# SECTION D: PERSONNEL

<table>
<thead>
<tr>
<th>DA</th>
<th>EMPLOYMENT OBJECTIVES</th>
</tr>
</thead>
<tbody>
<tr>
<td>DAA</td>
<td>Equal Employment Opportunity</td>
</tr>
<tr>
<td>DAAA</td>
<td>Genetic Nondiscrimination</td>
</tr>
<tr>
<td>DAB</td>
<td>Objective Criteria for Personnel Decisions</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DB</th>
<th>EMPLOYMENT REQUIREMENTS AND RESTRICTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>DBA</td>
<td>Credentials and Records</td>
</tr>
<tr>
<td>DBB</td>
<td>Medical Examinations and Communicable Diseases</td>
</tr>
<tr>
<td>DBC</td>
<td>Oath of Office</td>
</tr>
<tr>
<td>DBD</td>
<td>Conflict of Interest</td>
</tr>
<tr>
<td>DBE</td>
<td>Nepotism</td>
</tr>
<tr>
<td>DBF</td>
<td>Nonschool Employment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DC</th>
<th>EMPLOYMENT PRACTICES</th>
</tr>
</thead>
<tbody>
<tr>
<td>DCA</td>
<td>Term Contracts</td>
</tr>
<tr>
<td>DCB</td>
<td>Tenure</td>
</tr>
<tr>
<td>DCC</td>
<td>At-Will Employment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DD</th>
<th>PERSONNEL POSITIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>DDA</td>
<td>Qualifications and Duties</td>
</tr>
<tr>
<td>DDB</td>
<td>Substitute, Temporary, and Part-time Positions</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DE</th>
<th>COMPENSATION AND BENEFITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>DEA</td>
<td>Salaries and Wages</td>
</tr>
<tr>
<td>DEB</td>
<td>Fringe Benefits</td>
</tr>
<tr>
<td>DEC</td>
<td>Leaves and Absences</td>
</tr>
<tr>
<td>DECA</td>
<td>Family and Medical Leave</td>
</tr>
<tr>
<td>DECB</td>
<td>Military Leave</td>
</tr>
<tr>
<td>DED</td>
<td>Vacations and Holidays</td>
</tr>
<tr>
<td>DEE</td>
<td>Expense Reimbursement</td>
</tr>
</tbody>
</table>

| DF  | RETIREMENT PROGRAMS                                      |

<table>
<thead>
<tr>
<th>DG</th>
<th>EMPLOYEE RIGHTS AND PRIVILEGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>DGA</td>
<td>Freedom of Association</td>
</tr>
<tr>
<td>DGB</td>
<td>Personnel-Management Relations</td>
</tr>
<tr>
<td>DGBA</td>
<td>Employee Grievances</td>
</tr>
<tr>
<td>DGC</td>
<td>Academic Freedom and Responsibilities</td>
</tr>
<tr>
<td>DGD</td>
<td>Employee Use of College District Facilities</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DH</th>
<th>EMPLOYEE STANDARDS OF CONDUCT</th>
</tr>
</thead>
<tbody>
<tr>
<td>DHB</td>
<td>Searches and Alcohol/Drug Testing</td>
</tr>
<tr>
<td>DHC</td>
<td>Child Abuse and Neglect Reporting</td>
</tr>
</tbody>
</table>
SECTION D: PERSONNEL

DI   EMPLOYEE WELFARE
DIA  Freedom from Discrimination, Harassment, and Retaliation

DJ   ASSIGNMENT, WORK LOAD, AND SCHEDULES

DK   PROFESSIONAL DEVELOPMENT

DL   EMPLOYEE PERFORMANCE
DLA  Evaluation
DLB  Probation
DLC  Promotion and Demotion
DLD  Employee Awards

DM   TERMINATION OF EMPLOYMENT
DMA  Term Contracts
DMAA Termination Mid-Contract
DMAB Nonrenewal
DMB  Tenure
DMC  Reduction in Force
DMD  Resignation
Note: For complaints of discrimination, harassment, and retaliation targeting employees on the basis of a protected characteristic, see DIA(LEGAL).

No governmental entity, including a college district, shall deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amend. XIV

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin. 42 U.S.C. 2000e-2(a)

Title VII proscribes not only overt discrimination (disparate treatment) but also employment practices that are fair in form but discriminatory in operation (disparate impact). Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)

Disparate treatment (intentional discrimination) occurs where members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. 29 C.F.R. 1607.11

An unlawful employment practice based on disparate impact is established only if a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate (disproportionate) impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that the challenged practice is job-related and consistent with business necessity. 42 U.S.C. 2000e-2(k)(1)(A)

It shall be an unlawful employment practice for any employer controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training. 42 U.S.C. 2000e-2(a), (d)

It shall not be an unlawful employment practice for an employer to hire and employ an employee on the basis of his religion, sex, national origin, or age in those certain instances where religion, sex,
national origin, or age is a bona fide occupational qualification. 42 U.S.C. 2000e-2(e)

It shall be an unlawful employment practice for an employer controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification. 42 U.S.C. 2000e-3(b)

An employer, including a college district, may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)

The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in 29 U.S.C. 2000e-2(h) shall be interpreted to permit otherwise. 42 U.S.C. 2000e(k)

No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, or responsibility, and which are performed under similar working conditions, except where such payment is pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. 29 U.S.C. 206(d); 34 C.F.R. 106.54
The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless an employer demonstrates that it is unable to reasonably accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship to the an employer’s business. “Undue hardship” means more than a de minimus (minimal) cost. 42 U.S.C. 2000e(j); 29 C.F.R. 1605.2

Note: See STATE LAW, below, for state prohibitions on discrimination based on race, color, religion, sex, or national origin.

Harassment violates Title VII if it is sufficiently severe and pervasive to alter the conditions of employment. Pennsylvania State Police v. Suders, 542 U.S. 129 (2004)

Harassment on the basis of sex is a violation of 42 U.S.C. 2000e-2 (Title VII).

