



**A TEACHER, A STUDENT, AND A PARENT WALK INTO A BAR ...
AND ASK YOU FOR ADVICE**

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EXECUTIVE SUMMARY

Intended to be a resource tool for attorneys who do not practice school law, this white paper provides an overview of some of the basics of public school law in the State of Texas.

Information is provided in the context of the three main stakeholder groups in education: teachers, parents and students. Timelines and conditions precedent are important factors when an attorney provides advice regarding school law and are included here in an attempt to avoid having a stakeholder's grievance dismissed as untimely.

INTRODUCTION

The information that follows will equip the attorney who is unfamiliar with school law with basic information to which s/he may refer when asked about a school law matter.

The most common concerns that a teacher in Texas might bring to an attorney include employment matters or inappropriate relationships with students. Chapter 21 of the Texas Education Code provides guidance regarding teacher non-renewals and terminations, while Title 19 of the Texas Administrative Code answers questions regarding disciplinary procedures when a teacher's certification is at risk. Local school board policy, which tends to be fairly consistent across the state, also addresses teacher employment issues and can be a helpful resource.

Parents commonly ask if they "have a case" when they have a concern about their child's school or school district. If they have not exhausted their administrative remedies, generally understood to be the local grievance process, then the answer is almost always "no." Many parents are also concerned about school staff speaking to their children without a parent present, and this and many other concerns can easily be addressed through the local grievance process.

Discipline issues, violations of the Student Code of Conduct, and bullying are top concerns for PK-12 public school students in Texas. Senate Bill 179, commonly known as "David's Law," gives Texas public schools the authority to address cyberbullying that occurs off campus. Chapter 37 of the Texas Education Code addresses student discipline and bestows rights that parents may not exercise, simply because they are not aware of the processes for which the Code provides. Adult students in college or post-graduate institutions frequently face accusations of academic dishonesty and may seek the assistance of an attorney when fighting those accusations and trying to prevent removal from a program or course of study.

TEACHERS

The most common concerns that a teacher in Texas might bring to an attorney include employment matters and inappropriate relationships with students. Chapter 21 of the Texas Education Code provides guidance regarding teacher non-renewals and terminations, while Chapter 19 of the Texas Administrative Code answers questions regarding disciplinary procedures when a teacher's certification is at risk. Local school board policy, which tends to be

fairly consistent across the state, also addresses teacher employment issues and can be a helpful resource.

Chapter 21, Texas Education Code

Chapter 21 of the Texas Education Code addresses matters concerning educators. The various subchapters contained therein set out Texas law regarding educator certification, employment contracts, appraisals, staff development, educators' duties and benefits, and the options available to certain teachers when they have been proposed for termination or non-renewal. Tex. Educ. Code, Ch. 21.

If a teacher asks for advice regarding a proposed termination or non-renewal, it is important to determine whether the teacher's contract with the school district is probationary or term.¹ Probationary contracts are generally issued to teachers who are employed by a school district for the first time and are never issued for more than one year at a time. Tex. Educ. Code § 21.102. A teacher may be on a probationary contract for a maximum period of three years, with a couple of specific exceptions for teachers who may be new to the school district but have taught in public school for at least five of the eight preceding years prior to being employed by the school district or a board of trustees is unsure whether or not a teacher should be given a term or continuing contract at the end of three years of probationary contracts. Tex. Educ. Code § 21.102(b). Probationary teachers have minimal rights to appeal the termination of their probationary contract, but if a school district chooses to afford the probationary teacher a hearing to appeal a proposed termination, the school board's decision is final and may not be appealed. Tex. Educ. Code § 21.103(a).

Teachers on term contracts have more rights when appealing a proposed adverse employment action, but also face more possible actions: renewal, non-renewal, and termination. In the context of term contracts, non-renewals are proposed at the end of a contract term (end of a school year) and terminations are proposed during the term of a term contract. Reasons for term contract non-renewal are generally contained in Section D of the school board policy manual, and are usually included in the mandatory written notice of proposed non-renewal. Tex. Educ. Code § 21.206. If a teacher on a term contract receives notice of a proposed non-renewal, the teacher has only fifteen days to request a hearing on the matter. Tex. Educ. Code § 21.207. If the outcome of the hearing is that the non-renewal is upheld, then the teacher may request a review of the decision by the commissioner of education. Tex. Educ. Code § 21.209. The commissioner, in his or her review, may only change the school board's decision if it was "arbitrary, capricious, unlawful, or not supported by substantial evidence." Tex. Educ. Code § 21.209.

