; and

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COMPENSATION PLAN

DEA  
(LEGAL)

2. Provides district employees with the opportunity to express opinions regarding the furlough program or salary reduction proposal, as applicable, at the public meeting described below.

*Public Meeting*

A board must hold a public meeting at which the board and district administration present:

1. Information regarding the options considered for managing the district's available resources, including consideration of a tax rate increase and use of the district's available fund balance;
2. An explanation of how the district intends, through implementation of a furlough program or salary reductions, as applicable, to limit the number of district employees who will be discharged or whose contracts will not be renewed. Any explanation of a furlough program must state the specific number of furlough days proposed to be required; and
3. Information regarding the local option residence homestead exemption.

The public and district employees must be provided with an opportunity to comment at the public meeting.

*Education Code 21.4022*

COMPENSATION AND BENEFITS  
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(LOCAL)

The Superintendent shall recommend an annual compensation plan for all District employees. The compensation plan may include wage and salary structures, stipends, benefits, and incentives. [See also DEAA] The recommended plan shall support District goals for hiring and retaining highly qualified employees. The Board shall review and approve the compensation plan to be used by the District. The Board shall also determine the total compensation package for the Superintendent. [See BJ series]

**Pay Administration**

The Superintendent shall implement the compensation plan and establish procedures for plan administration consistent with the budget. The Superintendent or designee shall classify each job title within the compensation plan based on the qualifications, duties, and market value of the position.

**Annualized Salary**

The District shall pay all salaried employees over 12 months in equal monthly or bimonthly installments, regardless of the number of months employed during the school year. Salaried employees hired during the school year shall be paid in accordance with administrative regulations.

**Pay Increases**

The Superintendent shall recommend to the Board an amount for employee pay increases as part of the annual budget. The Superintendent or designee shall determine pay adjustments for individual employees, within the approved budget following established procedures.

*Mid-Year Pay  
Increases*

*Contract  
Employees*

A contract employee's pay may be increased after performance on the contract has begun only if authorized by the compensation plan of the District or there is a change in the employee's job assignment or duties during the term of the contract that warrants additional compensation. Any such changes in pay that do not conform with the compensation plan shall require Board approval. [See DEA(LEGAL) for provisions on pay increases and public hearing requirements]

*Noncontract  
Employees*

The Superintendent may grant a pay increase to a noncontract employee after duties have begun because of a change in the employee's job assignment or to address pay equity. The Superintendent shall report any such pay increases to the Board at the next regular meeting.

**Pay During Closing**

During an emergency closure, all employees shall continue to be paid for their regular duty schedule unless otherwise provided by Board action. Following an emergency closure, the Board shall adopt a resolution or take other Board action establishing the purpose and parameters for such payments. [See EB for the authority to close schools]

COMPENSATION PLAN  
INCENTIVES AND STIPENDS

DEAA  
(LEGAL)

**Incentive Grants—  
Contract Provision**

A district shall provide in employment contracts that qualifying employees may receive an incentive payment under an awards program established under Education Code Chapter 21, Subchapter O (Educator Excellence Award Program and Educator Excellence Innovation Program) if the district participates in the program. A district shall indicate that any incentive payment distributed is considered a payment for performance and not an entitlement as part of an employee's salary. *Education Code 21.415*

**Educator Excellence  
Innovation Program**

The Educator Excellence Innovation Program (EEIP) is a grant program under which a district may receive a competitive grant for the purposes of systematically transforming educator quality and effectiveness. The Texas Education Agency (TEA) will give priority to districts that receive Title I funding and have at a majority of district campuses a student enrollment that is at least 50 percent educationally disadvantaged.

Eligibility

A district is eligible to apply for EEIP grant funds if the district:

1. Completes and submits a Notice of Intent to Apply to TEA by the date established by the commissioner of education;
2. Complies with all assurances in the Notice of Intent to Apply and grant application;
3. Participates in the required technical assistance activities established by the commissioner, including establishing leadership teams, master teachers, mentor teachers, and instructional coaches and developing career pathways;
4. Agrees to participate for four years; and
5. Complies with any other activities set forth in the program requirements.

An eligible district must submit an application in a form prescribed by the commissioner. Each eligible applicant must meet all deadlines, requirements, and assurances specified in the application. The commissioner may waive any eligibility requirements as specified in 19 Administrative Code 102.1073.

Local Plan

An eligible district that intends to participate in the EEIP shall submit a local educator excellence innovation plan to TEA. A local educator excellence innovation plan must address the elements at 19 Administrative Code 102.1073(e)(2).

A district must act pursuant to its local board policy [see DEAA (LOCAL)] for submitting a local educator excellence innovation plan and grant application to TEA. A local decision to approve and

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submit a plan and grant application may not be appealed to the commissioner.

A district may renew its local educator excellence innovation plan for three consecutive school years without resubmitting a full grant application to TEA. With TEA approval, a district may amend its local plan in accordance with 19 Administrative Code 102.1073(c) and (h) for each school year the district receives a program grant.

Use of Grant Funds

A district may use grant funds only to carry out purposes of the program as described at Education Code 21.7011, in accordance with the district's local plan, which may include the following specific methods or procedures:

1. Implementation and administration of a high-quality mentoring program for teachers in the first three years of classroom teaching using mentors who meet the qualifications prescribed by Education Code 21.458 [see Mentor Teachers, below];
2. Implementation of a teacher evaluation system using multiple measures that include:
  - a. The results of classroom observation, which may include student comments;
  - b. The degree of student educational growth and learning; and
  - c. The results of teacher self-evaluation;
3. To the extent permitted under Education Code Chapter 25, Subchapter C, restructuring of the school day or school year to provide for embedded and collaborative learning communities for the purpose of professional development [see EC];
4. Establishment of an alternative teacher compensation or retention system; and
5. Implementation of incentives designed to reduce teacher turnover.

Waiver Request

A district may apply to the commissioner in writing for a waiver to exempt the district or one or more district campuses from one or more of the statutory sections listed at Education Code 21.7061(a).

The application for the waiver must demonstrate:

1. Why waiving the identified section of the Education Code is necessary to carry out the purposes of the program;

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2. Approval for the waiver by a vote of a majority of the members of the board;
3. Approval for the waiver by a vote of a majority of the educators employed at each campus for which the waiver is sought; and
4. Evidence that the voting occurred during the school year and in a manner that ensured that all educators entitled to vote had a reasonable opportunity to participate in the voting.

Neither the board nor the superintendent may compel a waiver of rights under Education Code 21.7061.

Not later than April 1 of the year in which the waiver application is submitted, the commissioner shall notify the district in writing whether the application has been granted or denied. A waiver expires when the waiver is no longer necessary to carry out the purposes of the program, in accordance with the district's local educator excellence innovation plan.