The Equal Employment Opportunity Commission (EEOC) has consistently held that harassment on the basis of national origin is a violation of Title VII. An employer has an affirmative duty to maintain a working environment free of harassment on the basis of national origin.

42 U.S.C. 2000e-2; 29 C.F.R. 1606.8(a), 1604.11(a)

Title VII does not prohibit all verbal and physical harassment in the workplace. For example, harassment between men and women is not automatically unlawful sexual harassment merely because the words used have sexual content or connotations. Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)

Verbal or physical conduct based on a person’s sex, race, color, religion, or national origin constitutes unlawful harassment when the conduct:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;
2. Has the purpose or effect of unreasonably interfering with an individual’s work performance; or
3. Otherwise adversely affects an individual’s employment opportunities.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

29 C.F.R. 1604.11(a)


An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned. 29 C.F.R. 1604.11(f)

With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment or harassment in the workplace on the basis of national origin in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace or harassment of employees in the workplace on the basis of national origin, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the EEOC will consider the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of such non-employees.

29 C.F.R. 1604.11(d)–(e), 1606.8(d)–(e)

When no tangible employment action is taken, an employer may raise the following affirmative defense:

1. That the employer exercised reasonable care to prevent and promptly correct any harassing behavior; and
2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.


It shall be unlawful for an employer:

1. To fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's age;

2. To limit, segregate, or classify his employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's age; or

3. To reduce the wage rate of any employee in order to comply with 29 U.S.C. Chapter 14.

*29 U.S.C. 623(a)*

It shall not be unlawful for an employer:

1. To take any action otherwise prohibited under 29 U.S.C. 623(a) where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

2. To take any action otherwise prohibited under 29 U.S.C. 623(a):
   a. To observe the terms of a bona fide seniority system that is not intended to evade the purposes of 29 U.S.C. Chapter 14, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by 29 U.S.C. 631(a) because of the age of such individual; or
   b. To observe the terms of a bona fide employee benefit plan in compliance with 29 U.S.C. 623. No such employee benefit plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individ-
EMPLOYMENT OBJECTIVES
EQUAL EMPLOYMENT OPPORTUNITY

DAA
(LEGAL)

DATE ISSUED: 3/27/2015
UPDATE 30
DAA(LEGAL)-LJC

uual specified by 29 U.S.C. 631(a) because of the age of such individual.

3. To discharge or otherwise discipline an individual for good cause.

29 U.S.C. 623(f)

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment because such individual has opposed any practice made unlawful by this section, or because such individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under 29 U.S.C. Chapter 14. 29 U.S.C. 623(d)

Note: See STATE LAW, below, for state prohibitions on discrimination based on age.

ADA AND SECTION 504 — DISABILITY DISCRIMINATION

No covered entity, including a college district, shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. 42 U.S.C. 12112(a); 29 C.F.R. 1630.4(b)

DISCRIMINATION BASED ON LACK OF DISABILITY

Nothing in 42 U.S.C. Chapter 126 (the Americans with Disabilities Act [ADA]) shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual’s lack of disability. 42 U.S.C. 12201(g); 29 C.F.R. 1630.4(b)

DEFINITION OF “DISABILITY”

“Disability” means, with respect to an individual:

1. A physical or mental impairment that substantially limits one or more major life activities of an individual;

2. A record of having such an impairment; or

3. Being regarded as having such an impairment.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

42 U.S.C. 12102(1), (4)(C)–(D); 29 C.F.R. 1630.2(g), (j)(1), .3

“REGARDED AS HAVING SUCH AN IMPAIRMENT”

An individual meets the requirement of being “regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under the ADA because of
EMPLOYMENT OBJECTIVES

EQual EMPLOYMENT OPPORTUNITY

DAA

(LEGAL)

an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. 42 U.S.C. 12102(3)(A); 29 C.F.R. 1630.2(g), (l)

**Transitory and Minor**

Item 3 in the definition of “disability,” above, (“regarded as having such an impairment”) shall not apply to impairments that are transitory or minor. A transitory impairment is an impairment with an actual or expected duration of six months or less. 42 U.S.C. 12102(3)(B); 29 C.F.R. 1630.2(j)(1)(ix)

**Mitigating Measures**

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy or supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications.

The ameliorative effects of mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

“Ordinary eyeglasses and contact lenses” are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

“Low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

42 U.S.C. 12102(4)(E)

“Major life activities” include, but are not limited to:

1. Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and

2. The operation of a major bodily function, including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within the body system.

42 U.S.C. 12102(2); 29 C.F.R. 1630.2(i)
“PHYSICAL OR MENTAL IMPAIRMENT”

“Physical or mental impairment” means:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

2. Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 C.F.R. 1630.2(h)

“QUALIFIED INDIVIDUAL”

“Qualified” with respect to an individual with a disability, means that the individual:

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires; and

2. With or without reasonable accommodation, can perform the essential functions of such position. Consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written job description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

42 U.S.C. 12111(8); 29 C.F.R. 1630.2(m)

“REASONABLE ACCOMMODATIONS”

A covered entity is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the “actual disability” prong or “record of disability” prong, but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the “regarded as” prong. 29 U.S.C. 794, 42 U.S.C. 12112(b)(5); 29 C.F.R. 1630.2(o)(4), .9, 34 C.F.R. 104.11 [See DBB regarding medical examinations and inquiries under the Americans with Disabilities Act]

“Reasonable accommodation” may include:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification
of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. 12111(9); 29 C.F.R. 1630.2(o); 34 C.F.R. 104.12(b)

“UNDUE HARDSHIP”

“Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include the nature and cost of the accommodation needed, the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the overall financial resources of the covered entity, the type of operation or operations of the covered entity, and other factors set out in 42 U.S.C. 12111(10). 42 U.S.C. 12111(10); 29 C.F.R. 1630.2(p); 34 C.F.R. 104.12(c)