¹ Continuing contracts, which have essentially fallen out of fashion, are also permitted under the Texas Education Code. Tex. Educ. Code § 21.002(a)(2). Automatically continuing from year to year, they are generally not non-renewed, but may be terminated for good cause. Tex. Educ. Code § 21.156.

School districts may also terminate a term contract prior to the end of the contract, but it must be for “good cause” or because of a financial exigency that results in a reduction in personnel. Tex. Educ. Code § 21.211. Pursuant to the Education Code, school boards determine what constitutes “good cause.” *Id.* If a teacher receives notice of the proposed termination of his or her term contract before the end of the contract period, the teacher may request a hearing before a certified hearing examiner within fifteen days of receipt of the written notice of proposed termination. Tex. Educ. Code § 21.253. The hearing is conducted like a bench trial, with a court reporter, application of the Texas Rules of Evidence, and cross-examination. Tex. Educ. Code § 21.256. The certified hearing examiner issues findings of fact and conclusions of law and a recommendation to the school district’s board of trustees for consideration. Tex. Educ. Code §§ 21.257-21.258. The board of trustees has the option to adopt, reject or change the hearing examiner’s findings and recommendation. Tex. Educ. Code § 21.259. If the teacher’s termination is upheld, the teacher may appeal the decision to the commissioner of education within twenty days after the school board announces its decision. Tex. Educ. Code § 21.301. As with non-renewals, the commissioner will only change a school board’s decision under particular, specific circumstances. Tex. Educ. Code § 21.303.

A party may appeal a decision by the commissioner of education to District Court, but the District Court will not take any additional evidence and may only reverse the commissioner’s decision in limited situations. Tex. Educ. Code § 21.307.

Texas Administrative Code

The Texas Administrative Code also contains information pertaining to Texas teachers. Title 19 of the Texas Administrative Code sets out the standards for educators in Texas, both teachers and administrators. Also included in Title 19 is the Educator’s Code of Ethics, which most public school districts have adopted as school board policy, as well. Another important part of the Texas Administrative Code is the procedures for a hearing before the State Office of Administrative Hearings (SOAH).

The standards for an educator who holds a Principal Certificate in Texas are found in 19 Tex. Admin. Code § 241.15. These Standards are intended to form the basis of performance assessment, professional growth plans, and professional development activities. 19 Tex. Admin. Code § 241.15(a). Included in the Standards are expectations in the areas of: School Culture, Leading Learning, Human Capital, Executive Leadership, Strategic Operations, and Ethics, Equity and Diversity. 19 Tex. Admin. Code § 241.15. Superintendent Standards are found in Rule § 242.15 and include the areas of: Learner-Centered Values and Ethics of Leadership, Learner-Centered Leadership and School District Culture, Learner-Centered Human Resources Leadership and Management , Learner-Centered Policy and Governance, Learner-Centered Communications and Community Relations, Learner-Centered Organizational Leadership and Management, Learner-Centered Curriculum Planning and Development, and Learner-Centered Instructional Leadership and Management. These expectations form the foundation for

assessment, professional growth plans, and professional development for educators in Texas who hold a Superintendent Certificate. 19 Tex. Admin. Code § 242.15(a).²

Standards for administrators can be very helpful in the grievance process, as they are an objective “measuring stick” used to determine whether or not an administrator’s conduct is appropriate. If a teacher believes s/he is being treated unfairly or that the administrator has wronged him or her, the Standards will set out what the Texas Education Agency and the State Board for Educator Certification expect of Texas administrators.

The State Board for Educator Certification enforces the Educators’ Code of Ethics as it relates to certification disciplinary proceedings. 19 Tex. Admin. Code §247.1(c). Additionally, most public school districts have adopted the Code of Ethics as part of Board Policy DH, “Employee Standards of Conduct.” Covering three major areas of performance, the Code of Ethics addresses Professional Ethical Conduct, Practices and Performance, Ethical Conduct Toward Professional Colleagues, and Ethical Conduct Toward Students. 19 Tex. Admin. Code § 247.2.

If a teacher is being investigated by the Texas Education Agency for suspected improper conduct, his or her first check should be the Texas Administrative Code for the procedures that TEA will follow and the timelines associated with the investigation and proceedings. Chapter 249, “Disciplinary Proceedings, Sanctions, and Contested Cases,” governs disciplinary matters before the State Board for Educator Certification, and SOAH hears all contested cases regarding educator discipline. 19 Tex. Admin. Code § 249.4.

