



EDUCATING EDUCATORS



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TEXAS LAWYERS ASSOCIATION

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INTRODUCTION

“Education is the most powerful weapon which you can use to change the world.”

~ Nelson Mandela

Although it is crucial to the success of many, the field of education is fraught with expectations, obligations, responsibilities, and regulations. “Educating Educators” is a resource guide designed to educate anyone with a job in the field of education (especially teachers and administrators) about their rights, responsibilities, and legal obligations. This guide will help educators understand and cultivate proper, legal relationships with students, parents, and administrators. It also provides guidance on reporting obligations and human trafficking. The guide also provides information on FERPA and other legal pitfalls educators face, and includes information regarding their rights and responsibilities.

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FOSTERING MEANINGFUL (AND LEGAL) RELATIONSHIPS

RELATIONSHIPS WITH STUDENTS

I have been told that as a teacher, I am not to have *any* physical contact with my students for any reason. Is this legal?

Yes. School districts have broad authority to adopt necessary rules “for the safety and welfare of students, employees, and property.” If you are given a specific directive from your school district administration not to have physical contact with students, you will need to do everything possible to comply with this policy. You need to use common sense and avoid situations that can give rise to false accusations of inappropriate contact, such as being alone with a student in an isolated setting.

What about in situations where physical contact is necessary to prevent the disruption of classes or other school activities?

Obviously, no one can justify touching a student in a harmful, sexual, or offensive manner. However, under the Texas Penal Code, teachers are justified in using reasonable force if they reasonably believe it is necessary to maintain discipline in a group. This law has been in place since 1879, and it is intended to provide teachers with a defense to prosecution rather than a license for the use of physical force.

The Texas Education Code also grants school employees immunity from suit, meaning you cannot be personally liable for any act that is incident to or within the scope of the duties of your position of employment and that involves the exercise of judgment or discretion. The only exception is instances where you use excessive force in the discipline of students or you are negligent and it results in bodily injury to students.

If you are given a specific directive from your school district administration on how to deal with disruptions of school activities, you will need to comply with this policy.

How do these rules change when applied to situations dealing with special education students?

State regulations are intended to ensure that all students are treated with dignity and respect, as well as educated in a safe environment. Behavior management techniques and/or discipline management practices must be implemented in such a way as to protect the health and safety of the students and others. When the use of physical restraint or time-out is necessary, the state has outlined specific requirements and procedures. Your school district administration should have a policy in place that complies with these laws and regulations. If you are given a specific directive from your school district administration, you will need to comply with this policy.

Where can I find more information or guidance on special education situations?

In Texas, special education is governed by federal regulations (Individuals with Disabilities Education Act), State Law (Texas Education Code), and State Rules (Texas Administrative Code: Commissioner's and State Board of Education Rules concerning Special Education). The purpose of these laws is to guarantee every eligible special education student both a free and appropriate public education. More information and guidance on special education rules and regulations can be found on the following websites:

- TYLA's Peace of Mind: A Guide to Supporting Special Kids with Special Needs – <http://www.tyla.org/tyla/assets/File/PeaceOfMindSpecialNeedsFINAL.pdf>
- Texas Education Agency (Special Education Rules and Regulations) – www.tea.state.tx.us
- Texas Department of Assistive & Rehabilitative Services – www.dars.state.tx.us
- The Arc of Texas (Special Education in Texas Program) – www.thearcoftexas.org
- Texas Parent to Parent – www.txp2p.org

Where can I find more information on the types of physical contact a teacher/coach can have with a student?

For more information, you can read the Code of Ethics and Standard Practices for Texas Educators, the general ethical standards for educators administered by the State Board for Educator Certifications, or visit the Texas Education Agency website at www.tea.state.tx.us and view its resources on discipline and school removals.

Can I be friends with my students on social media websites?

The standards for electronic communication with a student are outlined in the Code of Ethics and Standard Practices for Texas Educators. You should refrain from inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

- The nature, purpose, timing, and amount of the communication;
- The subject matter of the communication;
- Whether the communication was made openly or the educator attempted to conceal the communication;
- Whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;

- Whether the communication was sexually explicit; and
- Whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.

RELATIONSHIPS WITH PARENTS

How do I deal with angry, violent, or abusive parents?

All educators must deal with angry parents or guardians from time to time. Most educators agree that the most effective tool in a difficult conversation is active listening. Attempt to de-escalate the situation if possible, but you do not need to subject yourself to abusive language and can politely end the meeting if such abuse continues. If you know the parent or guardian can be unpredictable or hostile, it is appropriate to ask another teacher or assistant principal to be present during your meeting. If the parent or guardian does not speak English as their first language, make sure you have a translator present. A frustrated parent or guardian may be the result of feeling unable to express his or her concerns clearly. You should document all phone conversations, messages, emails, conferences, or any other notes or incidents with parents. If you are given a specific directive from your school district administration, it is best to follow this policy or procedure.