*Education Code Ch. 21, Subch. O; 19 TAC 102.1073*

**Local Optional  
Teacher Designation  
System**

A district may designate a classroom teacher as a master, exemplary, or recognized teacher for a five-year period based on the results from single year or multiyear appraisals [see DNA]. *Education Code 21.3521(a)*

**Rules**

The commissioner's rules specify the requirements for districts to implement local teacher designation systems, including teacher eligibility, application procedures and the approval process, system expansion and amendments, monitoring and program evaluation, continuing approval and renewal, and funding. *19 TAC 150.1012*

**Standards**

The commissioner's rules establish performance and validity standards for each local optional teacher designation system that:

1. Must provide a mathematical possibility that all teachers eligible for a designation may earn the designation; and
2. May not require a district to use an assessment instrument adopted under Education Code 39.023 to evaluate teacher performance.

*Education Code 21.3521(b); 19 TAC 150.1014*

A classroom teacher that holds a National Board Certification issued by the National Board for Professional Teaching Standards may be designated as recognized. *Education Code 21.3521(c); 19 TAC 150.1013*



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**Assistance** TEA shall develop and provide technical assistance for districts that request assistance in implementing a local optional teacher designation system, including assistance in prioritizing high needs campuses. *Education Code 21.3521(e)*

**No Property Right** A teacher has no vested property right in a teacher designation assigned under a local optional teacher designation system. A teacher designation is void in the determination that the designation was issued improperly, and the Administrative Procedure Act does not apply to the voiding of a local optional teacher designation. *Education Code 21.3521(f)*

**Teacher Incentive Allotment** For each classroom teacher with a local optional teacher designation, a district is entitled to an allotment, adjusted by high needs and rural factors, as determined under Education Code 48.112.

A district shall annually certify that:

1. Funds received were used as follows:
  - a. At least 90 percent was used for the compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed; and
  - b. Any other funds were used for costs associated with implementing the local optional teacher designation system, including efforts to support teachers in obtaining designations; and
2. The district prioritized high needs campuses in the district in using funds.

*Education Code 48.112(c), (i)*

**Evaluations** TEA shall periodically conduct evaluations of the effectiveness of the local optional teacher designation systems and the teacher incentive allotment and report the results of the evaluations to the legislature. A district that has implemented a local optional teacher designation system or received funds under the teacher incentive allotment shall participate in the evaluations. *Education Code 21.3521(g)*

**Mentor Teachers** A district may assign a mentor teacher to each classroom teacher who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned. A teacher assigned as a mentor must:

1. To the extent practicable, teach in the same school;

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2. To the extent practicable, teach the same subject or grade level, as applicable; and
3. Meet the qualifications prescribed by commissioner's rules.

*Education Code 21.458(a)*

Rules

The commissioner's rules specify the requirements for districts to implement mentor training programs, including program requirements, application approval process, ongoing verification and compliance, allowable expenditures, and program review. *19 TAC 153.1011*

Assignment of  
Mentor

To be assigned as a mentor, a teacher must agree to serve as a mentor teacher for at least one school year. The assignment must begin not later than the 30th day of employment of the classroom teacher to whom the mentor teacher is assigned. A district must agree to assign a mentor to a new classroom teacher for at least two school years. *Education Code 21.458(a-1)*

Requirements for  
Mentor

The commissioner's rules must require that a mentor teacher:

1. Complete a research-based mentor and induction training program approved by the commissioner;
2. Complete a training program provided by the district, which the district may allow to be satisfied by completing the commissioner's research-based mentor and induction training program above;
3. Have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance; and
4. Demonstrate interpersonal skills, instructional effectiveness, and leadership skills.

*Education Code 21.458(b)*

Training

A district must provide the training program described above to mentor teachers and any appropriate district and campus employees who work with the classroom teacher or supervise the classroom teacher. A district may allow the commissioner's research-based mentor and induction training program to qualify for the district's required training. The training must be completed by the mentor teacher and the district and campus employees before the beginning of the school year. A district shall also provide supplemental training to mentor teachers and employees during the school year. The training must include content related to best mentorship practices. *Education Code 21.458(b-1)*

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Mentoring Sessions

A mentor teacher must meet with each classroom teacher assigned to the mentor not less than 12 hours each semester. Observations of the mentor by the classroom teacher being mentored or of the classroom teacher being mentored by the mentor may count toward the 12 hours of meeting time required for the semester.

Unless the district has created a mentoring curriculum as provided below, the mentoring sessions must address the following topics:

1. Orientation to the context, policies, and practices of the school district;
2. Data-driven instructional practices;
3. Specific instructional coaching cycles, including coaching regarding conferences between parents and the classroom teacher;
4. Professional development; and
5. Professional expectations.

Subject to approval by TEA, in determining the topics to be addressed in the mentoring sessions, a school district may create an appropriate curriculum that meets the district needs.

A district must:

1. Designate a specific time during the regularly contracted school day for meetings between mentor teachers and classroom teachers assigned to a mentor; and
2. Schedule release time or a reduced teaching load for mentor teachers and classroom teachers under this section to facilitate mentoring activities, including classroom observations or participation in supportive coaching.

*Education Code 21.458(f), (f-1)*

Allotment

A school district that has implemented a mentoring program is entitled to an allotment to fund the mentoring program and provide stipends for mentor teachers under a formula adopted by the commissioner.

Funding may be used only for providing:

1. Mentor teacher stipends;
2. Scheduled release time for mentor teachers and the classroom teachers to whom they are assigned for meeting and engaging in mentoring activities; and

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3. Mentoring support through providers of mentor training.

*Education Code 48.114*

**Achievement  
Academy Stipends**

A stipend received by a teacher who attends a literacy or mathematics achievement academy is not considered in determining whether a district is paying the teacher the minimum monthly salary under Education Code 21.402. *Education Code 21.4552(d), .4553(d)*

A stipend received by a school counselor or teacher who attends a postsecondary education and career counseling academy under Education Code 33.009 is not considered in determining whether a district is paying the school counselor or teacher the minimum monthly salary under Education Code 21.402. *Education Code 33.009(h)*

**Autism Training**

A district may provide a salary incentive or similar compensation to a teacher who completes training provided by a regional education service center (ESC) relating to autism. A school district that decides to provide an incentive or compensation shall adopt a policy to implement this section. *Education Code 21.465*

**Retirement  
Incentives**

A district may not offer or provide a financial or other incentive to an employee to encourage the employee to retire from the Teacher Retirement System of Texas. *Education Code 22.007*

**Attendance  
Supplement**

A district shall not deny an educator a salary bonus or similar compensation given in whole or in part on the basis of educator attendance because of the educator's absence from school for observance of a religious holy day observed by a religion whose places of worship are exempt from property taxation under Tax Code 11.20. *Education Code 21.406*

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**Stipend**

The Superintendent shall recommend a stipend pay schedule as part of the annual compensation plan of the District. [See DEA]

**Supplemental  
Duties**

The Superintendent or designee may assign noncontractual supplemental duties to personnel exempt under the Fair Labor Standards Act (FLSA), as needed. [See DK(LOCAL)] The employee shall be compensated for these assignments according to the compensation plan of the District.