Anyone may file a complaint against an educator, but there are mandatory reporting requirements for superintendents or school directors in certain circumstances (i.e. evidence of illegal conduct with a student or a minor, possession of a controlled substance, or engaged in sexual conduct or a romantic relationship with a student or minor). 19 Tex. Admin. Code § 249.14(d). If TEA accepts a case for investigation, the matter is assigned a priority level and investigative notice is placed on the educator’s certification records. 19 Tex. Admin Code § 249.14. Notice of the investigation and placement of the investigative “flag” on a certificate is mailed to the address on file at TEA, so it is imperative that educators update their addresses with TEA when they move. 19 Tex. Admin. Code § 249.14(m)(2)(A). An educator has only ten days to show cause “why the notice should not be placed on the educator’s certification records.” 19 Tex. Admin. Code § 249.14(m)(2)(B).

After the investigation concludes, a recommendation is made to the State Board for Educator Certification (SBEC), if action is warranted. SBEC is authorized to place restrictions on a certificate, issue a reprimand, and suspend or revoke a certificate. 19 Tex. Admin. Code § 249.15(a). TEA will serve a petition on the educator, which describes SBEC’s intent to issue a sanction, and the educator has thirty days to file an answer. 19 Tex. Admin. Code § 249.15(c). If no answer is filed, TEA generally requests a default judgment from SBEC, imposing the

² 19 Tex. Admin. Code § 109.1001(o)(3)(B)(i) requires that a public school district’s superintendent contract be included in the annual financial management report or published on the school district’s website in the alternative.

proposed sanction. *See, e.g.*, 19 Tex. Admin. Code § 249.15(d). If the educator timely files an answer, the case is referred to SOAH and handled accordingly.³ 19 Tex. Admin. Code § 249.15(e).

Local Board Policy

Texas Education Code Section 11.151(b) gives a school district’s trustees the “exclusive power and duty to govern and oversee the management of the public schools of the district.” A board of trustees’ powers and duties are set forth in Texas Education Code Section 11.1511, which enumerates fifteen mandatory actions and lists four optional actions (that include issuing bonds and other financial matters). Board policy, for the most part, is suggested by the Texas Association of School Boards and adopted locally through a regular study and adoption process.

The Texas Association of School Boards (TASB) was established in 1949 and represents all 1028 school districts in Texas. www.tasb.org/about-TASB.aspx, July 11, 2018. The Association provides school boards with sample policies that school boards then revise and adopt or adopt as-is. Online web pages for board policy look very similar across districts and many policies are the same across the state, as well.

In general, board policy is divided into LEGAL and LOCAL categories within several sections that are labeled with letters. Section D covers personnel matters, Section F covers student matters, and G includes policies relating to the general public. Within a section, the individual policies are sequentially alpha-labeled, for example, Policy DA, DB, DC, and so on. Most policies are broken down one step further into the LEGAL and LOCAL categories mentioned above. The legal category generally identifies the laws supporting the particular policy and the local category generally includes the policy and relevant procedures to administer the policy.

Most relevant to teachers is Section D of a school district’s board policy, which includes policies relating to employment, compensation, employment contracts, employees’ rights and standards of conduct, and performance appraisal, to name a few.

PARENTS

Parents commonly ask if they “have a case” when they have a concern about their child’s school or school district. If they have not exhausted their administrative remedies, understood to be the local grievance process, then the answer is almost always “no.” Many parents are also concerned about school staff speaking to their children without a parent present, and this and many other concerns can easily be handled through the local grievance process.

³ See SOAH rules, Tex. Gov’t. Code, Chapter 2001 and Tex. Admin. Code.

Exhausting Administrative Remedies

Parents with school law questions most commonly ask if they “have a case” when they have a concern about their child’s school or school district. Pressed further, they frequently explain that their child is being bullied, their high school-level student’s class rank has been negatively impacted by a clerical error, or that someone at the school is not doing what they are “supposed to do.” In the majority of instances, the answer to the parent’s question is “no” – they do not have a case until they exhaust their administrative remedies, commonly understood to mean the local grievance process. In fact, the Texas Education Code requires that a parent do so prior to filing a lawsuit. The law states:

A person may not file suit against a professional employee of a school district unless the person has exhausted the remedies provided by the school district for resolving the complaint. Tex. Educ. Code § 22.0514

The grievance process, which will set the foundation for a possible lawsuit in the future, is discussed, *infra*.