If a situation turns violent, it may be necessary to give the parent a warning to leave. Contact your principal immediately. It may be necessary to call 911 or local law enforcement to remove the person. If you have reason to suspect the parent is being abusive to the student, you must report the suspected child abuse or neglect to Child Protective Services.

How do I cultivate proper relationships in situations involving divorced parents?

Schools can play an important role in helping children make a positive adjustment to their parents' divorce. By working together, families and schools can form a network of support that promotes healthy child development. Remain sensitive to family diversity, and when possible, communicate with both parents.

Your school should have the most recent custody order for the children, and this order should be followed. Act professionally and stay calm at all times, even when a parent does not. Keep your principal informed about any problems. If a parent cannot remain professional or becomes abusive, politely cancel the meeting and reschedule it. Remain as neutral as possible, and don't take sides. Document all phone conversations, messages, emails, conferences, or any other notes or incidents with parents. Ultimately, the best interests of the child are your main concern.

How do I interact with a parent or visitor who's a registered sex offender?

A school district may verify whether someone is a sex offender by using a computerized central database maintained by the Texas Department of Public Safety or another source acceptable to the district. Sex offenders should not be allowed to serve as volunteers. Your school board is required by law to adopt a policy regarding the action to be taken by

campus administration if a visitor is identified as a sex offender. You should comply with this policy.

A court may enforce “child safety zone” as a condition of community supervision against any sex offender, but *must* enforce “child safety zone” against a sex offender whose victim was a child. A “child safety zone” mandates:

1. No supervision or participation in athletic, civic, or cultural activities programs for children 17 or younger; and
2. No traveling within 1,000 feet of a place where children commonly gather, including a school.

You should notify law enforcement of child safety zone violators.

For sex offender information, see Texas Department of Public Safety Crime Records Service, <https://records.txdps.state.tx.us>.

What do I do if I have to make a home visit?

If possible, do not go alone. See if your parent liaison, another teacher, or if a member of administration at your school will go with you. If the gate into the home is locked, do not try to enter. Do not try to enter the home unless you are invited. If you are invited inside, do not try to search the home. Be polite and concise. Document your trip to the home and include important facts like the date, who was with you, what time you arrived and left, and what was discussed.

Can parents request me as teacher for their children?

The Texas Education Code allows a parent to access an administrator for the purpose of making such a request. To be considered, the assignment may not affect the assignment or reassignment of another student. The decision of the board of trustees regarding the assignment is final.

What kind of “campus control” is allowed?

The District can control activities on school property, including barring parents and others when necessary to maintain order and prevent disruptions to the educational environment. Parents have no constitutional right to access the school, and parents do not have an unfettered right of access to a child’s classroom. A school district may require any person who enters a district campus to show a driver’s license or other official photo identification. A district may establish an electronic database of campus visitor information; however, the information may be used only for purposes of district security and may not be sold or otherwise disseminated to a third party for any purpose. A school district may verify whether a campus visitor is a sex offender, using a computerized central database maintained by the Texas Department of Public Safety or another source acceptable to the district. The board of trustees is required to adopt a policy regarding the action to be taken by campus administration if a visitor is identified as a sex offender.

What are some tips for dealing with parents that possess drugs, alcohol, or weapons on school property?

- Call 911 or local law enforcement.
- Give a trespass warning, written or oral.
- Report suspected child abuse to Child Protective Services, when appropriate.
- Post signs on campus parking lots.

RELATIONSHIPS WITH THE ADMINISTRATION

What do I do if I'm having problems with my principal?

It's key to your professional success to make sure your relationship with your principals are solid, positive, constructive, and mutually respectful. If your relationship with your principal is good and he or she is well-liked at the school, then enjoy your job and contribute to your school's success! Join committees, take risks, and continue to ask for advice and support. If you sense mounting tension from a difficult principal, start documenting every event that occurs. Keep a log of all conversations, the subject matters, dates, times, and durations of his classroom visits. If the relationship continues to decline, stay calm, be respectful, remain focused and polite, and work with him or her to create a plan to solve any problems. Set goals and be straightforward. If it becomes clear that your principal is overstepping his or her bounds or preventing you from properly performing your teaching duties, consider talking to your union representative. Learn about your protected rights and make a plan with the union representative to clear the air and come to a new understanding with the administrator. If you do not have a union representative, consider talking to another supervisor or someone in human resources. If the problem does not improve over time with mediation and patience, then you can always request a transfer to another campus. Because there are varying circumstances, it will require your good judgment to decide on a course of action.

When should I file a grievance?

Most complaints regarding a public school employee's rights or conditions of employment should be addressed through the district's grievance procedure. If you have a union representative, contact them immediately for advice and assistance. The time limits for initiating a grievance are extremely short, typically 15 days or less from the time the employee knew or should have known of the event for which the grievance is filed. Legal rights to appeal could be permanently lost if these time limits are not followed. A grievance alleging a violation of law by a supervisor need not be filed with the same supervisor. Keep all records of meetings. It is within your rights to make an audio recording of any meeting or proceeding at which the substance of a grievance is discussed, and if necessary, you can even be represented by your attorneys via teleconferences, subject to availability of necessary equipment.

