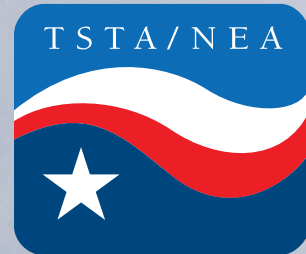


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ESSENTIAL RIGHTS

all education professionals should know

Texas State Teachers Association: Fighting for Texas Schools since 1880

Center for Legal Services and Member Advocacy

TSTA has an experienced team of attorneys and advocates, including a network of outside attorneys dedicated to providing the highest level of service to protect a member's employment rights.

The legal services department operates a high-volume call center to assist members (educators and support personnel) with employment-related legal issues, who have been members of the association for at least 30 days. The Help Center provides legal advice, research, advocacy, and grievance processing. Issues addressed include, but are not limited to, certification, demotion, disciplinary action (reprimand, suspension, administrative leave), and termination/nonrenewal.

The Help Center operates 11 hours each weekday during the school year, but has reduced hours in the summer:

- 8 a.m. to 7 p.m. Central Time During school year
- 8 a.m. to 5 p.m. Central Time During summer months

The Help Center may be reached toll-free at 877-ASK-TSTA (877-275-8782). Documents may be faxed to 512-486-7044. Members also may submit issues directly to https://tsta.wufoo.com/forms/tsta-help-center/?do=hd_add_record.

Privacy Policy and Terms of Use

The intent of this handbook is to provide general information. It should not be construed as, nor is it intended to provide, legal or tax advice. It does not necessarily fully address all your specific issues and cannot possibly take into account all of the various and mitigating factors that may impact a specific individual or situation. Member questions regarding specific issues should be addressed by the Help Center or an attorney who specializes in this practice area.

No part of this handbook may be reproduced or transmitted in any form, without explicit consent from TSTA.

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PLANNING AND PREPARATION

The principal is requiring our team to meet during my planning and prep conference period. Can she do that?



RULE OF THUMB: Each classroom teacher is entitled to at least 450 minutes within each 2-week period for instructional preparation, including parent-teacher conferences, evaluating students' work, and planning. During the planning and preparation period, a classroom teacher may not be required to participate in any other activity. Tex. Educ. Code §21.404.

Caveat

A teacher does not have to be given a conference period every day; however, on days that the teacher has a conference period, that period may not be less than 45 minutes, within the instructional day.

Authority and Discussion

"The statute was enacted for the purpose of giving teachers time to engage in parent-teacher conferences, reviewing students' homework, and planning and preparation as the teacher, not the administration, deems best. The statute clearly relieves the teacher of any duty during this period of time and prohibits the district and its administration from requiring the teacher to engage in any other activity the administration determines to be useful and important." *Strater v. Houston Indep. Sch. Dist.*, Docket No. 129-R8-685 (Comm'r Educ. 1986).

"A teacher's planning and preparation period is for the use of the teacher as he or she sees fit, within the statutory boundaries, free from any duty mandated by the school district." *Chaffin v. Los Fresnos Indep. Sch. Dist.*, Docket No. 128-R10-1290 (Comm'r Educ. 1990).

Note: The planning and prep time must be "within the instructional day," and not merely tacked on to the end of the instructional day. *Weatherbie v. Tuloso-Midway Indep. Sch. Dist.* (Comm'r Educ. 1985).

NOTES:

DUTY-FREE LUNCH

My principal is requiring me to take and pick up my students from the lunchroom. This takes about seven minutes away from my lunch period. Can she do that?



RULE OF THUMB: Classroom teachers and full-time librarians are entitled to at least a 30-minute lunch period free from all duties and responsibilities connected with the instruction and supervision of students. The district may not require the teacher to have their lunch in the cafeteria or even on school property.

Caveat

If necessary, because of a personnel shortage, extreme economic conditions, or an unavoidable or unforeseen circumstance, a school district may require a classroom teacher or librarian entitled to a duty-free lunch to supervise students during lunch, not more than one day per week.

Authority & Discussion

What constitutes a personnel shortage, extreme economic conditions, or an unavoidable or unforeseen circumstance? Can the district make-up this stuff to get around the law? No.

- A personnel shortage exists when, despite reasonable efforts of a school district to use nonteaching personnel or the assistance of community volunteers to supervise students during lunch, there are no other personnel available.
- Extreme economic conditions exist when the percentage of a local tax increase, including any amounts necessary to implement this section, would place the district in jeopardy with respect to a potential tax roll-back election as provided in Texas Property Tax Code, §26.08.
- Unavoidable or unforeseen circumstances exist when, due to illness, epidemic, or natural or man-made disaster, a school district is unable to find an individual to supervise students during lunch.

19 Tex. Admin. Code §153.1001. *See also* Tex. Educ. Code §21.405; AG Opinion JM-481.

NOTES:

TEACHER CONTRACTS

Types of Contracts

There are three types of contracts:

- Probationary (generally 1-year duration, usually first 3 years of employment)
- Term (generally 1-year duration, but could be up to 5 years)
- Continuing (renews automatically each year)

What rights do probationary teachers have?



RULE OF THUMB: Texas law requires that all "teachers" (defined as a principal, supervisor, classroom teacher, counselor or other full-time professional employee who is required to hold a certificate) must be employed under a contract. Every teacher new to a district must be employed on a one-year probationary contract after which time the district may employ the teacher on a continuing or term contract.