Parents would be wise to consider using a school district’s grievance process to resolve issues and concerns, as school districts themselves enjoy a host of immunities, as do their employees. A professional employee of a school district⁴ is not personally liable for any act incident to or within the scope of duties of the employee’s position and that involves the exercise of judgment or discretion, except in three circumstances: operation of a motor vehicle, excessive force in discipline, or negligence that results in bodily injury to students. Tex. Educ. Code § 22.0511(a). While tedious, sometimes the administrative process will produce results for a parent when the parent might not be able to petition a court for relief.

In Loco Parentis

It is a long-standing tradition in Texas public schools that school authorities have the right to prescribe and enforce rules for children during the portion of the day that the children are in their care. This doctrine, *in loco parentis*, is strengthened by Chapter 37 of the Texas Education Code, which addresses school discipline, law and order, and by local codes of student conduct, which generally mirror Chapter 37 (and are required under Tex. Educ. Code § 37.001(a)). Recognition of students’ constitutional rights and the requirement for due process in student discipline have impacted the doctrine, but it is still appropriate and applied in regular, routine student management and discipline. Parents are often shocked to learn that a school administrator or counselor may speak with their children during the course of an investigation into a disciplinary matter without their presence and without notifying them first, but this is common practice and generally not a violation of rights.

⁴ A “professional employee of a school district” includes a principal, teacher, counselor, nurse and teacher’s aide. Tex. Educ. Code § 22.051(a).

The Grievance Process

In the majority of Texas public school districts, the parent/student grievance (or complaint) process is found in Board Policy FNG(LOCAL). Most parents are unaware of the policy and most school district personnel will not advise parents of that mechanism to resolve concerns, so the process tends to go unused. However, as noted above, if a parent has even an inkling that they might want to explore the possibility of filing a lawsuit regarding their concern in the future, it is imperative that they go through the grievance process in a timely manner.

Timeliness is the crux of the matter; untimely grievances will be dismissed without consideration of their merits. Most school districts have set very short timelines for filing the initial grievance, and most also require that the grievance be filed on a form provided by the district (although the forms are frequently not available online and difficult to locate or obtain). Timelines for filing the initial grievance, usually called the Level One complaint, can be as short as ten school district business days (or two weeks) from the day of the incident giving rise to the complaint. Table 1 shows the deadlines for filing a Level One grievance in various Houston-area school districts.

TABLE 1

School District	School District Business Days to File a Level One Grievance Under Board Policy FNG(LOCAL)
Houston ISD	15
Cypress-Fairbanks ISD	15
Katy ISD	15
Spring Branch ISD	15
Fort Bend ISD	10
Pearland ISD	15
Humble ISD	15

The grievance process is usually a three- or four-tiered process, with the original grievance filed at Level One, an appeal at Level Two, and an appeal to the Board of Trustees at Level Three. If the relief requested is not granted at Level One, the grievant normally has a timeline of ten school district business days to appeal to Level Two, and so on.

Grievance hearings are conducted informally, with no questioning of opposing parties. Hearing officers usually use a script to run the hearing and set a time limit for a grievant's presentation. Practice tips for representing a parent in a grievance hearing include ensuring the requested remedies are stated on the record and submitting any relevant documents either with the grievance form or at the Level One hearing. Most school districts have adopted the policy that no new documents may be submitted after the Level One hearing unless the grievant did not know of their existence prior to the Level One hearing.

STUDENTS

Discipline issues, violations of the Student Code of Conduct, and bullying are top concerns for PK-12 public school students in Texas. Senate Bill 179, commonly known as “David’s Law,” gives Texas public schools the authority to address cyberbullying that occurs off campus. Chapter 37 of the Texas Education Code addresses student discipline and bestows rights that parents may not exercise, simply because they are not aware of the processes for which the Code provides. Adult students in college or post-graduate institutions frequently face accusations of academic dishonesty and may seek the assistance of an attorney when fighting those accusations and trying to prevent removal from a program or course of study.

Bullying

Local school board policy addresses bullying in Board Policy FFI(LOCAL). Bullying was long-defined as set out below (taken from Alvin ISD’s board policy in effect in 2012), but many districts have gone to more simple policy language and provide that bullying is “as defined by state law.” *See, e.g.*, Waller ISD Board Policy FFI(LOCAL), adopted Nov. 14, 2017.