DISCRIMINATION BASED ON RELATIONSHIP

It is unlawful for a covered entity to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association. 42 U.S.C. 12112(b)(4); 29 C.F.R. 1630.8

ILLEGAL DRUGS AND ALCOHOL

A qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use. 42 U.S.C. 12114(a); 29 C.F.R. 1630.3(a)

DRUG TESTING

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on the results of such tests. 42 U.S.C. 12114(d); 29 C.F.R. 1630.3(c) [See DHB]

ALCOHOL USE

The term “individual with a disability” does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others. 29 U.S.C. 705(20)(C)(v); 42 U.S.C. 12114(a); 28 C.F.R. 35.104

QUALIFICATION STANDARDS

It is unlawful for a covered entity to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity. 29 C.F.R. 1630.10(a)
The term “qualification standards” may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace. “Direct threat” means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. The determination that an individual poses a “direct threat” shall be based on an individualized assessment of the individual’s present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm. 42 U.S.C. 12111(3), 12113(b); 29 C.F.R. 1630.2(r)

A covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity. 42 U.S.C. 12113(c); 29 C.F.R. 1630.10(b)

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the U.S. Secretary of Health and Human Services under 42 U.S.C. 12113(e)(1), and that cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign an individual to a job involving food handling. 42 U.S.C. 12113(e)(2); 29 U.S.C. 705(20)(D); 29 C.F.R. 1630.16(e)

A covered entity that is subject to the jurisdiction of Title I of the ADA (employment discrimination) or to section 504 of the Rehabilitation Act (EMPLOYMENT DISCRIMINATION), shall comply with the reasonable accommodation requirements of those laws with respect to service animals. [See REASONABLE ACCOMMODATIONS, above]

A covered entity that is not subject to either Title I or section 504 shall comply with Title II of the ADA (discrimination by public entity). An employer that is subject to Title II shall comply with 28 C.F.R. part 35, including the requirements relating to service animals at 28 C.F.R. 35.136 [see FAA]

28 C.F.R. 35.140
MILITARY SERVICE

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of that membership, application for membership, performance of service, application for service, or obligation.

An employer, including a college district, may not discriminate in employment against or take any adverse employment action against any person because such person has taken action to enforce protections afforded any person under 38 U.S.C. Chapter 43 (the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA)), has testified or otherwise made a statement in or in connection with any proceeding under USERRA, has assisted or otherwise participated in an investigation under USERRA, or has exercised a right provided for in USERRA.

38 U.S.C. 4311 [See DECB]

RETIATION

An employer, including a college district, may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. 29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 34 C.F.R. 100.7(e) (Title VI); 34 C.F.R. 110.34 (Age Act); 42 U.S.C. 12203 (ADA); Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005) (Title IX)

Note: See STATE LAW, below, for state prohibitions on retaliation.

STATE LAW

An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee. Labor Code 21.051; 40 TAC 819.12(a)
An employer commits an unlawful employment practice if it aids, abets, incites, or coerces a person to engage in an unlawful discriminatory practice based on race, color, disability, religion, sex, national origin, or age. 40 TAC 819.12(f)

An employer controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it discriminates against an individual in admission to or participation in the program, unless a training or retraining opportunity or program is provided under an affirmative action plan approved by federal or state law, rule, or court order. The prohibition against discrimination based on age applies only to individuals who are at least 40 years of age but younger than 56 years of age. 40 TAC 819.12(d)

An employer does not commit an unlawful employment practice by engaging in a practice that has a discriminatory effect and that would otherwise be prohibited by Labor Code Chapter 21 if the employer establishes that the practice is not intentionally devised or operated to contravene the prohibitions of Chapter 21; and is justified by business necessity. Labor Code 21.115(a)

An unlawful employment practice based on disparate impact is established under Chapter 21 only if a complainant demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, sex, national origin, religion, or disability and the respondent fails to demonstrate that the challenged practice is job-related for the position in question and consistent with business necessity; or the complainant makes the demonstration in accordance with federal law as that law existed June 4, 1989, with respect to the concept of alternative employment practices, and the respondent refuses to adopt such an alternative employment practice. To demonstrate that a particular employment practice causes a disparate impact, the complainant must demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complainant demonstrates to the satisfaction of the court that the elements of a respondent's decision-making process are not capable of separation for analysis, that decision-making process may be analyzed as one employment practice. Labor Code 21.122(a), (c)

An employer may not use a qualification standard, employment test, or other selection criterion based on an individual's uncorrected vision unless the standard, test, or criterion is consistent with business necessity and job-related for the position to which the standard, test, or criterion applies. Labor Code 21.115(b)
If disability, religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise, performing any of the following practices on the basis of disability, religion, sex, national origin, or age of an employee, member, or other individual is not an unlawful employment practice:

1. An employer hiring and employing an employee;
2. An employment agency classifying or referring an individual for employment; or
3. An employer controlling an apprenticeship, on-the-job training, or other training or retraining program admitting or employing an individual in its program.

_Labor Code 21.119_

An employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, employment agency, or committee prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

1. Indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and
2. Concerns an employee’s status, employment, or admission to or membership or participation in a labor union or training or retraining program.

This section does not apply if disability, religion, sex, national origin, or age is a bona fide occupational qualification.