**Incentive and  
Innovation Programs**

The Superintendent shall have authority to submit plans and grant applications for incentive and innovation programs to TEA or other granting organizations on behalf of the Board. Incentive plans shall address teacher eligibility, including any exclusions.

Locally developed incentive programs, if any, shall be addressed in the compensation plan of the District.

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<b>Fair Labor Standards Act</b>	Unless an exemption applies, a district shall pay each of its employees not less than minimum wage for all hours worked. 29 U.S.C. 206(a)(1)
Minimum Wage and Overtime	Unless an exemption applies, a district shall pay an employee not less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 in any workweek. 29 U.S.C. 207(a)(1); 29 C.F.R. pt. 778
Breaks for Nonexempt Employees	<p>Rest periods of up to 20 minutes must be counted as hours worked. Coffee breaks or time for snacks are rest periods, not meal periods. 29 C.F.R. 785.18</p> <p>Bona fide meal periods of 30 minutes or more are not counted as hours worked if the employee is completely relieved from duty. The employee is not relieved from duty if the employee is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his or her desk is working while eating. It is not necessary that an employee be permitted to leave the premises if the employee is otherwise completely freed from duties during the meal period. 29 C.F.R. 785.19</p>
Compensatory Time <i>Accrual</i>	<p>Nonexempt employees may receive, in lieu of overtime compensation, compensatory time off at a rate of not less than one and one-half hours for each hour of overtime work, pursuant to an agreement or understanding arrived at between the employer and employee before the performance of the work. Such agreement or understanding may be informal, such as when an employee works overtime knowing that the employer rewards overtime with compensatory time.</p> <p>An employee may accrue not more than 240 hours of compensatory time. If the employee's overtime work included a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 480 hours of compensatory time. After the employee has reached these limits, the employee shall be paid overtime compensation for additional overtime work.</p>
<i>Payment for Accrued Time</i>	Compensation paid to an employee for accrued compensatory time shall be paid at the regular rate earned by the employee at the time of payment. An employee who has accrued compensatory time off shall be paid for any unused compensatory time upon separation from employment at the rates set forth at 29 U.S.C. 207(o)(4).
<i>Use</i>	An employee who has requested the use of compensatory time shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the district.

The Fair Labor Standards Act (FLSA) does not prohibit a district from compelling the use of accrued compensatory time.

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

Exempt Employees

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

*Academic  
Administrators*

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

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

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

Employees engaged in academic administrative functions include:

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

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Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunchroom managers, or dietitians do not perform academic administrative functions, although such employees may qualify for another exemption.

*29 C.F.R. 541.204*

*Salary Basis*

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis, unless the employee is a teacher. Subject to the exceptions listed in the rule, an employee must receive the full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. A district that makes improper deductions from salary shall lose the exemption if the facts demonstrate that the district did not intend to pay exempt employees on a salary basis. *29 C.F.R. 541.600, .602(a), .603*

*Partial-Day  
Deductions*

A district employee who otherwise meets the salary basis requirements shall not be disqualified from exemption on the basis that the employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because:

1. Permission for its use has not been sought or has been sought and denied;
2. Accrued leave has been exhausted; or
3. The employee chooses to use leave without pay.

Deductions from the pay of a district employee for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

*29 C.F.R. 541.710*

*Safe Harbor  
Policy*

If a district has a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the district will not lose



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

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

*29 C.F.R. 541.603(d)*

*Teachers*

The term "employee employed in a bona fide professional capacity" includes any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an elementary or secondary school system by which the employee is employed. The salary basis requirements do not apply to teaching professionals.

Exempt teachers include:

1. Regular academic teachers;
2. Teachers of kindergarten or nursery school pupils;
3. Teachers of gifted or disabled children;
4. Teachers of skilled and semi-skilled trades and occupations;
5. Teachers engaged in automobile driving instruction;
6. Home economics teachers; and
7. Vocal or instrumental music instructors.

Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. However, a teacher who is not certified may be considered for

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exemption, provided that such individual is employed as a teacher by the employing school or school system.

*29 C.F.R. 541.303*

Wage and Hour  
Records

A district shall maintain and preserve payroll or other records for nonexempt employees containing the information required by the regulations under the FLSA. *29 C.F.R. 516.2(a)*

**Payday Law  
Exemption**

The Texas Payday Law does not apply to the state or a political subdivision. *Labor Code 61.003*

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**Classification of  
Positions**

The Superintendent or designee shall determine the classification of positions or employees as "exempt" or "nonexempt" for purposes of payment of overtime in compliance with the Fair Labor Standards Act (FLSA).

**Exempt**

The District shall pay employees who are exempt from the overtime pay requirements of the FLSA on a salary basis. The salaries of these employees are intended to cover all hours worked, and the District shall not make deductions that are prohibited under the FLSA.

An employee who believes deductions have been made from his or her salary in violation of this policy should bring the matter to the District's attention, through the District's complaint policy. [See DGBA] If improper deductions are confirmed, the District will reimburse the employee and take steps to ensure future compliance with the FLSA.

**Nonexempt**

Nonexempt employees may be compensated on an hourly basis or on a salary basis. Employees who are paid on an hourly basis shall be compensated for all hours worked. Employees who are paid on a salary basis are paid for up to and including a 40-hour workweek.

A nonexempt employee shall have the approval of his or her supervisor before working overtime. An employee who works overtime without prior approval is subject to discipline but shall be compensated in accordance with the FLSA.

**Workweek Defined**

For purposes of FLSA compliance, the workweek for District employees shall begin at 12:00 a.m. Sunday and end at 11:59 p.m. Saturday.

**Compensatory Time**

At the District's option, nonexempt employees may receive compensatory time off, rather than overtime pay, for overtime work. The employee shall be informed in advance if overtime hours will accrue compensatory time rather than pay.

*Accrual*

Compensatory time earned by nonexempt employees may not accrue beyond a maximum of 60 hours. If an employee has a balance of more than 60 hours of compensatory time, the District shall require the employee to use the compensatory time, or at the District's option, the District shall pay the employee for the compensatory time.

*Use*

An employee shall use compensatory time within the duty year in which it is earned. If an employee has any unused compensatory time remaining at the end of a duty year, the District shall pay the employee for the compensatory time.

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Compensatory time may be used at either the employee's or the District's option. An employee may use compensatory time in accordance with the District's leave policies and if such use does not unduly disrupt the operations of the District. [See DEC(LOCAL)] The District may require an employee to use compensatory time when in the best interest of the District.

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

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**State Leave**

State Personal  
Leave

A district shall provide employees with five days per year of state personal leave, with no limit on accumulation and no restrictions on transfer among districts. A district may provide additional personal leave beyond this minimum.

A board may adopt a policy governing an employee's use of state personal leave, except that the policy may not restrict the purposes for which the leave may be used.