Tex. Educ. Code §21.102.

Caveat

Though a probationary contract may not exceed one-year, it may, as a matter of course, be renewed for two additional one-year periods and then for a fourth one-year period if the board of trustees makes a finding that the teacher's continued employment with the district is doubtful. Therefore, a teacher may be employed under a probationary contract for a maximum of four years.

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.

Authority & Discussion

Texas Education Code §21.102 requires a district to place a new hire who has not previously been employed by the district for two consecutive school years, on a probationary contract. While a district is permitted in most instances to renew the teacher's employment on probationary status for a few years, a teacher who has taught in public schools for at least five out of eight preceding years may be employed under a probationary contract for one year only. Legislation (i.e., the Tex. Educ. Code) allows, but does not require, a school district to immediately employ a new principal or classroom teacher under a term rather than probationary contract if he or she has previous experience as a principal or classroom teacher.

A probationary teacher has most of the same rights as a teacher employed under a term or continuing contract: state minimum salary schedule and any applicable local schedules; thirty-minute duty-free lunch; five days of personal leave, and any applicable local leave; 450 minutes of planning and prep time every two weeks; right to resign without board approval if done in

writing at least 45 days before the first day of instruction. The major difference is that a probationary teacher lacks the protections against end-of-year termination which Texas law gives to term and continuing contract teachers. In order for a district to terminate a probationary teacher the board of trustees must simply give the employee notice not later than the 10th day prior to the last day of instruction that it has determined that it is in the district's best interest not to renew the contract. Contrast this with an end-of-year nonrenewal for teachers employed under a term or continuing contract—there must be factual evidence establishing the teacher's contract is not being renewed for reasons enumerated in the district's policy.

The Texas Education Code §21.103(a) states that the board's decision to terminate a probationary teacher at the end of the school year "is final and may not be appealed." However, a teacher may file a grievance over any action taken against him or her alleging violations of a specific education code.

As is the case for teachers employed under term contracts and continuing contracts, a school district must prove "good cause" to support the termination of a probationary teacher mid-term.

What happens at the end of the contract term?

- A probationary teacher is entitled to notice at least 10 days before the last day of instruction that the contract will be terminated at the end of the term.
- A teacher on a probationary contract is not entitled to a due process hearing under Chapter 21 for a decision to terminate his or her contract at the end of the school year. A teacher may file an appeal if there is an alleged violation under Chapter 21 of the Education Code.

NOTES:

Termination

Termination of a contract occurs when a school district seeks to end an employment relationship during the contract period. The district must have good cause to terminate a contract. The contract-holder has a right to a hearing before the contract is terminated.

Nonrenewal of a Term Contract

The district must notify a contract-holder at least 10 calendar days before the end of the school year if the contract will not be renewed. The individual may request a hearing regarding the non-renewal. The district must show that the individual failed to comply with district policies by a 'more likely than not' evidence standard.

RESIGNATION

What do I have to do to resign from my employment contract?



RULE OF THUMB: Teachers may resign by filing with the board of trustees a written resignation not later than the 45th day before the first day of instruction. [Tex. Educ. Code §21.105, probationary contracts; §21.210, term contract; §21.160, continuing contracts]

Caveat

On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher who does not provide the written notification of resignation 45 days before the first day of instruction. [Tex. Educ. Code §21.105, probationary contracts; §21.210, term contract; §21.160, continuing contracts]

Authority & Discussion

Probationary, term and continuing contract employees may all unilaterally resign if they do so in writing at least **45 days** before the first day of instruction. Tex. Educ. Code §21.105; §21.160; §21.210. The resignation should be sent certified mail, return receipt requested, to the board president or designee, and it will be considered "filed" on the day it is mailed.

During the school year, contract employees must get the board's permission to resign, which may sometimes be granted by its designee. If an employee resigns without permission, the school district may report the employee to SBEC for possible certification sanction.

We should not stand in the way of an employee who truly desires to resign. However, TSTA members should not resign until they have had a chance to calmly analyze the situation with their family, a fellow member, or an advocate at the TSTA Help Center (877-ASK-TSTA).

SALARY & COMPENSATION

Can my supervisor or principal require me to work overtime?



RULE OF THUMB: An employer may require employees to work additional hours but must compensate employees who are protected by the Fair Labor Standards Act (FLSA) at the rate of time and-a-half for every hour over 40 worked in a pay period. Teachers and other employees not protected by the FLSA are not entitled to additional compensation for overtime.

Caveat

Nonexempt employees must actually work over 40 hours in a pay period before they are eligible for overtime compensation ("O.T.") and may be compensated in the form of compensatory time at the same premium rate of one and one-half hours for every hour over 40 which is worked. Teachers and other contractual employees *may* be entitled to additional compensation if the additional hours become unreasonable.

Authority & Discussion

As a general rule, a school district may require any employee to work additional hours. The real issue is whether an employee who is required to work additional time at the end of the day-or on days off (such as Saturdays or vacations)-must be compensated for the extra time worked.

The answer to this question depends upon whether you are protected by the Fair Labor Standards Act (FLSA). An employee who is protected by the FLSA must be compensated at the rate of time and-a-half for every hour worked in excess of 40 in a workweek. An employee who is not protected by the FLSA is exempt from the law's requirements that overtime be compensated.