_Labor Code 21.059; 40 TAC 819.12(i)_

An employer does not commit an unlawful employment practice by applying different standards of compensation or different terms, conditions, or privileges of employment under a bona fide seniority system, merit system, or an employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade Labor Code Chapter 21; or a system that measures earnings by quantity or quality of production. _Labor Code 21.102(a)_

Exception

An employee benefit plan may not excuse a failure to hire on the basis of age. A seniority system or employee benefit plan may not require or permit involuntary retirement on the basis of age except as permitted by Labor Code 21.103.
This section does not apply to standards of compensation or terms, conditions, or privileges of employment that are discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

*Labor Code 21.102(b)–(c)*

**ADDITIONAL CONSIDERATIONS**

**PREGNANCY DISCRIMINATION**

A provision in Labor Code Chapter 21 referring to discrimination because of sex or on the basis of sex includes discrimination because of or on the basis of pregnancy, childbirth, or a related medical condition. A woman affected by pregnancy, childbirth, or a related medical condition shall be treated for all purposes related to employment, including receipt of a benefit under a fringe benefit program, in the same manner as another individual not affected but similar in the individual's ability or inability to work. *Labor Code 21.106*

**RELIGIOUS DISCRIMINATION**

A provision in Labor Code Chapter 21 referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business. *Labor Code 21.108*

A government agency, including a college district, may not substantially burden a person's free exercise of religion. The prohibition does not apply if the government agency demonstrates that the application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. and Rem. Code 110.003(a)–(b)*

**DISCRIMINATION BASED ON LACK OF DISABILITY**

Nothing in this chapter may be construed as the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of a disability. *Labor Code 21.005(c)*

**REASONABLE ACCOMMODATION**

It is an unlawful employment practice for a respondent covered under this chapter to fail or refuse to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability who is an employee or applicant for employment, unless the respondent demonstrates that the accommodation would impose an undue hardship on the operation of the business of the respondent. A showing of undue hardship by the respondent is a defense to a complaint of discrimination made by an otherwise qualified individual with a disability. *Labor Code 21.128(a)–(b)*
**OFFICIAL OPPRESSION**

A public servant acting under color of his office or employment commits an offense if he intentionally subjects another to sexual harassment.

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person’s exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly. An offense under this section is a Class A misdemeanor.

*Penal Code 39.03(a), (c)–(d)*

**RETALIATION**

An employer commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person who, under Labor Code Chapter 21 opposes a discriminatory practice; makes or files a charge; files a complaint; or testifies, assists, or participates in any manner in an investigation, proceeding, or hearing. *Labor Code 21.055; 40 TAC 819.12(e)*

**NOTICES**

**TITLE VII**

Every employer, including each college district, shall post and keep posted in conspicuous places upon its premises, where notices to employees, applicants for employment, and members are customarily posted, a notice to be prepared or approved by the Equal Employment Opportunity Commission (EEOC) setting forth excerpts from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint. *42 U.S.C. 2000e-10*

**ADEA**

Every employer shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the EEOC setting forth information as the EEOC deems appropriate to effectuate the purposes of the ADEA. *29 U.S.C. 627*

**SECTION 504 NOTICE**

A recipient of federal funds that employs 15 or more persons shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability in violation of Section 504 of the Rehabilitation Act or 34 C.F.R. Part 104.

The notification shall state, where appropriate, that the recipient does not discriminate in employment in its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to 34 C.F.R. 104.7(a) (Section 504 coordinator).

Methods of initial and continuing notification may include:

1. Posting of notices;
2. Publication in newspapers and magazines;
3. Placement of notices in recipients’ publications; and
4. Distribution of memoranda or other written communications.

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

34 C.F.R. 104.8
DEFINITIONS

“Genetic information” means information about:

1. An individual's genetic tests;
2. The genetic tests of that individual's family members;
3. The manifestation of disease or disorder in family members of the individual (family medical history);
4. An individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or
5. The genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

“Genetic information” does not include information about the sex or age of the individual, the sex or age of family members, or information about the race or ethnicity of the individual or family members that is not derived from a genetic test.

29 C.F.R. 1635.3(c)

“Genetic test” means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. Genetic tests include:

1. A test to determine whether someone has the BRCA1 or BRCA2 variant evidencing a predisposition to breast cancer, a test to determine whether someone has a genetic variant associated with hereditary nonpolyposis colon cancer, and a test for a genetic variant for Huntington's Disease;
2. Carrier screening for adults using genetic analysis to determine the risk of conditions such as cystic fibrosis, sickle cell anemia, spinal muscular atrophy, or fragile X syndrome in future offspring;
3. Amniocentesis and other evaluations used to determine the presence of genetic abnormalities in a fetus during pregnancy;
4. Newborn screening analysis that uses DNA, RNA, protein, or metabolite analysis to detect or indicate genotypes, muta-
tions, or chromosomal changes, such as a test for PKU performed so that treatment can begin before a disease manifests;

5. Preimplantation genetic diagnosis performed on embryos created using in vitro fertilization;

6. Pharmacogenetic tests that detect genotypes, mutations, or chromosomal changes that indicate how an individual will react to a drug or a particular dosage of a drug;

7. DNA testing to detect genetic markers that are associated with information about ancestry; and

8. DNA testing that reveals family relationships, such as paternity.

The following are examples of tests or procedures that are not genetic tests:

1. An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes;

2. A medical examination that tests for the presence of a virus that is not composed of human DNA, RNA, chromosomes, proteins, or metabolites;

3. A test for infectious and communicable diseases that may be transmitted through food handling; and

4. Complete blood counts, cholesterol tests, and liver-function tests.

A test for the presence of alcohol or illegal drugs is not a genetic test. However, a test to determine whether an individual has a genetic predisposition for alcoholism or drug use is a genetic test.