*Education Code 22.003(a)*

State Sick Leave  
(Accumulated Prior  
to 1995)

District employees retain any sick leave accumulated as state minimum sick leave under former Section 13.904(a) of the Education Code. Accumulated state sick leave shall be used only for the following:

1. Illness of the employee.
2. Illness of a member of the employee's immediate family.
3. Family emergency.
4. Death in the employee's immediate family.
5. During military leave [see Use During Military Leave, below].

*Acts of the 74th Legislative Session, Senate Bill 1, Sec. 66*

Former Education  
Service Center  
Employees

A district shall accept the sick leave accrued by an employee who was formerly employed by a regional education service center (ESC), not to exceed five days per year for each year of employment. *Education Code 8.007*

Order of Use

A board's policy governing an employee's use of state personal leave may not restrict the order in which an employee may use state personal leave and any additional personal leave provided by the school district.

An employee who retains any state sick leave is entitled to use the state sick leave, state personal leave, or local personal leave in any order to the extent that the leave the employee uses is appropriate to the purpose of the leave.

*Education Code 22.003(a), (f)*

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Use During Military Leave	An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. "Personal leave" includes personal or sick leave available under former law or provided by local policy. <i>Education Code 22.003(d), (e)</i> [See DECB]
Temporary Disability	Each full-time educator shall be given a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties. The contract or employment of the educator may not be terminated while the educator is on a leave of absence for temporary disability. For purposes of temporary disability leave, pregnancy is considered a temporary disability.
At Employee's Request	<p>A request for a leave of absence for temporary disability must be made to a superintendent. The request must:</p> <ol style="list-style-type: none"><li>1. Be accompanied by a physician's statement confirming inability to work;</li><li>2. State the date requested by the educator for the leave to begin; and</li><li>3. State the probable date of return as certified by the physician.</li></ol>
By Board Authority	A board may adopt a policy providing for placing an educator on leave of absence for temporary disability if, in the board's judgment in consultation with a physician who has performed a thorough medical examination of the educator, the educator's condition interferes with the performance of regular duties. The educator shall have the right to present to the board testimony or other information relevant to the educator's fitness to continue in the performance of regular duties. [See DBB]
Return to Active Duty <i>Notice</i>	The educator shall notify the superintendent of a desire to return to active duty no later than the 30th day before the expected date of return. The notice must be accompanied by a physician's statement indicating the educator's physical fitness for the resumption of regular duties.
<i>Placement</i>	An educator returning to active duty after a leave of absence for temporary disability is entitled to an assignment at the school where the educator formerly taught, subject to the availability of an appropriate teaching position. In any event, the educator shall be placed on active duty no later than the beginning of the next school year. A principal at another campus voluntarily may approve the appointment of an employee who wishes to return from leave of absence. However, if no other principal approves the assignment by the beginning of the next school year, a district must place the

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	<p>employee at the school at which the employee formerly taught or was assigned.</p>
Length of Absence	<p>A superintendent shall grant the length of leave of absence for temporary disability as required by the individual educator. A board may establish a maximum length for a leave of absence for temporary disability, but the maximum length may not be less than 180 calendar days.</p> <p><i>Education Code 21.409; Atty. Gen. Op. DM-177 (1992); Atty. Gen. Op. H-352 (1974)</i></p>
<b>Sick Leave Different from Temporary Disability Leave</b>	<p>An employee's entitlement to sick leave is unaffected by any concurrent eligibility for a leave of absence for temporary disability. The two types of leave are different, and each must be granted by its own terms. <i>Atty. Gen. Op. H-352 (1974)</i></p>
<b>Assault Leave</b>	<p>In addition to all other days of leave, a district employee who is physically assaulted during the performance of regular duties is entitled to the number of days of leave necessary to recuperate from physical injuries sustained as a result of the assault. The leave shall be paid as set forth below at Coordination with Workers' Compensation Benefits.</p> <p>A district employee is physically assaulted if the person engaging in the conduct causing injury to the employee:</p> <ol style="list-style-type: none"><li>1. Could be prosecuted for assault; or</li><li>2. Could not be prosecuted for assault only because the person's age or mental capacity makes the person a nonresponsible person for purposes of criminal liability.</li></ol>
Notice of Rights	<p>Any informational handbook a district provides to employees in an electronic or paper form or makes available by posting on the district's website must include notification of an employee's rights regarding assault leave, in the relevant section of the handbook. Any form used by a district through which an employee may request personal leave must include assault leave as an option.</p>
Assignment to Assault Leave	<p>At the request of an employee, a district must immediately assign the employee to assault leave. Days of assault leave may not be deducted from accrued personal leave. Assault leave may not extend more than two years beyond the date of the assault. Following an investigation of the claim, a district may change the assault leave status and charge the leave against the employee's accrued personal leave or against the employee's pay if insufficient accrued personal leave is available.</p>

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Coordination with  
Workers'  
Compensation  
Benefits

Notwithstanding any other law, assault leave benefits due to an employee shall be coordinated with temporary income benefits due from workers' compensation so the employee's total compensation from temporary income benefits and assault leave benefits will equal 100 percent of the employee's weekly rate of pay.

*Education Code 22.003(b)–(c-1)*

**Religious  
Observances**

A district shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of district business. Such absence shall be without pay unless applicable paid leave is available. *42 U.S.C. 2000e(j), 2000e-2(a); Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, (1986); Pinner v. Joint Dist. No. 28J of Adams and Arapahoe Counties, 735 F.2d 388 (10th Cir. 1984)*

**Compliance with a  
Subpoena**

An employer may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. *Labor Code 52.051(a)*

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**Note:** A Texas federal court held that by omitting any reference to governmental entities from Labor Code 52.051, the state legislature intended to exclude governmental entities from the definition of "employer" contained within that section. Therefore, the statute did not waive a county's governmental immunity from liability for claims of retaliatory discharge of an employee for complying with a subpoena. *Alcala v. Texas Webb County*, 620 F. Supp. 2d 795 (S.D. Tex. 2009)

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**Jury Duty**

An employee's accumulated personal leave may not be reduced because of the employee's service in compliance with a summons to appear as a juror [see DG]. *Education Code 22.006(c)*

**Attendance at  
Truancy Hearing**

A district may not terminate the employment of a permanent employee because the employee is required under Family Code 65.062(b) to attend a truancy court hearing. *Family Code 65.063*

**Developmental  
Leaves of Absence**

A board may grant a developmental leave of absence for study, research, travel, or other suitable purpose to an employee working in a position requiring a permanent teaching certificate who has served in a district at least five consecutive school years.

A developmental leave of absence may be granted for one school year at one-half salary or for one-half of a school year at full salary paid to the employee in the same manner, on the same schedule,



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and with the same deductions as if the employee were on full-time duty.

An employee on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be an employee of a district for purposes of participating in programs, holding memberships, and receiving benefits afforded by employment in a district.