REPORTING OBLIGATIONS

CHILD ABUSE AND NEGLECT

Do I have a duty to report child abuse?

Pursuant to Section 261.101 (a) of the Texas Family Code, “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.

This duty also applies if a professional has cause to believe that an adult was a victim of abuse as a child and the disclosure of that information is necessary to protect the health and safety of another child or an elderly or disabled person. *See* Tex. Fam. Code § 261.101(b-1).

Am I legally required to report suspected drug or alcohol use to law enforcement?

While there is no explicit obligation to report, we would highly recommend that you notify your school administrator. If you suspect a child is buying or getting alcohol from a specific source, you can make an anonymous complaint to the Texas Alcohol Beverage Commission via phone at 1-888-THE-TABC and online at: https://www.tabc.state.tx.us/enforcement/complain_about_a_location.asp

How long does a person have to make a report of abuse?

A “professional” shall make a report not later than the 48th hour after the professional first suspects that a child has been or may be abused or neglected or is a victim of a criminal act. That professional shall not delegate their duties to a third party, but shall make the report themselves. *See* Tex. Fam. Code § 261.101(b).

Who is a professional with a duty to report?

A professional “means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers. *See* Tex. Fam. Code § 261.101(b).

Can you claim a privilege and avoid the duty to report?

No. The duty to report applies whether the communications would otherwise be privileged, “including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, an employee or member of a board that licenses or certifies a professional, and an employee of a clinic or health care facility that provides reproductive services.” *See* Tex. Fam. Code § 261.101(c).

If I make a report, will my name be disclosed?

No. Unless you waive your confidentiality, your identity may only be disclosed to law enforcement so they can conduct a criminal investigation, or pursuant to an order of the Court. If the Court does order the information released, it will typically only be on a finding that your safety will not be impaired.

Who do I make the report to?

There are several agencies that can receive reports, including local and state law enforcement agencies, the state agency responsible for the facility where the abuse occurred or an agency designated by the Court. But the best place to make the report to is the Texas Department of Family and Protective Services (DFPS) by phone 1-800-252-5400 or to www.txabusehotline.com.

What are some helpful tips if a child makes an outcry?

- Take detailed notes after the outcry.
- Document your report by noting the time and date of your report.
- Tell your administrator that the report has been made.
- Maintain all records of investigations regarding a student two years past the student's 18th birthday.

What should the report contain?

The report should contain the name and address of the child; the name and address of the person responsible for the care, custody and control of the child and any other pertinent information. *See* Tex. Fam. Code § 261.104

Can I be sued for making a report?

No, if you made the report in good faith, you are immune from civil or criminal liability. If you act in bad faith or for a malicious purpose, then you are not immune from civil or criminal liability. Said liability can include a fine payable to the state and potentially other civil claims by the individuals affected. *See* Chapter 261 of the Texas Family Code.

What happens if I don't make the report?

If you have a duty to report, you can be held liable for a Class A Misdemeanor and in some situations, this can be a state jail felony (for example if the actor intended to conceal the abuse or neglect). *See* Tex. Fam. Code § 261.109.

Can I be retaliated against by my employer for making the report?

No, you cannot be terminated, suspended or retaliated against if you make a child abuse report in good faith. *See* Tex. Fam. Code § 261.110. A person whose employment is

suspended or terminated or who is otherwise discriminated against may have a civil claim for injunctive relief, damages or both.

What happens after I make the report?

Child Protective Services and DFPS will conduct a full investigation that may include a home visit and an interview and examination of the child. CPS may come to your school to conduct an investigation.

What do I do when a CPS Worker comes to my school?

- Ask for identification and document the name and ID number of the worker, and/or call the CPS office to verify identity and authority.
- It is likely that the CPS worker may not want the parent called, if the parent is suspected of abusing or neglecting the student. Ask before you call the parent or guardian.
- Pull the child from class in the least disruptive manner for an interview or for transportation.
- Suggest that a counselor, administrator, or someone else who can put the student at ease, be present during questioning, but do not insist if the CPS worker declines.
- To the extent possible, protect the child's confidentiality from other students and staff. Find a quiet, private place for the student to be interviewed.
- If the CPS worker intends to transport the child, ensure that the worker has the authority to investigate and transport before releasing the student.
- If the CPS worker requests any student records or any information from student records, decide whether the records are related to the investigation of child abuse. In some cases, a student's attendance records, report cards, names and addresses of the child's parents, and counseling records will be related to the alleged abuse and, according to the FPCO, can be released to the individual investigating child abuse under the authority of federal law (CAPTA).
- Teachers and other employees can be made available for a CPS investigator for interview at the employees' convenience.
- Do not fill out questionnaires.

What do I do when law enforcement officials come to my school?