The types of employees who are exempt from the FLSA's requirements are typically classified as executive, administrative and professional employees. Teachers, librarians, athletic trainers, and nurses are "professional employees" and therefore exempt from the FLSA; whereas bus drivers, custodians, paraprofessionals and other educational support personnel are protected by the Fair Labor Standards Act.

- **Teachers:** Decisions from the Commissioner of Education have not been favorable when teachers have sought compensation for working beyond regular school hours. The Texas State Teachers Association monitors instances where teachers are required to work during days off or during time periods beyond the regular school day and believes that contract employees deserve additional compensation for working a significant amount of time outside of the instructional period.

- **Educational Support Personnel:** The FLSA does not require meal or rest periods or premium pay for weekend or holiday work nor does it limit the number of hours which a school district may require someone to work. It simply requires that an employee receive compensation (salary or compensatory time) at a premium rate once the employee has worked more than 40 hours in a pay period.
 - ✚ Bus drivers are entitled to be paid for waiting time.
 - ✚ The law prohibits an employee from volunteering to do the same type of work for the district for which he or she is employed. *Knowlton v. Greenwood*, 957 F.2d 1172 (5th Cir. 1992).
 - ✚ Mandatory attendance at trainings which are not directly related to your job may be considered time worked. (29 CFR 785.27)
 - ✚ The job title is not important; it is the job duties which place an employee within the Fair Labor Standards Act protections.
 - ✚ The district must allow you to use accrued comp time within a reasonable time after you earn it; your request can be denied only if taking the time off would “unduly disrupt” district operations.
 - ✚ A school district may require that you use accrued comp time.

When can my salary and benefits change?



RULE OF THUMB: A school district cannot lawfully reduce total compensation to a level lower than that which the teacher would have received under the previous year's compensation package if, at the time of notice, the teacher cannot unilaterally withdraw from the contract under state law; i.e., 45 days before the first instructional day of the next school year.

Caveats

An at-will employee can be terminated for any legally permissible reason. An at-will employment arrangement is one in which there is no contractual commitment to a specified period of employment.

A school district may set a salary schedule that reduces elements of that salary so long as the teacher's total compensation is not reduced. Example: The district may lower the stipend a teacher gets for sponsoring an extracurricular club so long as the teacher's overall salary is not reduced.

Past practices of providing salary supplement, health insurance coverage or other benefits does not standing alone bind a district. *Weslaco Federation of Teachers v. Texas Education Agency*, 27 S.W. 3d 258 (Tex. App. – Austin 2000, no pet.)

EMAIL, CELL PHONES, AND SOCIAL MEDIA



RULE OF THUMB: All text and email communications with students must have an educational purpose.

Caveat

Emails sent on your district email address are subject to open records requests and the district does and can have access to the emails.

Authority and Discussion

Many districts have enacted policies regarding cell phone usage. The general advice is as follows:

- Look at the district policy regarding cell phones.
- Many of the policies only address personal use. If the principal or school recommends communication through cell phone or email usage, respond at the appropriate times to do so. This is business use and is not necessarily subject to a policy regarding personal usage.
- If you are going to communicate about school district business, do so on your district email address. Texts and emails sent on your personal accounts may still be subject to open records requests if there is school district business occurring within your personal accounts.

Preservation of Information on Employees' Personal Devices

All text messages (to parents, students or regarding school district communications) recorded on a personal cell phone/device must be maintained pursuant to the district's document retention policy. A district cannot require a teacher to release his/her personal cell phone number to a student.

Social Media & the First Amendment

School district employees should not communicate with students on social media.

NOTES:

STUDENT DISCIPLINE

What can I do to maintain order in my classroom?



RULE OF THUMB: A teacher has absolute authority to send a student to the principal's office "to maintain effective discipline in the classroom" and the principal is required to take appropriate disciplinary steps.

Caveat

It must be stressed that physical contact for the purpose of punishing a student should never be used. Touching for the purpose of punishment (as opposed to redirecting a student) by a school employee will expose the teacher (or other school staff) to termination, nonrenewal, civil liability, criminal indictment, investigations by Child Protective Services and license revocation proceedings by the State Board for Educator Certification.

Authority and Discussion

A teacher may always send a student to the principal's office "to maintain effective discipline in the classroom." The principal shall respond with appropriate discipline management techniques consistent with the student code of conduct.

A teacher may remove a student from the classroom (i) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn or, (ii) whose behavior is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn.

The principal may not return the student to that teacher's class without the teacher's consent unless the school's Placement Review Committee, composed of two teachers selected by the campus faculty and one professional staff member appointed by the principal, determines that such placement is the best or only alternative available.

A teacher cannot be required to return the student to their class if the student has assaulted the teacher.

The Tex. Educ. Code, §37.001 requires Boards of Trustees to adopt a student code of conduct for the district which establishes not only standards for student conduct but also the circumstances under which a student may be removed from a classroom, a campus or disciplinary alternative education program. In addition to Chapter 37 of the Tex. Educ. Code (which lists grounds for the suspension or referral of a student to the alternative education campus), the district's code of conduct may add to or supplement these limited statutory grounds for suspension or AEP referral.