*Education Code 21.452*

**Leave for Sick Foster Child**

An employer commits an unlawful employment practice under Labor Code, Chapter 21 if:

1. The employer administers a leave policy under which an employee is entitled to personal leave to care for or otherwise assist the employee's sick child; and
2. The leave policy does not treat in the same manner as an employee's biological or adopted minor child any foster child of the employee who:
  - a. Resides in the same household as the employee; and
  - b. Is under the conservatorship of the Texas Department of Family and Protective Services.

*Labor Code 21.0595*

**Leave for Peace Officers**

Quarantine Leave

A board shall develop and implement a paid quarantine leave policy for peace officers who are employed by the district and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

A paid quarantine leave policy must:

1. Provide that a peace officer on paid quarantine leave receive:
  - a. All employment benefits and compensation, including leave accrual, pension benefits, and health benefit plan benefits for the duration of the leave; and
  - b. Reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation; and
2. Require that the leave be ordered by the person's supervisor or the district's health authority.

A district may not reduce a peace officer's sick leave balance, vacation leave balance, holiday leave balance, or other paid leave

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balance in connection with paid quarantine leave taken in accordance with the district's policy.

*Local Gov't Code 180.008*

Mental Health  
Leave

A district shall develop and adopt a policy allowing the use of mental health leave by peace officers employed by the district who experience a traumatic event in the scope of that employment.

The mental health leave policy must:

1. Provide clear and objective guidelines establishing the circumstances under which a peace officer is granted mental health leave and may use mental health leave;
2. Entitle a peace officer to mental health leave without a deduction in salary or other compensation;
3. Enumerate the number of mental health leave days available to a peace officer; and
4. Detail the level of anonymity for a peace officer who takes mental health leave.

The mental health leave policy may provide a list of mental health services available to peace officers in the area of the district.

*Gov't Code 614.015*

**Absence Control**

Uniform enforcement of a reasonable absence-control rule is not retaliatory discharge. For example, a district that terminates an employee for violating a reasonable absence-control provision cannot be liable for retaliatory discharge as long as the rule is uniformly enforced. Howell v. Standard Motor Prods., Inc., 2001 U.S. Dist LEXIS 12332 (N. D. Tex. 2001) (Family and Medical Leave Act case); Specialty Retailers v. DeMoranville, 933 S.W.2d 490 (Tex. 1996) (age discrimination case); Continental Coffee Products Co. v. Cazarez, 937 S.W.2d 444 (Tex. 1996) (workers' compensation claim); Gonzalez v. El Paso Natural Gas Co., 40 F.E.P. Cases (BNA) 353 (Tex. App.—El Paso 1986, no pet.) (sex discrimination case)

[Some employees may have protected status even after the expiration of all other leave. See DAA.]

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**Leave  
Administration**

The Superintendent shall develop administrative regulations addressing employee leaves and absences to implement the provisions of this policy.

**Definitions**

The term "immediate family" is defined as:

Immediate Family

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

For purposes of the Family and Medical Leave Act (FMLA), the definitions of spouse, parent, son or daughter, and next of kin are found in DECA(LEGAL).

Family Emergency

The term "family emergency" shall be limited to disasters and life-threatening situations involving the employee or a member of the employee's immediate family.

Leave Day

A "leave day" for purposes of earning, using, or recording leave shall mean the number of hours per day equivalent to the employee's usual assignment, whether full-time or part-time.

School Year

A "school year" for purposes of earning, using, or recording leave shall mean the term of the employee's annual employment as set by the District for the employee's usual assignment, whether full-time or part-time.

Catastrophic Illness  
or Injury

A catastrophic illness or injury is a severe condition or combination of conditions affecting the mental or physical health of the employee or a member of the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the District. Such conditions typically require prolonged hospitalization or recovery or are expected to result in disability or death. Conditions relating to pregnancy or childbirth shall be considered catastrophic if they meet the requirements of this paragraph.

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**Note:** For District contribution to employee insurance during leave, see CRD(LOCAL).

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**Availability**

The District shall make state personal leave and local leave for the current year available for use at the beginning of the school year.

**State Leave  
Proration**

If an employee separates from employment with the District before his or her last duty day of the school year or begins employment after the first duty day of the school year, state personal leave shall be prorated based on the actual time employed.

If an employee separates from employment before the last duty day of the school year, the employee's final paycheck shall be reduced for state personal leave the employee used beyond his or her pro rata entitlement for the school year.

**Medical Certification**

An employee shall submit medical certification of the need for leave if:

1. The employee is absent more than five consecutive workdays because of personal illness or illness in the immediate family;
2. The District requires medical certification due to a questionable pattern of absences or when deemed necessary by the supervisor or Superintendent; or
3. The employee requests FMLA leave for the employee's serious health condition; a serious health condition of the employee's spouse, parent, or child; or for military caregiver leave.

In each case, medical certification shall be made by a health-care provider as defined by the FMLA. [See DECA(LEGAL)]

**State Personal Leave**

The Board requires employees to differentiate the manner in which state personal leave is used.

**Nondiscretionary  
Use**

Nondiscretionary use of leave shall be for the same reasons and in the same manner as state sick leave accumulated before May 30, 1995. [See DEC(LEGAL)]

Nondiscretionary use includes leave related to the birth or placement of a child and taken within the first year after the child's birth, adoption, or foster placement.

**Discretionary Use**

Discretionary use of leave is at the individual employee's discretion, subject to limitations set out below.

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<i>Request for Leave</i>	<p>In deciding whether to approve or deny a request for discretionary use of state personal leave, the supervisor shall not seek or consider the reasons for which an employee requests to use leave. The supervisor shall, however, consider the duration of the requested absence in conjunction with the effect of the employee's absence on the educational program and District operations, as well as the availability of substitutes.</p> <p>Discretionary use of state personal leave shall not exceed three consecutive workdays.</p>
<b>Local Leave</b>	<p>Each employee shall earn five paid local leave days per school year in accordance with administrative regulations.</p> <p>Local leave shall be noncumulative.</p> <p>Local leave shall be used according to the terms and conditions of state sick leave accumulated before the 1995–96 school year, except that an employee may donate local leave to a sick leave pool. [See DEC(LEGAL)]</p>
<b>Extended Sick Leave</b>	<p>After all available paid leave days and any applicable compensatory time have been exhausted, an employee shall be granted in a school year a maximum of 30 leave days of extended sick leave to be used for the employee's catastrophic illness or injury, including pregnancy-related illness or injury, or for absences related to the catastrophic illness or injury of a member of the employee's immediate family.</p> <p>Extended sick leave shall be available only once in a 12-month period.</p> <p>A written request for extended sick leave must be accompanied by medical certification of the illness or injury.</p> <p>The District shall deduct the average daily rate of pay of a substitute for the employee's position for each day of extended sick leave taken, whether or not a substitute is employed.</p>
<b>Sick Leave Pool</b>	<p>An employee who has exhausted all paid leave as well as any applicable compensatory time and who suffers from a catastrophic illness or injury or is absent due to the catastrophic illness or injury of a member of the employee's immediate family may request the establishment of a sick leave pool, to which District employees may donate local leave for use by the eligible employee.</p> <p>The pool shall cease to exist when the employee no longer needs leave for the purpose requested, uses the maximum number of days allowed under a pool, or exhausts all leave days donated to the sick leave pool.</p>