- Ask for identification and document the name and shield number of the officer.
- If the officer has a subpoena, court order, or warrant or is asking to speak to the child in regard to a child abuse investigation, ask the police officer to allow you to get the student, so as not to disrupt the school environment.

- If the officer has a right to question the student, ask if an administrator/counselor can be present.
- Make reasonable efforts to contact the parents, unless the officer requests that you do not.
- If the officer represents that he/she has an arrest warrant or a subpoena, ask to see and make a copy of it for the school's records, before releasing the information or the student.
- If the officer requests copies of confidential student records, explain that FERPA protects the documents and the district needs written consent of the parent, a warrant or subpoena for the record, the school must establish that a health or safety emergency exists, or the records are for the purpose of investigating child abuse.
- If you have any problems or questions, contact your school attorney.

SCHOOL SAFETY AND EMERGENCY RESPONSE

What do I do if there is an emergency on campus?

First, preparation is key. Because the plan for each school differs for a variety of reasons, check with your school administration for a copy of your school's emergency response plan. If your school doesn't have a plan, urge your administration to create one and to practice the procedures it includes through drills. Second, educate yourself. Texas has recently formulated the Texas Unified School Safety and Security Standards, which provides a flexible guideline for schools to form their own safety standards. More information about the standards, what is being done to encourage compliance, and what you can do to be more safe can be found at: <http://txssc.txstate.edu/>

HUMAN TRAFFICKING

What Is Human Trafficking?

Human trafficking is a serious federal crime with serious punishment, which can include sentences up to imprisonment for life. Federal law defines "forms of trafficking in persons" as:

- A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." [22 U.S.C. §7102(8)] Human trafficking is also clearly tagged as "modern-day slavery."

Does Human Trafficking Affect Our Schools?

Trafficking can involve (and frequently does involve) school-age children and especially those children who do not live with their immediate families and who are conditionally vulnerable to the exploitation of victimizers.

Sex traffickers target children because of their vulnerability and due to the unfortunate market demand for younger victims. The average age of initial involvement in prostitution is 12 to 14 years old, and traffickers have been known to recruit at schools and even after-school programs. Recruitment can take many variations, which can include basic kidnapping, solicitation by other children on behalf of the sex trafficker and the “genuinely interested” solicitor who gradually coerces a child into prostitution by feigning romantic feelings for the child. If a child has a significantly older love interest, this may be cause for concern that the child is a victim.

How Do I Identify a Victim of Human Trafficking?

Signs to indicate that a child is being trafficked include:

- Knows little about his or her whereabouts;
- Repeatedly runs away from home;
- Truancy;
- Exhibits fear, withdrawn or anxious behavior;
- Bruises or other evidence of physical constraint or confinement;
- Unexplained or unlikely explanations of physical ailments or injuries;
- Lacks any control over personal schedule or personal identification documents;
- Inappropriately dressed and knowledge about sex beyond years of age;
- Sudden change in behavior or material belongings have become surprisingly expensive and newly acquired;
- Has an inconsistency with her or her story, background, or family dynamic.

Anyone can be trafficked, regardless of class, education, gender or age when forcefully coerced or lured by false promises. Identifying the traits of Human Trafficking of children can be especially difficult. Human Trafficking rates are particularly high in Texas, well above the national average. Missing or “runaway” children are most often victims of human trafficking. The school system is included as a critical component of finding missing children in Texas. Schools are required to keep specific information for any child under 11 years of age who is enrolled in a school for the first time and uses this information in its efforts to locate missing children. Also, Texas Code of Criminal Procedure Annotated Article 63.020 (Duty of schools and other entities to flag missing children’s record) outlines the responsibilities of the schools and day care facilities to flag a missing student’s (less than 11 years of age) record upon receiving notice from a law enforcement agency that the child is missing. Essentially, educators should be aware of just what behavioral signals demonstrate a risk of a child being a victim of human trafficking.

If you suspect that a child is a victim of human trafficking, there are several resources available to contact for assistance.

How Do I Report a Suspected Incident of Human Trafficking?

Call your local police department or emergency access number with immediate emergencies.

You can also report trafficking crimes by calling the national 24/7 toll-free Human Trafficking Resource Center at **1-888-373-7888**. This center will help you determine if you are, in fact, dealing with a victim of human trafficking; identify local resources available to help victims in your local area; and coordinate with local community social service providers to help protect victims so they can begin the process of rehabilitation and recovery. When appropriate, the Human Trafficking Resource Center makes referrals to local organizations for counseling, legal advice, and other services, as well as to law enforcement agencies that help victims find and sustain safety.

For sexually exploited or abused children, call the National Center for Missing and Exploited Children's (NCMEC) hotline at **1-800-THE-LOST** to connect to the most appropriate assistance available in your area or report online at <http://www.cybertipline.org>.

You can report suspected instances of trafficking or worker exploitation by contacting the FBI field office nearest you at <http://www.fbi.gov/contact/fo/fo.htm> or by contacting the Department of Justice's Human Trafficking Office at **1-888-428-7581**.