29 C.F.R. 1635.3(f)

NOTICES

A covered entity, including a college district, shall post in conspicuous places on its premises, where notices to employees and applicants for employment are customarily posted, a notice setting forth excerpts from or summaries of the pertinent provisions of C.F.R. Title 29 and information pertinent to the filing of a complaint. 29 C.F.R. 1635.10(c)

PROHIBITED PRACTICES

It is unlawful for an employer, including a college district, to discriminate against an individual on the basis of genetic information of the individual in regard to hiring, discharge, compensation, terms, conditions, or privileges of employment. 29 C.F.R. 1635.4(a)
A covered entity, including a college district, may not discriminate against any individual because such individual has opposed any act or practice made unlawful by C.F.R. Title 29 or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title 29. 29 C.F.R. 1635.7

A covered entity may not request, require, or purchase genetic information of an individual or family member of the individual, except as specifically provided below. 29 C.F.R. 1635.8(a)

“Request” includes:

1. Conducting an Internet search on an individual in a way that is likely to result in a covered entity obtaining genetic information;

2. Actively listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information; and

3. Making requests for information about an individual’s current health status in a way that is likely to result in a covered entity obtaining genetic information.

A covered entity that possesses any genetic information, regardless of how the entity obtained the information, may not disclose the information except as set forth in 29 C.F.R. 1635.9. 29 C.F.R. 1635.9(b) [See CONFIDENTIALITY, below]
INADVERTENT ACQUISITION

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where a covered entity, including a college district, inadvertently requests or requires genetic information of the individual or family member of the individual. This exception applies in situations where a manager or supervisor learns genetic information about an individual by:

1. Overhearing a conversation between the individual and others;

2. Receiving the information during a casual conversation, including in response to an ordinary expression of concern that is the subject of the conversation. This exception does not apply where a manager or supervisor follows up with questions that are probing in nature, such as whether other family members have the condition or whether the individual has been tested for the condition, because the supervisor or official should know that these questions are likely to result in the acquisition of genetic information;

3. Receiving unsolicited information (e.g., where a manager or supervisor receives an unsolicited e-mail about the health of an employee’s family member from a co-worker); or

4. Accessing a social media platform that the manager or supervisor was given permission to access by the creator of the profile at issue (e.g., a supervisor and employee are connected on a social networking site and the employee provides family medical history on his page).

29 C.F.R. 1635.8(b)(1)(ii)

REQUESTS FOR MEDICAL INFORMATION

If a covered entity, including a college district, acquires genetic information in response to a lawful request for medical information, the acquisition of genetic information will not generally be considered inadvertent unless the covered entity directs the individual and/or health-care provider from whom it requested medical information not to provide genetic information. 29 C.F.R. 1635.8(b)(1)(ii)(A)

Situations involving lawful requests for medical information include:

1. Requests for documentation to support a request for reasonable accommodation under federal, state, or local law;

2. Requests for medical information as required, authorized, or permitted by federal, state, or local law, such as where an employee requests leave under the Family and Medical Leave Act (FMLA) to attend to the employee’s own serious
health condition or where an employee complies with the FMLA's employee return to work certification requirements; or

3. Requests for documentation to support leave that is not governed by federal, state, or local laws requiring leave, as long as the documentation required to support the request otherwise complies with the requirements of the Americans with Disabilities Act (ADA) and other laws limiting a covered entity's access to medical information.

29 C.F.R. 1635.8(b)(1)(i)(A)

SAFE HARBOR

Any receipt of genetic information in response to a request for medical information shall be deemed inadvertent if a covered entity uses language such as the following:

“The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. ‘Genetic information,’ as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.’

A covered entity's failure to give such a notice or to use this or similar language will not prevent the covered entity from establishing that a particular receipt of genetic information was inadvertent if the request for medical information was not likely to result in a covered entity's obtaining genetic information (for example, where an overly broad response is received in response to a tailored request for medical information).

29 C.F.R. 1635.8(b)(1)(i)(B)

EMPLOYMENT EXAMINATIONS

The prohibition on acquisition of genetic information applies to medical examinations related to employment. A covered entity shall tell health-care providers not to collect genetic information, including family medical history, as part of a medical examination intended to determine the ability to perform a job. 29 C.F.R. 1635.8(d)
A covered entity shall take additional reasonable measures within its control if it learns that genetic information is being requested or required. Such reasonable measures may depend on the facts and circumstances under which a request for genetic information was made, and may include no longer using the services of a health-care professional who continues to request or require genetic information during medical examinations after being informed not to do so. 29 C.F.R. 1635.8(d)

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where a college district offers health or genetic services, including services offered as part of a voluntary wellness program, if the conditions at 29 C.F.R. 1635.8(b)(2) are met.

A covered entity, including a college district, may not offer a financial inducement for individuals to provide genetic information, but may offer financial inducements for completion of health risk assessments that include questions about family medical history or other genetic information. The covered entity shall make clear, in language reasonably likely to be understood by those completing the health risk assessment, that the inducement will be made available whether or not the participant answers questions regarding genetic information.

A covered entity may offer financial inducements to encourage individuals who have voluntarily provided genetic information (e.g., family medical history) that indicates that they are at increased risk of acquiring a health condition in the future to participate in disease management programs or other programs that promote healthy lifestyles, and/or to meet particular health goals as part of a health or genetic service. However, the covered entity must also offer these programs to individuals with current health conditions and/or to individuals whose lifestyle choices put them at increased risk of developing a condition. 29 C.F.R. 1635.8(b)(2)

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the covered entity, including a college district, requests family medical history to comply with the certification provisions of the FMLA or state or local family and medical leave laws, or pursuant to a policy (even in the absence of requirements of federal, state, or local leave laws) that permits the use of leave to care for a sick family member and that requires all employees to provide information about the health condition of the family member to substantiate the need for leave. 29 C.F.R. 1635.8(b)(3)
PUBLICLY AVAILABLE INFORMATION

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the covered entity, including a college district, acquires genetic information from documents that are commercially and publicly available for review or purchase, including newspapers, magazines, periodicals, or books, or through electronic media, such as information communicated through television, movies, or the Internet, except that this exception does not apply to:

1. Medical databases, court records, or research databases available to scientists on a restricted basis;

2. Genetic information acquired through sources with limited access, such as social networking sites and other media sources that require access permission from a specific individual or where access is conditioned on membership in a particular group, unless the covered entity can show that access is routinely granted to all who request it;

3. Genetic information obtained through commercially and publicly available sources if the covered entity sought access to those sources with the intent of obtaining genetic information; or

4. Genetic information obtained through media sources, whether or not commercially and publicly available, if the covered entity is likely to acquire genetic information by accessing those sources, such as website and online discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination.