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	<p>The Superintendent shall develop regulations for the implementation of the sick leave pool that address the following:</p> <ol style="list-style-type: none"><li>1. Procedures to request the establishment of a sick leave pool;</li><li>2. The maximum number of days an employee may donate to a sick leave pool;</li><li>3. The maximum number of days per school year an eligible employee may receive from a sick leave pool; and</li><li>4. The return of unused days to donors.</li></ol>
Appeal	<p>An employee may appeal a decision regarding the establishment or implementation of the District's sick leave pool in accordance with DGBA(LOCAL), beginning with the Superintendent or appropriate administrator.</p>
Family and Medical Leave	<p>FMLA leave shall run concurrently with applicable paid leave and compensatory time, as applicable.</p> <hr/> <p><b>Note:</b> See DECA(LEGAL) for provisions addressing FMLA.</p> <hr/>
Twelve-Month Period	<p>For purposes of an employee's entitlement to FMLA leave, the 12-month period shall be July 1 through June 30.</p>
Combined Leave for Spouses	<p>When both spouses are employed by the District, the District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks. The District shall limit military caregiver leave to a combined total of 26 weeks.</p>
Intermittent or Reduced Schedule Leave	<p>The District shall permit use of intermittent or reduced schedule FMLA leave for the care of a newborn child or for the adoption or placement of a child with the employee.</p>
Certification of Leave	<p>When an employee requests leave, the employee shall provide certification, in accordance with FMLA regulations, of the need for leave.</p>
Fitness-for-Duty Certification	<p>In accordance with administrative regulations, when an employee takes FMLA leave due to the employee's own serious health condition, the employee shall provide, before resuming work, a fitness-for-duty certification.</p>
Leave at the End of Semester	<p>When a teacher takes leave near the end of the semester, the District may require the teacher to continue leave until the end of the semester.</p>

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**Temporary Disability  
Leave**

Any full-time employee whose position requires educator certification by the State Board for Educator Certification or by the District shall be eligible for temporary disability leave. The maximum length of temporary disability leave shall be 180 calendar days. [See DBB(LOCAL) for temporary disability leave placement and DEC(LEGAL) for return to active duty.]

An employee's notification of need for extended absence due to the employee's own medical condition shall be forwarded to the Superintendent as a request for temporary disability leave.

The District shall require the employee to use temporary disability leave and paid leave, including any compensatory time, concurrently with FMLA leave.

**Workers'  
Compensation**

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**Note:** Workers' compensation is not a form of leave. The workers' compensation law does not require the continuation of the District's contribution to health insurance.

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An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.

**No Paid Leave  
Offset**

The District shall not permit the option for paid leave offset in conjunction with workers' compensation income benefits. [See CRE]

**Court Appearances**

Absences due to compliance with a valid subpoena or for jury duty shall be fully compensated by the District and shall not be deducted from the employee's pay or leave balance.

Absences for court appearances related to an employee's personal business shall be deducted from the employee's personal leave balance.

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**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

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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

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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

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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

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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

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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

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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

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	<ol style="list-style-type: none"><li>3. The employee would return to work during the three-week period before the end of the semester.</li></ol>
<i>During Last Five Weeks of Semester</i>	<p>A district may require an instructional employee to continue taking leave until the end of the semester if:</p> <ol style="list-style-type: none"><li>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;</li><li>2. The leave will last more than two weeks; and</li><li>3. The employee would return to work during the two-week period before the end of the semester.</li></ol>
<i>During Last Three Weeks of Semester</i>	<p>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.</p> <p>29 C.F.R. 825.602</p>
Substitution of Paid Leave	<p>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)</p>
<i>Compensatory Time</i>	<p>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)</p>
<i>FMLA and Workers' Compensation</i>	<p>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.</p>



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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

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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

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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)

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*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

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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)*

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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.

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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]
<i>Authentication and Clarification</i>	<p>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.</p> <p>"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.</p> <p>"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.</p> <p><i>29 C.F.R. 825.307(a)</i></p>
<i>Second and Third Opinions</i>	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. <i>29 C.F.R. 825.307(b), (c)</i>
<i>Foreign Medical Certification</i>	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

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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.



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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

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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

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**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

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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

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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

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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

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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



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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

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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

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	<ol style="list-style-type: none"><li>3. The employee would return to work during the three-week period before the end of the semester.</li></ol>
<i>During Last Five Weeks of Semester</i>	<p>A district may require an instructional employee to continue taking leave until the end of the semester if:</p> <ol style="list-style-type: none"><li>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;</li><li>2. The leave will last more than two weeks; and</li><li>3. The employee would return to work during the two-week period before the end of the semester.</li></ol>
<i>During Last Three Weeks of Semester</i>	<p>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.</p> <p>29 C.F.R. 825.602</p>
Substitution of Paid Leave	<p>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)</p>
<i>Compensatory Time</i>	<p>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)</p>
<i>FMLA and Workers' Compensation</i>	<p>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.</p>

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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

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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

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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)

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*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

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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)*



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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.

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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	<p>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.</p> <p>"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.</p> <p>"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.</p> <p><i>29 C.F.R. 825.307(a)</i></p>
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. <i>29 C.F.R. 825.307(b), (c)</i>
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

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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.

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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

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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

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**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.

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**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

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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)*

Disaster Leave of  
Absence

In addition to the leave of absence above, an employee described above called to state active duty by the governor or another appropriate authority in response to a disaster, as defined by Government Code 418.004, is entitled to a paid leave of absence from the person's duties for each day the person is called to active duty during the disaster, not to exceed seven workdays in a fiscal year. During a leave of absence for a disaster, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. *Gov't Code 437.202(a-1)*

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

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

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)*



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Use of Personal  
Leave

An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. This provision applies to any personal or sick leave available under former law or provided by local policy.

A district may adopt a policy providing for paid leave for active military service as part of the consideration of employment.

*Education Code 22.003(d), (e)*

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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.

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**State Leave for  
Member of Military or  
Rescue Team**

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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*

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Leave

An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. This provision applies to any personal or sick leave available under former law or provided by local policy.

A district may adopt a policy providing for paid leave for active military service as part of the consideration of employment.