What are some other resources available on the issue of human trafficking?

Information to combat human trafficking and to raise public awareness for identifying victims can be found on the following Web sites:

- United States Department of Health and Human Services-Campaign to Rescue and Restore Victims of Human Trafficking: www.acf.hhs.gov/trafficking
- United States Department of State-Office to Monitor and Combat Trafficking in Persons: www.state.gov/g/tip/
- Polaris Project:
<http://www.polarisproject.org/resources/resources.by.trafficking>
- Children at Risk: <http://childrenatrisk.org/research/childtrafficking>
- U.S. Department of Health and Human Services, Campaign to Rescue and Restore Victims of Human Trafficking:
<http://www.acf.hhs.gov/trafficking/index.html>
- U.S. Department of Justice:
http://www.usdoj.gov/whatwedo/whatwedo_ctip.html
<http://www.ovc.gov/help/tip.htm>
<http://www.usdoj.gov/criminal/ccos/trafficking.html>

- Federal Bureau of Investigation, Investigative Programs, Crimes Against Children: <http://www.fbi.gov/hq/cid/cac/crimesmain.htm>
- National Center for Missing and Exploited Children: <http://www.ncmec.org>
- National Human Trafficking Hotline: **1-888-373-7888** Unicef: <http://www.unicefusa.org/mission/protect/trafficking/end>

Most importantly, don't ignore the indicators if a child may be a victim of human trafficking; ask questions of the presumed victim to elicit any confirmation of your suspicions of human trafficking; and contact any of the above resources for help or simply reach out to your local authorities with any emergency situations. The best combat against Human Trafficking is attention to the indicators of suspected victims and early intervention to secure (especially a child) victim's safety.

COMMON LEGAL PITFALLS

FERPA

What is FERPA and how does it apply to me?

The Family Educational Rights and Privacy Act or FERPA (20 U.S.C. § 1232(g)) is a federal statute that gives parents access to a student's education records and prohibits the disclosure of student records to third parties without consent. The statute applies to all public schools or schools that receive public funding. Teachers have perhaps the most access to student education records and therefore must be mindful of FERPA's provisions.

FERPA's most well-known purpose is to ensure the privacy of student education records. Education records are those that are directly related to a student and are maintained by an educational institution. This would include student files, grade records, and possibly even emails between two teachers about a particular student. However, a teachers' informal notes kept about their students, for example, notes shared with a substitute teacher, are not student education records under FERPA. FERPA does not protect the confidentiality of information in general, but prohibits improper disclosure of information derived from students' education records. Teachers may share information within their personal knowledge or obtained through observation.

What do I need to keep confidential?

It is important for teachers to keep a student's personal information confidential. Teachers should not publish student grades or share information obtained from a student's education records. There are numerous exceptions to FERPA's privacy rules, such as exemptions for health and safety concerns, disclosure to other school officials with a legitimate educational interest, or compliance with a subpoena. One notable exception that may apply to information teachers share is the exception for "directory information." Directory information is information that would not generally be considered

harmful or an invasion of privacy if disclosed. Directory information includes, but is not limited to, names, addresses, telephone numbers, email addresses, date and place of birth, photographs, grade level, participation in activities and sports, awards received, previous schools attended by the student. Directory information may be disclosed without consent unless the parent has previously requested to opt out. Everything else must remain private until consent is obtained.

Whose consent do I need to release confidential information?

As a general rule, it is the student's parent or guardian, unless the student has turned 18 or has been emancipated.

What are some specific examples of what can and cannot be released?

Teachers should not post test scores from the class on a bulletin board or on the internet. While a student's work can be evaluated by the class for learning purposes, once it is graded, teachers should exercise caution to keep the information from view of the other students in the class.

Displaying student artwork in classrooms and hallways has been a long-standing practice, particularly in elementary schools. This tradition is not likely a violation of FERPA because artwork is more akin to the display of directory information or an award on display.

Videos of school events or student performances could also constitute education records that should not be shown or released without first getting consent from all participants or their parents. Even if you are proud of your students' efforts on the stage or in your classroom, do not post videos of them to Facebook or other public forums. If the video was taken by someone other than the teacher or another school representative, it would likely not qualify as a protected education record.

What if a parent asks for information on how their child is doing?

FERPA is not just about confidentiality, but also about a parent and the student's right to review their own records and, if necessary, request corrections where there are errors. Requests to see student education records under FERPA should be made in writing. Once made, parents are entitled to access within 45 days after the request is made. FERPA grants parents access to all of their child's education records. This could be more than just their grades or information in the student's file, but could also include emails related to the student. Teachers should be cautious with what is put in an email about a student, as it could be disclosed to the parent if they make a FERPA request.

Does this mean I need to retain emails and other student records?

FERPA provides a right of access to education records that are maintained by the district, but does not require preservation. However, depending on the type of record, state law or your district policy may require you to retain records according to a particular schedule.