29 C.F.R. 1635.8(b)(4)

WORKPLACE MONITORING

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the covered entity, including a college district, acquires genetic information for use in the genetic monitoring of the biological effects of toxic substances in the workplace. Such monitoring must meet with the criteria at 29 C.F.R. 1635.8(b)(5). 29 C.F.R. 1635.8(b)(5)

INQUIRIES MADE OF FAMILY MEMBERS

A covered entity, including a college district, does not violate 29 C.F.R. 1635.8 when it requests, requires, or purchases information about a manifested disease, disorder, or pathological condition of an employee whose family member is also employed by the covered entity or who is receiving health or genetic services on a voluntary basis. For example, a covered entity does not violate 29 C.F.R. 1635.8 by asking someone whose sister also works for the covered entity to take a post-offer medical examination that does not include requests for genetic information. 29 C.F.R. 1635.8(c)
CONFIDENTIALITY

A covered entity, including a college district, that possesses genetic information in writing about an employee must maintain such information on forms and in medical files (including where the information exists in electronic forms and files) that are separate from personnel files. A covered entity must treat such information as a confidential medical record. A covered entity may maintain genetic information about an employee in the same file in which it maintains confidential medical information under the ADA.

Genetic information placed in personnel files before November 21, 2009, need not be removed. A covered entity will not be liable under 29 C.F.R. Part 1635 for the mere existence of the information in the file. However, the prohibitions on use and disclosure of genetic information apply to all genetic information that meets the statutory definition, including genetic information requested, required, or purchased before November 21, 2009.

Genetic information that a covered entity receives orally need not be reduced to writing, but may not be disclosed, except as permitted by 29 C.F.R. Part 1635.

Genetic information that a covered entity acquires through sources that are commercially and publicly available, as provided by 29 C.F.R. 1635.8(b)(4), is not considered confidential genetic information but may not be used to discriminate against an individual.

29 C.F.R. 1635.9(a)

A covered entity that possesses any genetic information, regardless of how the covered entity obtained the information (except for genetic information acquired through commercially and publicly available sources), may disclose the information:

1. To the employee (or family member if the family member is receiving genetic services) about whom the information pertains upon receipt of the employee’s written request;

2. To an occupational or other health researcher if the research is conducted in compliance with the regulations and protections at 45 C.F.R. Part 46;

3. In response to an order of a court. The covered entity may disclose only the genetic information expressly authorized by the order. If the order was secured without the knowledge of the employee to whom the information refers, the covered entity shall inform the employee of the order and any genetic information that was disclosed pursuant to the order;

4. To government officials investigating compliance with C.F.R. Title 29 if the information is relevant to the investigation;
5. To the extent the information is disclosed in support of an employee's compliance with the certification provisions of the FMLA or certification requirements under state family and medical leave laws; or

6. To a federal, state, or local public health agency, only with regard to information about the manifestation of a disease or disorder that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness, provided that the individual whose family member is the subject of the disclosure is notified of such disclosure.

29 C.F.R. 1635.9(b)

RELATIONSHIP TO HIPAA PRIVACY REGULATIONS

Pursuant to 29 C.F.R. 1635.11(d), nothing in this section shall be construed as applying to the use or disclosure of genetic information that is protected health information subject to regulations issued pursuant to Section 264(c) of the Health Insurance Portability and Accountability Act of 1996. 29 C.F.R. 1635.9(c) [See CKD(LEGAL)]
With regard to public access to information in personnel records, custodians of such records shall adhere to the requirements of the Texas Public Information Act (PIA). Gov't Code 552 [See GAA]

Information is excepted from the requirements of the PIA if it is information in a personnel file, the disclosure would constitute a clearly unwarranted invasion of personal privacy.

Each employee of a governmental body, including a college district, and each former employee of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, emergency contact information, or social security number, or that reveals whether the person has family members.

Gov't Code 552.024(a), .102(a)

All information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee’s designated representative as public information is made available under Government Code Chapter 552 (PIA).

A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under the PIA but may assert as grounds for denial of access other provisions of the PIA or other law that are not intended to protect the person’s privacy interests.

If a governmental body determines that information subject to a special right of access under Government Code 552.023 is exempt from disclosure under an exception of Government Code Chapter 552, Subchapter C, other than an exception intended to protect the privacy interest of the requestor or the person whom the requestor is authorized to represent, the governmental body shall, before disclosing the information, submit a written request for a decision to the attorney general under the procedures of Government Code Chapter 552, Subchapter G. If a decision is not requested, the governmental body shall release the information to the person with special right of access not later than the tenth business day after the request for information is received.

Gov't Code 552.023, .102(a), .307
CONFIDENTIALITY GUIDELINES

Each state agency, including each college district, shall develop and implement guidelines regarding confidentiality of AIDS- and HIV-related medical information for employees of the agency. The confidentiality guidelines shall be consistent with guidelines published by the Texas Department of State Health Services (DSHS) and with state and federal law and regulations. [See DBB] Health and Safety Code 85.115(a), (c)
The credentials of faculty and professional staff shall conform to the criteria established by the Southern Association of Colleges and Schools.
Note: For the definition of individuals with disabilities and related terms and concepts addressed in this policy, see DAA(LEGAL).