Retaliation by students is strictly forbidden! Texas Education Code §37.006 sets forth grounds for which a student shall be removed from class and placed in an alternative education program. One of the grounds for mandatory removal is retaliation; (see Texas Education Code §37.006(b)). This is defined as intentionally harming, or threatening to harm, a person by an illegal act in retaliation for, or on account of, the service or status of one as a public servant. The student's act of retaliation need not have occurred on school grounds or during school activities.

Because participation in extracurricular activities by students is a privilege and not a right (as is the right to a public education), districts may develop codes of conduct for students who engage in extracurricular activities which are more stringent than those applied to non-participating students.

Disciplining Special Education Students

If a student with a disability misbehaves, the types of disciplinary measures that may be employed depend on whether the student's behavior is related to the student's disability, whether there was a failure to implement the student's Individual Education Plan (IEP) or whether the student's misconduct involves carrying or possessing a weapon or possessing, using, or selling illegal drugs at school.

Misconduct That Arises Out of the Disability

Responses to the behavior must be channeled through the IEP and related services. Removal from regular education may be allowed, but usually will be brief and will always require continued provision of educational services. After the determination that the student's behavior was caused by the disability or the school's failure to implement their IEP, the school must create a Behavior Intervention Plan (BIP) to address this behavior.

Misconduct That Does NOT Arise out of the Disability

If the Manifestation Determination Review (MDR) committee concludes that the behavior is not a manifestation of the disability or that the schools did not fail to implement their IEP, then the school district can apply the same disciplinary procedures that it would apply to students without disabilities accused of the same violation.

NOTES:

TRANSFER/REASSIGNMENT

My principal wants to reassign me from first to fourth grade. Can she do that?



RULE OF THUMB: Most Texas teacher contracts contain a clause to the effect that the employee may be assigned and reassigned at the discretion of the superintendent.

Caveats

(Caveat for the district) A reassignment that is motivated by illegal reasons is improper. If the reassignment is retaliatory, it is actionable. *Anderson v. Pasadena Indep. School Dist.*, 184 F.3d 439 (5th Cir. 1999).

If a teacher has a coaching stipend, his/her coaching duties may be reassigned or removed without the district adhering to the nonrenewal provisions of the Education Code.

Authority and Discussion

Assignments Outside Your Certification Area

District's Responsibilities:

- A superintendent or designee who cannot secure an appropriately certified and qualified individual to fill a vacant position may activate an emergency permit for an individual. The superintendent or designee must:
 - (1) document the efforts the district has taken to employ a fully certified person in the position for which a permit is activated;
 - (2) apply for an emergency permit when a vacant position is filled with an uncertified or inappropriately certified individual who will serve as the teacher of record or will serve in the assignment for more than 30 consecutive instructional days. The application must be submitted to the Texas Education Agency within 45 instructional days of the date of assignment;
 - (3) verify that the district maintains a support system, has assigned a mentor, and will provide release time as needed to assist the individual serving on an emergency permit. (Not required for a degreed, certified teacher with one or more years of experience within the district); and,
 - (4) verify that the teacher for whom the permit is activated has been advised of State Board for Educator Certification (SBEC) rules regarding permits and permit renewal requirements in this subchapter.

19 Tex. Admin. Code §230.71

- Districts must notify parents, in writing, if it assigns an inappropriately certified or uncertified teacher to the same classroom for more than 30 consecutive instructional days during the same school year. This may apply to teachers employed on an emergency permit.

Tex. Educ. Code §21.057(a)

Teacher's Rights and Responsibilities:

- For a degreed, certified teacher who was employed by a district in the previous year or semester in an assignment for which he or she was fully certified:
 - (1) The teacher may not be assigned to a position that requires activating a permit unless:
 - a. the teacher has given written consent to the activation of the permit; or
 - b. because of fluctuations in enrollment or changes in course offerings, the teacher's previous assignment no longer exists and no alternative assignment for which the teacher is fully certified is available on that campus. If a permit is activated for a teacher under these circumstances, the teacher shall be offered the opportunity to return to his or her previous assignment or an alternative assignment for which the teacher is fully certified on that campus as soon as such an assignment is available. If a teacher accepts the assignment, the actual transfer of duties shall occur not later than the beginning of the next academic year.
 - (2) If a permit under this subsection is activated for a temporary staffing condition within 30 days of the opening of the school year or later during the contract year, the teacher is exempt from the requirement to complete additional coursework or examination requirements for certification for the remainder of the contractual year for which the permit is activated. This exemption is not renewable on a second-year emergency permit.
- A teacher who refuses to consent to activation of a permit under this subsection may not be terminated or nonrenewed or otherwise retaliated against because of the teacher's refusal to consent to the activation of the permit. However, a teacher's refusal to consent shall not impair a district's right to implement a necessary reduction in force or other personnel actions in accordance with local district policy.

19 Tex. Admin. Code §230.71(e)

- Whenever possible, an appraisal shall be based on the teacher's performance in fields and teaching assignments for which he or she is certified.

19 Tex. Admin. Code. §150.1003 (a)

- Further, a teacher's contract may not be considered void if he or she has been assigned to teach a subject for which the teacher is not certified.

Tex. Educ. Code §21.0031(e)

APPRAISALS

I received a bad appraisal. What can I do about it?