What if I receive a subpoena for student records?

A key exception to FERPA's privacy provisions allows compliance with a court order or subpoena which would require the disclosure of student education records. You would ordinarily be required to make reasonable efforts to notify the parent before the documents are disclosed so that the parent may have an opportunity to seek protective action from the subpoena.

Can a teacher let students grade each other's papers?

In general, grading practices are determined under local policy, but these policies must be consistent with the Texas Education Code. In *Owasso Independent School District No. 1-011 v. Falvo*, the United States Supreme Court held that having students grade each other's papers and call out the grades does not violate FERPA.

FOODS OF MINIMAL NUTRITIONAL VALUE (FMNV) POLICY

What is a Food of Minimal Nutritional Value?

Foods of Minimal Nutritional Value (FMNV) include, but are not limited to: Soda water; water ices (sweetened waters); chewing gum; candies made predominantly from sweeteners or artificial sweeteners such as hard candy, jellies, and gums; marshmallow candies; fondant; licorice; spun candy; and candy coated popcorn. There are some exceptions, including events and specific products that can be found at www.square-meals.org.

Can I give or can someone sell my students treats or FMNV?

No, as a general rule FMNV or candy cannot be given or sold (even by students or student groups) until the end of the last scheduled class.

MISCELLANEOUS ISSUES

What is the state law on prayer or moment of silence in Texas public schools?

State law recognizes the right of individual students to pray in a non-disruptive manner. School districts may provide for a period of silence at the beginning of the school day, but there are Constitutional restrictions on the ability of school districts to actively participate in activities that amount to religious observances. More information regarding prayer in public schools can be found in the U.S. Department of Education's Guidance on Constitutionally Protected Prayer.

Can students legally possess a cell phone at school?

Yes. Prior to 1995, school districts were required to adopt policies prohibiting any "paging device." In 1995, the law was amended to allow, but not require, school districts to adopt such a policy. If your school district administration has a cell phone policy in place, you will need to comply and enforce this policy in your classroom.

RIGHTS AND RESOURCES

BASIC RIGHTS OF EDUCATORS

What is included in my right to due process?

If you are an employee of a state institution (such as a Texas public school), then you have a right to due process. This means that your employer must follow some process before you are terminated from your employment. The guidelines for the process are explained in the Texas Education Code (and in detail below). The exact process that is followed may vary from district to district. Typically, this means you will be given a warning, notice prior to termination, and the opportunity for you to appeal your termination through an administrative hearing (a hearing within your school). Additionally, employee termination typically involves approval by school administrators.

If you are a private school employee, then you do not have the same rights of due process that a state employee has. However, your employer could be required to follow certain procedures in dismissing you from employment as set forth in your employment contract (if you have one) or your employee handbook.

What are the different levels of laws that apply to me?

As a Texas educator, you are protected by both state and federal laws.

Federal law provides the following levels of protection:

- Free Speech Regarding Matters of Public Concern

The First Amendment of the U.S. Constitution, and Article 1, Section of the Texas Constitution set forth the freedom of speech. This has been interpreted to mean that state actors (including school district employees) have the right to free speech regarding matters of public concern. This does not mean that you have a license to say anything that you want in the classroom. For example, an employee's speech is not protected if it is disruptive or violates work rules.

If you are an employee of a private school, you do not have the same broad free speech protections afforded public school employees.

- Illegal Discrimination on Basis of Race, Color, National Origin, Religion and Sex, including Sexual Harassment

Protection from illegal discrimination based on race, color, national origin, religion and sex is provided by Title VII of Civil Rights Act of 1964. Additionally, the Equal Pay Act protects employees from discrimination in pay based on gender.

It is important to recognize that before a lawsuit may be filed based on a discrimination claim, an employee must first follow the statutory administrative

scheme set forth in Title VII. In Texas, this means that an employee must file a Charge of Discrimination with the Equal Employment Opportunity Commission within 300 days of the act of discrimination (or with the Texas Workforce Commission Civil Rights Division within 180 days of the act of discrimination). Because of the short deadlines, if you believe you have a claim of discrimination you should consult an attorney as soon as possible.

- Illegal Discrimination on Basis of Age Over 40: Age Discrimination in Employment Act of 1967.

It should be noted that the decision to not to hire an employee because he or she is “overqualified” for a job can be considered age discrimination.

ADEA claims are subject to an administrative process and require filing with the EEOC, like claims brought under Title VII.

- Disability Discrimination

Disability discrimination is prohibited by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Employees are protected from discrimination based on an actual or perceived disability, and retaliation for requesting an accommodation for a disability.

Disability discrimination claims are subject to an administrative process and require filing with the EEOC, like claims brought under Title VII.

- Family Medical Leave Act (“FMLA”)

The FMLA allows employees who have been working for their employer for at least a year to take up to twelve weeks (unpaid) leave for qualifying medical conditions. The FMLA also protects employees from retaliation for exercising their FMLA rights.