Bullying occurs when a student or group of students engages in written or verbal expression, expression through electronic means, or physical conduct that occurs on school property, at a school sponsored or school-related activity, or in a vehicle operated by the District and that:

1. Has the effect or will have the effect of physically harming a student, damaging a student’s property, or placing a student in reasonable fear of harm to the student’s person or of damage to the student’s property; or
2. Is sufficiently severe, persistent, and pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student.

This conduct is considered bullying if it:

1. Exploits an imbalance of power between the student perpetrator and the student victim through written or verbal expression or physical conduct; and
2. Interferes with a student’s education or substantially disrupts the operation of a school. Alvin ISD Board Policy FFI(LOCAL), adopted Feb. 24, 2012.

Unbeknown to most parents, Board Policy FFI generally creates a duty on school administrators’ part to investigate allegations of bullying and to produce a written report of the investigation. Many parents attempt to resolve bullying issues informally, usually with little to no result. Formalizing the process and invoking Board Policy FFI(LOCAL) may produce better results for the bullying victim and his or her family.

Senate Bill 179, commonly known as David's Law, was signed into law in 2017. The law focuses on prevention efforts in schools, institutes consequences for those who harass children on the Internet and now gives school administrators authority to address cyber-bullying that occurs off-campus. More information on this recent legislation may be found at www.davidslegacy.org.

Texas Education Code, Chapter 37

Chapter 37 of the Texas Education Code addresses issues with student behavior management, law and order in schools, protection of school grounds and buildings, and placement of students who are registered sex offenders.

It is important for parents to understand their rights and those of their children in the discipline process, most commonly in an instance of a proposed removal of a student to a disciplinary alternative education program (DAEP). First, *prior* to a campus administrator's proposal of an assignment to DAEP based on a violation of the school district's student code of conduct, the administrator is required to consider four factors in the decision: if the student acted in self-defense, the intent or lack thereof at the time of the conduct, the student's discipline record, and if the student has a disability that impairs the student's ability to appreciate the wrongfulness of his or her conduct. Tex. Educ. Code § 37.009(a).

Equally as important are the family's rights if a DAEP assignment is proposed for longer than sixty days or will go beyond the end of the next grading period, whichever is earlier. In that case, the parent is entitled by law to notice of and an opportunity to participate in a proceeding before the board of trustees or the board's designee regarding the placement. Tex. Educ. Code § 37.009(b). Furthermore, if the recommended placement is for a period of time that extends beyond the end of the school year, the school board or the board's designee must determine that the student's presence at his or her regular campus presents a danger of physical harm to the student or another, or that the student has engaged in serious or persistent misbehavior that violates the school district's student code of conduct in order to uphold such an extended period of time at DAEP. Tex. Educ. Code § 37.009(c).

Parents are sometimes surprised when they are escorted out of their child's school in volatile or emotional situations. However, Section 37.105 of the Texas Education Code provides that a school board or its authorized representative "may refuse to allow a person without legitimate business to enter on property under the board's control and may eject any undesirable person from the property on the person's refusal to leave peaceably on request." Notably, the Code does not define an "undesirable person." Similar to that provision, Texas Education Code § 37.124 provides that a person other than a student enrolled in the school commits a criminal offense if the person intentionally disrupts "the conduct of classes or other school activities" either on school grounds or within 500 feet of school property.

College and University Students

College and university students frequently face accusations of academic dishonesty and may seek the assistance of an attorney when fighting those accusations and trying to prevent removal from a program or course of study. Many post-secondary institutions do not allow an attorney to speak on the student's behalf at a disciplinary proceeding, but some will allow the attorney to be present in the room with the student. Adult students would be wise to retain counsel to help them prepare for the proceeding and should review the school's policy and procedure immediately upon receiving notice that they are being sent to a disciplinary or review committee.

Adult students may also seek legal assistance in reporting a sexual assault to a post-secondary institution or defending themselves from such an accusation. Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of gender in any educational program or activity that receives federal funding, to include sexual harassment and sexual assault. A post-secondary institution that receives federal funds may be liable if it is aware of but ignores sexual harassment or assault. Many colleges and universities have dedicated departments or staff who handle Title IX matters, which may create a bias towards affirmatively identifying and punishing accused Title IX offenders.