RULE OF THUMB: A teacher may submit a written response or **REBUTTAL** at the following times: Within 10 working days of receiving a written observation summary, a written summative annual appraisal report, or any other written documentation associated with the teacher's appraisal. At the discretion of the appraiser, the time period may be extended to 15 working days.

Caveat

Though the regulations state that the classroom observation is to be 45 minutes it may be conducted in shorter time segments that add up to 45 minutes if the teacher and appraiser both agree.

Authority and Discussion

- What is a rebuttal? A rebuttal is a written response to any written review of a teacher's performance.
- What is the purpose of a rebuttal? Rebuttals are written so that additional information and the teacher's impressions and reactions are on record. A rebuttal refutes and counters inaccuracies, misconceptions, erroneous statements, and any item(s) in the evaluation deemed as misleading, disparate treatment, and/or equal protection violations. The information included in a written response may be helpful in some future proceeding instituted against a teacher or it may simply correct the record or provide additional information for an appraiser's consideration.
- When should I consider writing a rebuttal? Be prepared to submit a rebuttal when anything is received that could have an unmerited negative impact on your employment status.
- How should a rebuttal be written?
 - ✚ Positive – no sarcastic or accusatory remarks, personal opinions, emotions, or subjective statements
 - ✚ Factual – utilize facts in own best interest
 - ✚ Not a "true confession" – It is the appraiser's responsibility to identify weaknesses, imperfections, or wrongdoing



RULE OF THUMB: A teacher may request a **SECOND APPRAISAL** by another appraiser at the following times: Within 10 working days of receiving a written observation summary or a written summative annual appraisal report. At the discretion of the appraiser, the time period may be extended to 15 working days.

Caveat

A teacher may submit a response or a rebuttal and has the right to have a second appraisal by another appraiser-but must submit the response or request for a second appraisal within ten working days.

Authority and Discussion

The second appraiser shall appraise the teacher in all domains. The second appraiser shall make observations and walk-throughs as necessary to evaluate Domains I through V. The second appraiser shall use the Teacher Self-Report Form and cumulative data from the first appraisal to evaluate Domains VI through VIII. Cumulative data may also be used by the second appraiser to evaluate other domains.

Each school district shall adopt written procedures for a teacher to present grievances and receive written comments in response to the written annual report. Each district shall also adopt written procedures for determining the selection of second appraisers. These procedures shall be disseminated to each teacher at the time of employment and updated annually or as needed.

Teachers must be appraised each school year absent an agreement, and whenever possible, the appraisal shall be based on the teacher's performance in fields and teaching assignments for which the teacher is CERTIFIED. The annual teacher appraisal shall include at least one classroom observation of a minimum of 45 minutes with additional walk-throughs and observations conducted at the discretion of the appraiser and a written summary of each observation which shall be given to teachers within 10 working days after the observation with a pre- and post-observation conference conducted at the request of the teacher or appraiser. 19 Tex. Admin. Code §150.1003.

The evaluation may also include cumulative data of written documentation collected regarding job-related teacher performance, in addition to formal classroom observations. "Any third-party information from a source other than the teacher's supervisor that the appraiser wishes to include as cumulative data shall be verified and documented by the appraiser. Any documentation that will influence the teacher's [evaluation] **must be shared in writing** with the teacher within 10 working days of the appraiser's knowledge of the occurrence.

- Tex. Educ. Code §21.351
- Tex. Educ. Code §21.352(c)
- 19 Tex. Admin. Code §150.1001

LEAVE PROVISIONS

Personal Leave

What are my rights regarding the various types of leave?



RULE OF THUMB: All district employees shall receive at least five (5) personal leave days per year. These personal leave days may be accrued without limit and are transferable among districts. The Board of Trustees may adopt a policy governing an employee's use of leave but may not restrict the purposes for which the leave may be used.

Caveats

The problem is that the vast majority of districts have strict limitations on when employees may take their personal leave. The questions become: 1) What does it mean to "govern an employee's use of leave?" and 2) What does it mean to "restrict the purpose for which the leave may be used?"

Assault Leave Program

Tex. Educ. Code §22.003(b) provides that:

- In addition to all other types of leave, an employee of a school district who is physically assaulted during the performance of the employee's regular duties is entitled to up to two years paid leave to recuperate from all physical injuries.
- At the request of the employee, the school district must immediately assign an employee to assault leave and, on investigation of the claim, may change the assault leave status and charge the leave against an employee's accrued personal leave or against an employee's pay if insufficient accrued personal leave is available.
- Assault leave benefits are to be coordinated with Temporary Income Benefits due from workers' compensation so that the employee receives no more than 100 percent of their weekly pay.
- An employee is "physically assaulted" if the person causing the injury (a) could be prosecuted for assault or (b) could not be prosecuted only because the person's age or mental incapacity bars criminal liability.