- Fair Labor Standards Act (FLSA)

The FLSA requires that employers follow wage and hour laws, including laws for minimum wage and overtime compensation rules. It should be noted that certain employees are exempt from overtime and minimum wage protection.

- Other Legal Rights Protected under Federal Law

- o Freedom from retaliation for Petit or Grand Jury Service.
- o Employee pension interests are generally governed by ERISA – Employment Retirement and Income Security Act.
- o OSHA – Occupational Safety and Health Act, provides guidelines and protection for workplace safety.

- o Employees faced with wage garnishment for indebtedness are protected by the Consumer Credit Protection Act.
- o An employer's use of polygraph equipment is governed by the Employee Polygraph Protection Act.
- o An employee's right to union membership and political party membership is protected under the National Labor Relations Act, and such rights are recognized in federal case law.

In addition to the protections provided by federal law, Texas law provides employees with a number of similar (and some different) protections:

- General provisions regarding Texas Educators are set forth in Chapter 21 of the Texas Education Code. This chapter covers a number of matters relevant to Texas educators, including certification, contracts, hearings, appeals, rights, and duties.
- Employees are protected from retaliation for refusal to commit an illegal act. This protection was recognized by the Texas Supreme Court in *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W.2d 733 (Tex. 1985).
- Illegal discrimination based on race, color, religion, sex, national origin, disability and age, is prohibited under the Texas Labor Code.

Like federal discrimination claims, state employment discriminations are subject to an administrative process. To pursue a claim of unlawful discrimination at the state level, an employee must file a Charge of Discrimination with the Texas Workforce Commission Civil Rights Division within 180 days of the act of discrimination.

- Employees are protected from retaliation for filing a grievance in employment by section 617.005 of the Texas Government Code.
- The Texas Workers' Compensation Act protects employees who file workers' compensation for retaliation for filing those claims.
- Whistleblowers

Employees who are "whistleblowers" or who report an employer's violation of the law are protected from retaliation by the Texas Whistleblower statute. It should be noted that whistleblower retaliation claims must be brought within ninety (90) days of the act of retaliation.

- Additionally, Texas law provides employees with the following protection:
 - o Employees are protected from retaliation for union membership and nonmembership by the Texas Government Code, Texas Labor Code, and Texas Education Code.

- o The right to be absent for work for jury service.
- o The right to be absent for work for military service (within limits).
- o The right to be absent from work for political convention attendance.
- o The right to be absent from work for religious observation.
- o Right to refuse to deal with or associate with a specified business.
- o Protection from retaliation or other penalty for compliance with an otherwise lawfully issued subpoena.
- o Texas employers are prohibited from discriminatory hiring or discharging an employee who is subject to a withholding order for child support.

What do I do if I think I am being harassed?

There are several different types of harassment, including harassment based on age, sex, color, racial, national origin, religious beliefs, and disabilities. If you feel that you are being harassed, go to the Texas Workforce Commission’s website to learn how to make a complaint and view any applicable deadlines and procedures. <http://www.twc.state.tx.us/customers/jsemp/employee-rights-laws.html>

EMPLOYMENT CONTRACT RIGHTS

Why is my employment contract important?

If you are an employee with a contract, then your employer is required to give you due process at termination. This will generally mean that you are entitled to notice and a hearing before you can be terminated. Typically, your contract will require that certain school board policies be followed and that a request for termination be reported to central administration.

It is important to recognize that, while your contract, the Texas Education Code, and school policy do provide you with due process protection, if you are a public school employee you likely have limited rights to pursue a breach of contract action against your employer. State governmental entities, including schools, have sovereign immunity from many causes of action.

What if I don’t have an employment contract?

If you are a Texas public school teacher, you will generally have a contract and the terms of your employment will be governed by the Texas Education Code.

If you are a private employee, without a contract then you are an employee at will. Most Texas employees are employees “at will.” If you are an employee at will, no due process is required prior to termination of your employment or disciplinary action, and you can be terminated for any reason, at any time. Even if you are an at will

employee, you are still protected from discrimination and retaliation under the statutes that are discussed in this guide.

What happens if a teacher resigns a teaching position before the end of their contract?

Teachers are required to resign a contract no later than 45 days before the first day of instruction. After this time, a school district may release a teacher voluntarily, but it is not compelled to do so. If you abandon a contract without good cause, you may have your teaching certificate suspended by the State Board for Educator Certification.

What types of contracts govern Texas public school employees?

The Texas Education Code sets forward three basic types of teacher (“teacher” in this section is defined as principals, supervisors, classroom teachers, school counselors, or other full-time professional employee who is required to hold a teaching certificate, or a nurse) contracts for Texas public school employees:

- (1) Probationary Contracts
- (2) Continuing Contracts
- (3) Term Contracts

Probationary Contracts

What is a Probationary Contract?