Except as provided below, a covered entity, including a college district, shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of a disability. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. 42 U.S.C. 12112(d)(2); 29 C.F.R. 1630.14(a)

A covered entity may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

The results of such examination shall not be used for any purpose inconsistent with 42 U.S.C. Chapter 126, Subchapter I or 29 C.F.R. Part 1630. Information obtained regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, and first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment. 42 U.S.C. 12112(d)(3); 29 C.F.R. 1630.14(b)

Medical examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an employee or employees with disabilities as a result of such an examination or inquiry, the exclusionary criteria must be job-related and consistent with business necessity, and performance of the essential job functions cannot be accomplished with reasonable accommodation as required in 29 C.F.R. Part 1630. 29 C.F.R. 1630.14(b)(3)
A covered entity, including a college district, may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

Information obtained regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with 42 U.S.C. Chapter 126, Subchapter I or 29 C.F.R. Part 1630. Information obtained regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, and first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

\[42\ U.S.C.\ 12112(d)(3)\text{–}(4);\ 29\ C.F.R.\ 1630.14(c)\]

A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site.

Information obtained regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with 42 U.S.C. Chapter 126, Subchapter I or 29 C.F.R. Part 1630. Information obtained regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, and first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

\[42\ U.S.C.\ 12112(d)(3),\ (4))(B)\text{–}(C);\ 29\ C.F.R.\ 1630.14(d)\]

A person, including a college district, may not require another person, such as an employee, to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:

1. The medical procedure or test is necessary:
   a. As a bona fide occupational qualification, and there is not a less discriminatory means of satisfying the occupational qualification. “Bona fide occupational qualification” means a qualification that is reasonably related to the
satisfactory performance of the duties of the job and for which there is reasonable cause to believe that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety.

b. In relation to a particular person under Health and Safety Code Chapter 81.

c. To manage accidental exposure to blood or other bodily fluids, but only if the test is conducted under written infectious disease control protocols adopted by a healthcare facility. The protocols must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with Health and Safety Code Chapter 81.

2. A medical procedure is to be performed on the person that could expose health-care personnel to AIDS or HIV infection, according to Texas Department of State Health Services’ (DSHS) guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted.

Health and Safety Code 81.102

Each institution of higher education, including each college district, shall make available the institution’s policy on HIV infection and AIDS to faculty and staff members by including the policy in the personnel handbook if practicable or by any other method. Education Code 51.919(b)

CONFIDENTIALITY OF AIDS TESTING

"Test result" means any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, has, or does not have a certain level of antibodies.

A test result is confidential. A person who possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section. A test result may be released to:

1. DSHS.
2. A local health authority if reporting is required under Health and Safety Code Chapter 81.

3. The Centers for Disease Control and Prevention of the United States Public Health Service if reporting is required by federal law or regulation.

4. The physician or other person authorized by law who ordered the test.

5. A physician, nurse, or other health-care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient’s health and welfare.

6. The person tested or a person legally authorized to consent to the test on the person’s behalf.

7. The spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

8. A person authorized to receive the test results under Code of Criminal Procedure 21.31 (regarding testing of persons indicted for or who waive indictment for certain crimes), concerning a person who is tested as required or authorized under that article.

9. A person exposed to HIV infection as provided by Health and Safety Code, Section 81.050.

10. A county or district court to comply with Health and Safety Code Chapter 81 or rules relating to the control and treatment of communicable diseases and health conditions.

A person tested or a person legally authorized to consent to the test on the person’s behalf may voluntarily release or disclose that person’s test results to any other person, and may authorize the release or disclosure of the test results. An authorization must be in writing and signed by the person tested or the person legally authorized to consent to the test on the person’s behalf. The authorization must state the person or class of persons to whom the test results may be released or disclosed.

An employee of a health-care facility whose job requires the employee to deal with permanent medical records may view test results in the performance of the employee’s duties under reasonable health practices.

*Health and Safety Code 81.103(a)–(b), (d), (i)*
HIV EDUCATION

Each state agency, including each college district, shall provide to each state employee an educational pamphlet about methods of transmission and methods of prevention of HIV infection, and state laws relating to the transmission of HIV infection, and conduct that may result in the transmission of HIV infection. The educational pamphlet shall be provided to a newly hired state employee on the first day of employment. The educational pamphlet shall be based on the model developed by DSHS and shall include the workplace guidelines adopted by the state agency. DSHS shall prepare and distribute to each state agency a model informational pamphlet that can be reproduced by each state agency to meet the requirements of this section. *Health and Safety Code 85.111*

HIV / AIDS
WORKPLACE
GUIDELINES

Each state agency shall adopt and implement workplace guidelines concerning persons with AIDS and HIV infection. The workplace guidelines shall, at a minimum, incorporate the model workplace guidelines developed by DSHS. *Health and Safety Code 85.112*

BLOODBORNE PATHOGEN CONTROL

DEFINITIONS

“BLOODBORNE PATHOGENS”

“Bloodborne pathogens” means pathogenic microorganisms that are present in human blood and that can cause diseases in humans. The term includes hepatitis B virus, hepatitis C virus, and human immunodeficiency virus. *Health and Safety Code 81.301(1)*

“SHARP”

“Sharp” means an object used or encountered in a health-care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur. *Health and Safety Code 81.301(5)*

MINIMUM STANDARDS

The minimum standards apply to a governmental unit, including a college district, that employs employees who provide services in a public or private facility providing health-care-related services, including home health-care organizations, or otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps. The exposure control plan developed by DSHS is adopted as the minimum standard to implement Health and Safety Code 81.304. The plan is designed to minimize exposure of employees as described in 25 Administrative Code 96.201 and includes policies relating to occupational exposure to bloodborne pathogens, training and educational requirements for employees, measures to increase vaccination of employees, and increased use of personnel protective equipment by employees.
Employers should review the plan for particular requirements applicable to their specific situation. The employer may modify the plan appropriately to its practice settings. Employers will need to include provisions relevant to their particular facility or organization in order to develop an effective, comprehensive exposure control plan specific to their facility or organization. Employers will annually review their exposure control plan, update when necessary, and document when accomplished.