NOTES:

QUICK REFERENCE GUIDE TO TYPES OF LEAVE AVAILABLE TO DISTRICT EMPLOYEES

Family and Medical Leave Act (FMLA)

29 U.S.C. §2601 et seq. 29 C.F.R. Part 825.108(c) & Part 825.600(b)

Applies to employees who:

- work in a school district that has 50 or more employees on the payroll within a 75-mile radius
- have worked for the district for at least 12 months; and
- have worked 1,250 hours during the immediately preceding 12 months

Qualifying reasons:

- ✚ birth of a child, or care of the newborn child;
- ✚ placement with the employee of a child for adoption, or foster care, and care of the newly placed child;
- ✚ to care for the employee's spouse, child, or parent with a "serious health condition;" or
- ✚ a "serious health condition" that made the employee unable to perform the essential functions of the job

Duration is 12 workweeks (or 26 weeks of military caregiver leave) in a 12-month period, taken either in blocks, intermittently, or on a reduced leave schedule under certain circumstances. Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation, when the employee would not have been required to report for duty, is not counted against an employee's FMLA entitlement.

Personal Leave

Tex. Educ. Code §22.003(a)

- All school district employees eligible
- A minimum of five days per school year
- Leave is paid
- No limit on accumulation

Assault Leave

Tex. Educ. Code §22.003(b)

- All school district employees eligible
- Duration is the number of days necessary to recuperate
- Leave is paid up to two years

Temporary Disability Leave

Tex. Educ. Code §21.409

- Applies only to full-time educators
- Request must be accompanied by a physician's statement confirming inability to work and must state leave and return dates
- The length of leave shall be granted by the superintendent as required by the individual educator
- Board may establish a maximum duration of not less than 180 calendar days

Professional Leave

Tex. Educ. Code §21.452

- To be eligible the employee must be employed in a position requiring a permanent teaching certificate; and must have served in the same school district for at least five consecutive school years
- Reasons for developmental leave: study, research, travel, or other suitable purpose
- Duration is one school year or one-half of a school year
- Paid leave

Religious Observance Leave

Tex. Educ. Code §21.406

- All employees eligible
- Reason for religious leave is participation in religious observance and practice
- The duration is negotiable

Jury Duty Leave

Tex. Civ. Prac. & Rem. Code §§122.001-003

- All permanent employees eligible
- Salaried employees unpaid; non-salaried employees paid

Subpoenaed Witness Leave

Tex. Labor Code §52.051

- All district employees eligible
- Duration of the subpoena
- Paid leave
-

Short-term Military Leave

Tex. Gov't Code §437.202

- All employees in the military
- Duration is not more than 15 days per federal fiscal year
- Paid leave

LOST PROPERTY

A school board may not require an employee of the district who was acting in good faith to pay for a textbook, electronic textbook, or technological equipment that is damaged, stolen, misplaced, or not returned. Tex. Educ. Code §31.104(e)

A school district may not require an employee who was acting in good faith to waive immunity from liability or require a district employee to pay for or replace student property which was in the employee's possession because the employee was maintaining order. Tex. Educ. Code §22.0511(d)

DISTRICTS OF INNOVATION

Districts of innovation (DOI) were enacted by the Texas legislature in 2015. A school district may be designated as a DOI if the district's most recent performance rating reflects at least acceptable performance; (see Tex. Educ. Code §12A.001). A district may waive compliance with some of the education provisions pertaining to employees. The DOI plan must be approved by the district level committee; (see Tex. Educ. Code §12A.005). At least two-thirds of the elected professional staff on the district level committee must be classroom teachers; (see Tex. Educ. Code §11.251(e)). The designation may not exceed 5 years.

A list of districts designated as districts of innovation may be found on the TEA website: https://tea.texas.gov/Texas_Schools/District_Initiatives/Districts_of_Innovation, which indicates there were 875 districts of innovation at the end of 2019. The plan must be posted on the district's website for the length of the designation (see 19 TAC §102.1305(e)). This is in addition to the requirement that the final proposed version of the plan be available on the district's website for at least 30 days prior to the board of trustee's vote on the adoption of the proposed plan (see Tex. Educ. Code §12A.005(a)(1), 19 TAC §102.1307(a)(1)).

“DO NOT HIRE” REGISTRY

This is the list, required under House Bill 3, the new school finance law passed during the 2019 legislative session, of educators (certified and non-certified) who cannot be hired by school districts because they have a history of criminal misconduct or they are under investigation for misconduct. Examples of allegations/offenses include, but are not limited to:

- possession, transfer, or distribution of a controlled substance
- fiduciary misappropriation
- commission of a criminal offense on school property or at a school-sponsored event
- romantic relationship and/or sexual contact with a student or minor
- abuse or other unlawful act with a student or minor

DUTY TO REPORT

A teacher has an affirmative duty to report suspected child abuse or neglect. Failure to report is a Class B Misdemeanor, punishable by up to 6 months in jail and up to a \$2,000 fine.

Make a report or get more info by calling **1-800-252-5400** (Tex. Dept. of Fam. and Protective Services) For more info, go to **<http://www.tdprs.state.tx.us>**

- ***Tex. Fam. Code §261.101. Persons Required to Report; Time to Report***

- ✚ A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.
- ✚ If a professional has cause to believe that a child has been abused or neglected or that a child is a victim of an offense under Tex. Penal Code §21.11, and the professional has cause to believe that the child has been abused as defined by Tex. Fam. Code §261.001, the professional shall make a report **not later than the 48th hour** after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under §Tex. Penal Code 21.11. **A professional may not delegate to, or rely on, another person to make the report.** In this subsection, "professional" means an individual who is licensed or certified by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, daycare employees, and employees of a clinic or health care facility that provides reproductive services.
- ✚ The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, and an employee of a clinic or health care facility that provides reproductive services.
- ✚ The identity of an individual making a report under this chapter is confidential and may be disclosed only on the order of a court rendered under Tex. Fam. Code §261.201 or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

- ***Tex. Fam. Code §261.102. Matters to be Reported***

A report should reflect the reporter's belief that a child has been or may be abused or neglected or has died of abuse or neglect.