- One year contract;
- May be renewed for two additional one year periods;
- Probationary contracts are typically used for new teachers, or teachers who return to a district after a two-year lapse in employment;
- If a teacher has been employed in public schools for at least five of the previous eight years and transfers districts, that teacher will be probationary for only one year (although the district does have the option to offer a non-probationary contract).

Can I be discharged or suspended without pay during the school term under a Probationary Contract?

- A teacher employed under a probationary contract may be discharged at any time for good cause, as determined by the board.
- A teacher may also be suspended without pay until the end of the current school year.

- Good cause is defined as “the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in the this state.”
- The decision to discharge or suspend without pay is appealable by making a request for a hearing to the commissioner of education within 15 days of the discharge or suspension without pay.

Can I be discharged at the end of the school year under a Probationary Contract?

- Yes, if it is in the best interest of the district.
- Notice of termination must given at least 10 days before the last day of instruction.
- The decision to terminate a probationary employee is final and cannot be appealed.

Continuing Contracts

What is a Continuing Contract?

- A continuing contract is a written contract that is indefinite in duration. It should spell out the terms of employment.
- The contractual rights set forth in a continuing contract last until the teacher resigns, retires, is returned to probationary status in lieu of discharge, or is discharged for good cause (including a reduction in force).

Can I be discharged or suspended without pay during the school term under a Continuing Contract?

- Yes, for good cause as defined above.
- A teacher wishing to appeal this decision should give the local school board notice of appeal within 10 days of the action being appealed, and the commissioner of education should be notified within 15 days.

Can I be discharged at the end of the school year under a Continuing Contract?

- A teacher employed under a continuing contract may be discharged for good cause, or if a release from the district becomes necessary because of financial exigency.
- A teacher wishing to appeal this decision should give the local school board notice of appeal within 10 days of the action being appealed, and the commissioner of education should be notified within 15 days.
- Note – if financial exigency is the reason for termination, the board may choose to follow procedures applicable to end of term discharge for the appeal.

What other protections am I given as a teacher with a Continuing Contract?

- You are entitled to written notice of proposed discharge, suspension without pay, or release because of necessary reduction of personnel.
- If the discharge or suspension is related to inability or failure to perform assigned duties, the teacher is entitled to a copy of each evaluation report or any other written memorandum that concerns the fitness or conduct of the teacher. A request for those documents should be in writing.

Term Contracts

What is a Term Contract?

- A teacher may be placed on a term contract after having been on a probationary contract.
- A term contract may not exceed five school years, and it is usually for one or two.
- The school board will consider the term contract and the teacher's evaluations at the end of each term, and it shall determine whether or not the contract should be renewed.

Can I be discharged or suspended without pay during the school term under a Term Contract?

- A teacher under a term contract may be discharged or suspended without pay for good cause, or if a financial exigency exists that requires a reduction in personnel.
- The teacher may request a hearing by appealing to the commissioner of education within 15 days.
- Note – if financial exigency is the reason for termination, the board may choose to follow procedures applicable to end of term discharge for the appeal.

Can I be discharged at the end of the school year under a Term Contract?

- The discharge must be based on reasons listed in the district's policy.
- Teachers must be given notice of renewal or nonrenewal at least 10 days before the last day of instruction. Teacher's appraisals must be considered if they are relevant to the discharge.
- A teacher is entitled to a school board hearing if he or she requests the hearing at least 15 days after the teacher is notified of nonrenewal.
- A teacher may appeal the decision of the board of trustees by submitting an appeal to the commissioner of education. The decision is only appealable if it is arbitrary, capricious, unlawful, or not supported by substantial evidence.

EVALUATIONS AND APPRAISALS

How often can I be appraised?

You can be appraised/evaluated annually. However, if your school district chooses, you agree in writing, and your last evaluation was proficient, then you can be evaluated less frequently. The law requires that an appraisal be done at least once every five years. The laws and regulations governing the appraisal process can be found in the Texas Education Code, §§21.351-21.356, and the Texas Administrative Code, Chapter 150.

What is the minimum score I need on an appraisal?

According to the Professional Development and Appraisal System, you must meet expectations 80-89 percent of the time.

What do I do if I disagree with an appraisal?

You can file a written rebuttal within 10 working days or within the time period prescribed by your school district. If you are filing a written rebuttal, more information about how to respond to a grievance can be found on the Texas Education Agency's website.

Note: As of the completion of this informational brochure, the law for teacher appraisal was under review and the law may change to require different guidelines for teacher appraisal.

OTHER RESOURCES

- U.S. Department of Education – www.ed.gov
- Department of Labor – www.dol.gov
- Equal Employment Opportunity Commission – www.eeoc.gov
- Texas Education Agency – www.tea.state.tx.us
- Texas Workforce Commission – www.twc.state.tx.us
- Texas Department of Family Protective Services – www.dfps.state.tx.us
- Texas Young Lawyers Association – www.tyla.org
- Texas State- Texas School Safety Center – <http://txssc.txstate.edu/>
- Texas Department of Agriculture – www.squaremeal.org

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