*Education Code 22.003(d), (e)*

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	<hr/> <b>Note:</b> For a detailed treatment of termination and nonrenewal of educator contracts, see policies DFAA and DFAB (Probationary Contracts), and DFBA and DFBB (Term Contracts). <hr/>
<b>Withholding Information</b>	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). <i>Education Code 26.008(b)</i>
<b>Registry of Persons Not Eligible for Employment</b>	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] <i>Education Code 22.092</i>
<b>Discharge of Convicted Employees</b>	<p>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:</p> <ol style="list-style-type: none"><li>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</li><li>2. Convicted of:<ol style="list-style-type: none"><li>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</li><li>b. An offense under the laws of another state or federal law that is equivalent to an offense under item 1 or 2a, above.</li></ol></li></ol>
<b>Exception</b>	<p>However, a district is not required to discharge an employee if the person committed an offense under Title 5, Penal Code, and:</p> <ol style="list-style-type: none"><li>1. The date of the offense is more than 30 years before the date the person's employment will begin; and</li><li>2. The employee satisfied all terms of the court order entered on conviction.</li></ol>
<b>Certification to Commissioner</b>	Each school year, a superintendent shall certify to the commissioner that the district has complied with the above provisions.
<b>Sanctions</b>	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

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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)*

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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



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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]

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**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*

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**Board's Designee for  
Certain Termination  
Actions**

The Superintendent shall serve as the Board's designee to suspend a contract employee without pay, provide written notice that the person's contract is void, and terminate employment as soon as practicable when the District:

1. Receives notice that an individual's certificate has been revoked by the State Board for Educator Certification (SBEC) for reasons that require immediate action by the District; or
2. Becomes aware that a contract employee has been convicted of or has received deferred adjudication for a felony offense.

[See also DFAA, DFBA, and DFCA, as appropriate.]

PROBATIONARY CONTRACTS  
SUSPENSION/TERMINATION DURING CONTRACT

DFAA  
(LEGAL)

<b>Discharge</b>	<p>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. <i>Education Code 21.104(a)</i></p> <p>[See DHB regarding circumstances in which a certified employee's dismissal must be reported to the State Board for Educator Certification (SBEC).]</p>
<b>Suspension</b>	<p>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. <i>Education Code 21.104(b)</i></p>
<b>Notice</b>	<p>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. <u><i>Cleveland Bd. of Educ. v. Loudermill</i></u>, 470 U.S. 532 (1985)</p>
<b>Hearing</b>	<p>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].</p>
<b>Exception</b>	<p>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.</p> <p><i>Education Code 21.1041</i></p>

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)*

TERM CONTRACTS  
SUSPENSION/TERMINATION DURING CONTRACT

DFBA  
(LEGAL)

**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



TERM CONTRACTS  
SUSPENSION/TERMINATION DURING CONTRACT

DFBA  
(LEGAL)

[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.

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.

TERM CONTRACTS  
NONRENEWAL

DFBB  
(LOCAL)

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



TERM CONTRACTS  
NONRENEWAL

DFBB  
(LOCAL)

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

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

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## 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

TERMINATION OF EMPLOYMENT  
HEARINGS BEFORE HEARING EXAMINER

DFD  
(LEGAL)

**Applicability**

This hearing process applies only if an employee requests a hearing after receiving notice of a proposed decision to:

1. Terminate a continuing contract at any time, except as provided below;
2. Terminate a probationary or term contract before the end of the contract period, except as provided below; or
3. Suspend without pay.

**Exception**

This hearing process does not apply to a decision to:

1. Terminate a probationary contract at the end of the contract term;
2. Not renew a term contract, unless the Board has adopted this process for nonrenewals; or
3. Terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the Board has decided to use this hearing process.

*Education Code 21.251*

**Request for Hearing**

Not later than the 15th day after the date the employee receives notice of one of the proposed contract actions listed above, the employee must file a written request with the Commissioner for a hearing before a hearing examiner. The employee must provide the District with a copy of the request and must provide the Commissioner with a copy of the notice. The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing. *Education Code 21.253*

**Assignment of  
Hearing Examiner by  
Agreement**

The parties may agree to select a hearing examiner from the list maintained by the Commissioner or a person who is not certified to serve as a hearing examiner, provided that person is licensed to practice law in Texas. If the parties agree on a hearing examiner the parties shall, before the date the Commissioner is permitted to assign a hearing examiner, notify the Commissioner in writing of the agreement, including the name of the hearing examiner selected.

**By Appointment**

If the parties do not select a hearing examiner by agreement, the Commissioner shall assign the hearing examiner not earlier than the sixth business day and not later than the tenth business day after the date on which the Commissioner receives the request for a

TERMINATION OF EMPLOYMENT  
HEARINGS BEFORE HEARING EXAMINER

DFD  
(LEGAL)

	hearing. When a hearing examiner has been assigned, the Commissioner shall notify the parties immediately.
Rejection	The parties may agree to reject a hearing examiner for any reason and either party is entitled to reject an assigned hearing examiner for cause. A rejection must be in writing and filed with the Commissioner not later than the third day after the date of notification of the hearing examiner's assignment. If the parties agree to reject the hearing examiner or if the Commissioner determines that one party has good cause for the rejection, the Commissioner shall assign another hearing examiner.
Finality of Decision	After the employee receives notice of the proposed contract action, the parties may agree in writing that the hearing examiner's decision be final and nonappealable on all or some issues.  <i>Education Code 21.254</i>
Powers of Hearing Examiner	The hearing examiner may issue subpoenas, administer oaths, rule on motions and the admissibility of evidence, maintain decorum, schedule and recess the proceedings, allow the parties to take depositions or use other means of discovery, and make any other orders as provided by Commissioner rule.
Conduct of Hearing	The hearing and any depositions must be held within the geographical boundaries of the District or at the regional education service center that serves the District.  <i>Education Code 21.255</i>
Schedule Restriction	A hearing before a hearing examiner may not be held on a Saturday, Sunday, or a state or federal holiday, unless all parties agree. <i>Education Code 21.257(c)</i>
Private	A hearing before a hearing examiner shall be private unless the employee makes a written request for a public hearing.
Exception	If necessary to maintain decorum, the hearing examiner may close a hearing that an employee has requested be public.
Protection of Witnesses	To protect the privacy of a witness who is a child, the hearing examiner may close the hearing to receive the testimony or order that the testimony be presented by procedures in Article 38.071, Code of Criminal Procedure.
Employee Rights	At the hearing, the employee has the right to: <ol style="list-style-type: none"><li>1. Be represented by a representative of the employee's choice;</li><li>2. Hear the evidence on which the charges are based;</li><li>3. Cross-examine each adverse witness; and</li></ol>

TERMINATION OF EMPLOYMENT  
HEARINGS BEFORE HEARING EXAMINER

DFD  
(LEGAL)

4. Present evidence.

The hearing is not subject to the Administrative Procedure Act.

The hearing shall be conducted in the same manner as a trial without a jury in state district court. A certified shorthand reporter shall record the hearing.

Evidence

The Texas Rules of Civil Evidence shall apply at the hearing. An evaluation or appraisal of the teacher is presumed to be admissible at the hearing. The hearing examiner's findings of fact and conclusions of law shall be presumed to be based only on admissible evidence.

Burden of Proof

The District has the burden of proof by a preponderance of the evidence at the hearing.