- ***Tex. Fam. Code §261.103. Report Made to Appropriate Agency***

A report shall be made to: (1) any local or state law enforcement agency; (2) the Tex. Dept. of Family & Protective Services if the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child; (3) the state agency that operates, licenses,

certifies, or registers the facility in which the alleged abuse or neglect occurred; or the Texas Juvenile Justice Department (TJJD) if the report is based on information provided by a child while under the supervision of the TJJD concerning the child's alleged abuse of another child.

- **Tex. Fam. Code §261.104. Contents of Report**

The person making a report shall identify, if known: (1) the name and address of the child; (2) the name and address of the person responsible for the care, custody, or welfare of the child; and (3) any other pertinent information concerning the alleged or suspected abuse or neglect.

- **Tex. Fam. Code §261.106. Immunities**

(a) A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from civil or criminal liability that might otherwise be incurred or imposed.

- **Tex. Fam. Code §261.107. False Report; Penalty**

(a) A person commits an offense if, with the intent to deceive, the person knowingly makes a report as provided in this chapter that the person knows is false. An offense under this subsection is a state jail felony unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a felony of the third degree.

Child abuse and neglect definitions

- "Abuse" includes the following acts or omissions by a person:

- ✚ mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- ✚ causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- ✚ physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
- ✚ failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
- ✚ sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of indecency with a child under Tex. Penal Code

§21.11, sexual assault under Tex. Penal Code §22.011, or aggravated sexual assault under Tex. Penal Code §22.021;

- ✚ failure to make a reasonable effort to prevent sexual conduct harmful to a child;
- ✚ compelling or encouraging the child to engage in sexual conduct as defined by Tex. Penal Code §43.01;
- ✚ causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by Tex. Penal Code §43.21) or pornographic; the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
- ✚ causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code; or
- ✚ causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Tex. Penal Code §43.25.

- "Neglect" includes:

- ✚ the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
- ✚ the following acts or omissions by a person:
 - placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
 - failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
 - the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or
 - placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or
- ✚ the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

APPENDIX A

The majority of this manual has been dedicated to the rights of the education professional and how the educational professional can enforce those rights. The following is a short list of ways to help minimize an educator's risk of liability.



How can I decrease my exposure to liability?

MAINTAIN YOUR BOUNDARIES

Parents and teachers can be friendly with students, but that is not the purpose of the relationship. You are a school employee first. You cannot befriend a student as a peer. Never confide in a student as you would an adult.

AVOID BEING ALONE WITH STUDENTS

Often, the most serious charges against school employees involve situations where the employee was alone with a student. If a student would like to meet with you before or after school for a school purpose like tutoring, or checking on grades, etc., do these things:

- ✚ Try to arrange tutoring for several students at the same time;
- ✚ Try to coordinate after-hours tutoring with other teachers;
- ✚ Let your principal know you will be meeting with the student(s); and
- ✚ Always leave your classroom door open.

Exercise control over any meeting you have with a student. Don't let the student dictate the time and place of your meeting. If a student wishes to meet with you, meet with the student outside the principal's office or with another teacher. The other teacher does not have to participate in the conversation. The other teacher can simply be in the room doing some work of his or her own.

HAVE A PROFESSIONAL RELATIONSHIP WITH THE ADMINISTRATION AND YOUR COLLEAGUES

School employees are each other's eyes and ears. You are in a position to look out for each other. If you see or hear one of your fellow employees doing something foolish-tell them. Being a valued employee can also help you when a problem arises. The opinions of you held by your administrator can make a difference when a complaint is made.

DOCUMENT ANY INCIDENT THAT COULD BE CONSIDERED OUT OF THE ORDINARY

Documentation is always a good idea. Regardless whether it is ever needed, your recollection of events is always fresher at the time the events occurred, than it will be one or two years down the road.

APPENDIX B

There are numerous laws which protect school district employees from discrimination, harassment and retaliation. An overview of these laws could not possibly cover all of the available legal remedies or provisions that may be available to employees, but it is provided to give readers an introduction to the scope of protections and legal rights which exist.



If you have reason to believe that the district has violated any of these laws and has engaged in illegal harassment, discrimination or retaliation you should call the TSTA Help Center at 1-877-ASK TSTA immediately.

Illegal Retaliation

The Texas Whistleblower Act (Texas Gov't Code §§554.001-554.010)

The Texas Whistleblower Act prohibits a state or local governmental entity (including a school district) from taking adverse personnel action against an employee "who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority."

An "appropriate law enforcement authority" is a governmental entity which the employee believes is authorized to either enforce the law alleged to be violated or investigate or prosecute a violation of criminal law.

The Texas Supreme Court has ruled that reporting an employee's violation of the law to a supervisor--even if the violation occurs at work--may not always constitute a report to an appropriate law enforcement authority.

An employee **must** initiate action under the district's grievance or appeal procedures and challenge the adverse employment action within 90 days.