*Education Code 21.256*

Costs

The District shall bear the cost of the services of the hearing examiner and certified shorthand reporter and the production of any original hearing transcript. Each party shall bear its costs of discovery, if any, and its attorney's fees. *Education Code 21.255(e)*

**Recommendation**

Not later than the 60th day after the date on which the Commissioner receives a request for a hearing before a hearing examiner, the hearing examiner shall complete the hearing and make a written recommendation. The recommendation must include findings of fact and conclusions of law. The recommendation may include a proposal for granting relief, including reinstatement, back pay, or employment benefits. The proposal for relief may not include attorney's fees or other costs associated with the hearing or appeals from the hearing. The hearing examiner shall send a copy of the recommendation to each party, the Board President, and the Commissioner.

Waiver of Deadline

The parties may agree in writing to extend by not more than 45 days the right to a recommendation by the date specified above.

*Education Code 21.257*

**Consideration**

The Board or a designated subcommittee shall consider the hearing examiner's record and recommendation at the first Board meeting for which notice can be posted in compliance with the open meetings laws. The meeting must be held not later than the 20th day after the date that the Board President receives the hearing examiner's recommendation and record.

**Oral Argument and  
Recording**

At the meeting, the Board or subcommittee shall allow each party to present an oral argument to the Board or subcommittee. The



TERMINATION OF EMPLOYMENT  
HEARINGS BEFORE HEARING EXAMINER

DFD  
(LEGAL)

	<p>Board may, by written policy, limit the amount of time for oral argument, provided equal time is allotted each party. A certified shorthand reporter shall record any such oral argument.</p>
Legal Advice	<p>The Board or subcommittee may obtain advice from an attorney who has not been involved in the proceedings.</p> <p><i>Education Code 21.258, .260</i></p>
Decision	<p>Not later than the tenth day after the date on which the meeting to consider the hearing examiner's recommendation is held, the Board or subcommittee shall announce its decision, which must include findings of fact and conclusions of law, and may include a grant of relief.</p> <p>The Board or subcommittee may adopt, reject, or change the hearing examiner's conclusions of law or proposal for granting relief. A determination by the hearing examiner regarding good cause for the suspension of an employee without pay or the termination of a probationary, continuing, or term contract is a conclusion of law and may be adopted, rejected, or changed by the Board or Board subcommittee.</p> <p>The Board may reject or change a finding of fact made by the hearing examiner:</p> <ol style="list-style-type: none"><li>1. Only after reviewing the record of the proceedings; and</li><li>2. Only if the finding of fact is not supported by substantial evidence.</li></ol> <p>The Board or subcommittee shall state in writing the reason for and legal basis for a change or rejection.</p> <p><i>Education Code 21.257, .259</i></p>
Recording	<p>A certified shorthand reporter shall record the announcement of the decision. The District shall bear the cost of the reporter's services.</p> <p><i>Education Code 21.260</i></p>
Record of Proceedings	<p>The Commissioner shall consider the appeal solely on the basis of the local record and may not consider any additional evidence or issue. <i>Education Code 21.301(c)</i></p> <p>The record of the proceedings before the independent hearing examiner shall include:</p> <ol style="list-style-type: none"><li>1. The transcripts of proceedings at the local level;</li><li>2. All evidence admitted;</li><li>3. All offers of proof;</li></ol>

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4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the recommendation of the independent hearing examiner;
7. The transcript of the oral argument before the Board or Board subcommittee;
8. The decision of the Board or Board subcommittee; and
9. If applicable, the Board or Board subcommittee's written reasons for changing the recommendation of the independent hearing examiner.

*19 TAC 157.1072(e)*

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**Time Limits for Oral  
Argument**

The Board shall consider the hearing examiner's record and recommendation at the first Board meeting for which notice can be posted in compliance with the open meetings laws.

The Board shall allow ten minutes per party for oral argument. Administration shall be offered the opportunity to present argument first and may use a portion of the designated time for rebuttal after the other party has presented argument.

The Board reserves the right to grant additional time in equal amount to both parties, depending on the complexity of the issues and solely at the Board's discretion.

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**Resignation without  
Consent (Unilateral  
Resignation)**

An educator employed under a probationary contract for the following school year, or under a term or continuing contract, may relinquish the position and leave district employment at the end of the school year without penalty by filing a written resignation with a board or a board's designee not later than the 45th day before the first day of instruction of the following school year.

A written resignation mailed by prepaid certified or registered mail to a board president or a board's designee at the post office address of the district is considered filed at the time of mailing.

*Education Code 21.105(a), .160(a), .210(a)*

An unequivocal resignation filed not later than the 45th day before the first day of instruction of the following school year is effective upon filing with a district and the district cannot reject such a resignation. The resignation cannot be withdrawn by the teacher based on an argument that the district has not accepted the resignation. *Fantroy v. Dallas Indep. Sch. Dist.*, *Tex. Comm'r of Educ. Decision No. 034-R8-0206 (Mar. 5, 2009)*; *Garcia v. Miles Indep. Sch. Dist.*, *Tex. Comm'r of Educ. Decision No. 055-R1-503 (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)*

**Notice to Teacher**

If a district submits a complaint regarding a teacher to SBEC, the district shall promptly notify the teacher of the complaint. The notice must include:

1. The basis of the complaint;

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2. Information regarding how the teacher may contact SBEC;  
and
3. A reminder that the teacher should verify that the teacher's  
mailing address on file with SBEC is current.
- SBEC Actions
- Before imposing sanctions against a teacher for abandonment of  
contract, SBEC:
1. Must consider any mitigating factors relevant to the teacher's  
conduct; and
  2. May consider alternatives to sanctions, including additional  
continuing education or training.
- If a teacher files a written resignation after the 45th day but not  
later than the 30th day before the first day of instruction of the fol-  
lowing school year, SBEC may not suspend or revoke the  
teacher's certificate.
- Education Code 21.105(d)–(f), .160(d)–(f), .210(d)–(f)*
- SBEC shall not pursue sanctions against an educator who is al-  
leged 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 sepa-  
ration 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 Educa-  
tion 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

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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)*

**Required Report to SBEC**

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

**Investigation**

A superintendent of a district, including a district of innovation, shall complete an investigation of an educator that involves evidence

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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)*

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**General  
Requirements**

All resignations shall be submitted in writing to the Superintendent or other person designated by Board action in accordance with this policy. 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 shall be authorized to accept the resignation of an at-will employee at any time. The Superintendent may delegate to other administrators the authority to accept a resignation of an at-will employee.

**Contract Employees**

The Superintendent or other person designated by Board action 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. If an employee provides a resignation to a supervisor who has not been designated by the Board to accept resignations, the supervisor shall instruct the employee to submit the resignation to the Superintendent or other person designated by Board action. The resignation requires no further action by the District and is accepted upon receipt by the Superintendent or other person designated by Board action.

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. If an employee provides a resignation to a supervisor who has not been designated by the Board to accept resignations, the supervisor shall instruct the employee to submit the resignation to the Superintendent or other person designated by Board action. The Superintendent or other person designated by Board action 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.