First Amendment

As a public employee you may not have adverse action taken against you because of your exercise of constitutional rights including your rights to free speech and free association.

Not everything you say or do in the workplace will find constitutional protection. In order for speech to be deserving of protection, it must relate to a matter of public concern.

A school district may not interfere with or punish your decision to get involved with TSTA activities. However, it may limit your activities on the worksite to the same extent it limits any other nonwork behavior in order to prevent loss of work efficiency.

Grievance Retaliation

Public employees in general, and school district employees specifically, are entitled to file grievances concerning the terms and conditions of their employment. The Texas Constitution invests employees with the right to present grievances in Article I, §27. The Tex. Gov't Code, §617.005 likewise affords public employees the general right to file grievances.

School districts must adopt written procedures for teachers who challenge their T-TESS annual evaluation; 19 TAC §150.1004(g).

An employee may not be retaliated against for filing a grievance.

Illegal Discrimination

- Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination based on race, color, religion, sex, or national origin;
- The Equal Pay Act of 1963 (EPA), protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- The Age Discrimination in Employment Act of 1967 (ADEA), prohibits discrimination against individuals who are 40 years of age or older;
- The Americans with Disabilities Act of 1990 (ADA) outlaws employment discrimination against qualified individuals with disabilities and requires districts make reasonable accommodations to the known disabilities of its employees; and,
- The ADA prohibits a district from utilizing a return-to-work policy which requires an employee be released without any restrictions or limitations before being permitted to resume his or her previous job.

These laws, as well as their state counterpart—the Texas Commission on Human Rights Act—prohibit discrimination in any aspect of employment.

Discriminatory practices under these laws also include:

- harassment on the basis of race, color, religion, sex, national origin, disability, or age;
- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities; and
- denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Religious Accommodation

An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.

Sex Discrimination

Title VII's broad prohibitions against sex discrimination specifically cover:

- Sexual Harassment
 - ✚ This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment. (The "hostile environment" standard also applies to harassment on the bases of race, color, national origin, religion, age, and disability.)
- Pregnancy-Based Discrimination
 - ✚ Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions.

Age Discrimination in Employment Act

The ADEA's broad ban against age discrimination also specifically prohibits:

- statements or specifications in job notices or advertisements of age preference and limitations. An age limit may only be specified in the rare circumstance where age has been proven to be a bona fide occupational qualification (BFOQ);
- discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and
- denial of benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Equal Pay Act

The EPA prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

Americans with Disabilities Act

ADA Titles I and II of the Americans with Disabilities Act prohibit discrimination on the basis of disability in all employment practices.

- ***Individual with a Disability***

- ✚ An individual with a disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working.

- ***Qualified Individual with a Disability***

- ✚ A qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.

- ***Reasonable Accommodation***

- ✚ Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities.

- ✚ An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids.

- ***Prohibited Inquiries and Examinations***

- ✚ Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a

medical examination, but only if the examination is required for all entering employees in the same job category.

- ✚ Medical examinations of employees must be job-related and consistent with business necessity.

- ***Drug and Alcohol Use***

Employees and applicants currently engaging in the illegal use of drugs are not protected by the ADA when an employer acts on the basis of such use. Tests for illegal use of drugs are not considered medical examinations and, therefore, are not subject to the ADA's restrictions on medical examinations. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

These laws generally require filing a Charge with the EEOC or the Texas Commission on Human Rights within **180 days from the date of the alleged violation**. In some instances, the deadline is extended to 300 days.

To protect legal rights, the individual who believes that they have been subjected to discrimination should contact EEOC or the Texas Commission on Human Rights immediately.

Further information is available from the **United States Equal Employment Opportunity Commission** at www.EEOC.gov; 1-800-669-4000 (TTY 1-800-669-6820).

Texas Workforce Commission
Civil Rights & Discrimination Division
<https://twc.texas.gov/partners/civil-rights-discrimination>
512-463-2642
888-452-4778 (Toll-Free)

APPENDIX C

HELP CENTER INTAKE FORM

<i>OFFICE USE ONLY</i>	
Issue Trak #:	<input type="text"/>
Advocate:	<input type="text"/>

Part I: MEMBER INFORMATION						
					Today's Date:	<input type="text"/>
Name:	<input type="text"/>	Last 4 SSN:	xxx-xx-	Member No:	<input type="text"/>	
Address:	<input type="text"/>					
Phone:	<input type="text"/>	Email:	<input type="text"/>			
Best Time to Reach You:	<input type="text"/>	Time of Day:	AM	Time Zone:	Eastern	
Part II: EMPLOYMENT INFORMATION						
District:	<input type="text"/>			Occupation:	<input type="text"/>	
Contract:	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
				Type	Other	
Local:	<input type="text"/>					
Part III: ISSUE DESCRIPTION						
Issue Topic:	<input type="text"/>					
Date Occurred:	<input type="text"/>	Deadline:	<input type="text"/>			
Briefly describe what happened. You may attach an additional sheet of paper, if needed.						
<p>SEND DOCUMENTS TO THE HELP CENTER: Anitaw@tsta.org or fax to: 512-486-7044. It's important to send relevant documents to the Help Center for the Advocate's review. Examples are:</p> <ul style="list-style-type: none"> • Contract • Administrative Leave Letter • Termination Letter • Evaluation • Reprimand 						