*Health and Safety Code 81.302, .304; 25 TAC 96.201-.203*

**Note:** Copies of the exposure control plan are available on the Internet at [http://www.dshs.state.tx.us/idcu/health/bloodborne_pathogens/reporting/](http://www.dshs.state.tx.us/idcu/health/bloodborne_pathogens/reporting/) or from the DSHS regional offices.

**DSHS-ORDERED TESTS**

A person whose occupation or whose volunteer service is included in one or more of the categories listed at Health and Safety Code 81.050, including a law enforcement officer, may request the DSHS or a health authority to order testing of another person who may have exposed the person to a reportable disease, including HIV infection. A request under this section may be made only if the person has experienced the exposure in the course of the person's employment or volunteer service; believes that the exposure places the person at risk of a reportable disease, including HIV infection; and presents to the DSHS or health authority a sworn affidavit that delineates the reasons for the request. *Health and Safety Code 81.050(b)–(c)*

**COST OF HEPATITIS TESTING AFTER ACCIDENTAL EXPOSURE**

This section applies only in a case of accidental exposure of certified emergency medical services personnel, a firefighter, a peace officer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital to blood or other body fluids of a patient who is transported to a licensed hospital. The hospital receiving the patient, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C if the report shows there is significant risk to the person exposed. The organization, including a college district, that employs the person or for which the person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test. *Health and Safety Code 81.095(b)*

**GENETIC INFORMATION**

If a covered entity, including a college district, uses language described at 29 C.F.R. 1635.8(b)(1)(i)(B), any receipt of genetic information in response to the request for medical information will be deemed inadvertent. *29 C.F.R. 1635.8(b)(1)(i)(A)–(B)* [See DAAA]
The College President or designee may require an employee to undergo a medical examination if information received from the employee, the employee’s supervisor, or other sources indicates the employee has a physical or mental impairment that:

1. Interferes with the employee’s ability to perform essential job functions; or

2. Poses a direct threat to the health or safety of the employee or others. A communicable or other infectious disease may constitute a direct threat.

The College District may designate the physician to perform the examination. If the College District designates the physician, the College District shall pay the cost of the examination. The College District may place the employee on paid administrative leave while awaiting results of the examination and evaluating the results.

Based on the results of the examination, the College President or designee shall determine whether the employee has an impairment. If so, the College President or designee shall determine whether the impairment interferes with the employee’s ability to perform essential job functions or poses a direct threat. If not, the employee shall be returned to his or her job position.

If the impairment does interfere with the employee’s ability to perform essential job functions or poses a direct threat, the College President or designee shall determine whether the employee has a disability and, if so, whether the disability requires reasonable accommodation, including the use of available leave. The granting of additional unpaid leave may be a reasonable accommodation in some circumstances. If the employee does not have a disability, the College President or designee shall evaluate the employee’s eligibility for leave. [See DEC(LOCAL)]

[See DAA for information on disabilities and reasonable accommodation]

Employees with communicable diseases shall follow recommendations of public health officials regarding contact with students and other employees. Food service workers shall comply with health requirements established by city, county, and state health authorities. [See DBA]
No public funds shall be paid to an employee of the College District unless the employee has taken the required oath of office. The oath shall be considered taken when the employee signs a printed or written oath of office.
“Public servant” means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties: an officer, employee, or agent of government; an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; an attorney at law or notary public when participating in the performance of a governmental function; or a person who is performing a governmental function under a claim of right although he is not legally qualified to do so. *Penal Code 1.07(a)(41)* [See also BBFA and DH]

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

1. Any benefit as consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant.

2. Any benefit as consideration for the recipient’s decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding.

3. Any benefit as consideration for a violation of a duty imposed by law on a public servant.

4. Any benefit that is a political contribution as defined by Election Code Title 15 or that is an expenditure made and reported in accordance with Government Code Chapter 305 (lobbying expense), if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit.

“Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest. *Penal Code 36.01(3), .02*

A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.
A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under Penal Code 36.08 may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Penal Code 36.08(d), (i)

EXCEPTIONS

Penal Code 36.08 does not apply to:

1. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

2. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

3. A benefit to a public servant required to file a statement under Government Code Chapter 572, or a report under Election Code Title 15, that is derived from a function in honor or appreciation of the recipient if:
   a. The benefit and the source of any benefit in excess of $50 is reported in the statement; and
   b. The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

4. A political contribution as defined by Election Code Title 15;

5. An item with a value of less than $50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;

6. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;

7. Transportation, lodging, and meals described by Penal Code 36.07(b) [see HONORARIA AND EXPENSES, below];

8. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law; or

9. Complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning
document rendered to a public servant who is a first responder and through a program or clinic that is operated by a local bar association or the State Bar of Texas and approved by the head of the agency employing the public servant, if the public servant is employed by an agency. “First responder” includes a peace officer whose duties include responding rapidly to an emergency and other individuals listed at Penal Code 36.10(e).

Penal Code 36.10(a)–(b), (e)

HONORARIA AND EXPENSES

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

ABUSE OF PUBLIC EMPLOYMENT

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

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

“Misuse” means to deal with property contrary to:

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

_Penal Code 39.01(2)_

The local governmental entity, including a college district, may extend the requirements of Local Government Code 176.003 and 176.004 [see BBFA] to any employee of the local governmental entity who has the authority to approve contracts on behalf of the local governmental entity, including a person designated as the representative of the local governmental entity for purposes of Local Government Code Chapter 271. The local governmental entity shall identify each employee made subject to Sections 176.003 and 176.004 and shall provide a list of the identified employees on request to any person. A local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this section. _Local Gov't Code 176.005(a)–(b)_

An employee of a local governmental entity commits an offense if the employee knowingly violates the requirements imposed under this section. The offense is a Class C misdemeanor. _Local Gov't Code 176.005(c)_

It is an exception to the application of Local Government Code 176.005(c) that the person filed the required conflicts disclosure statement not later than the seventh business day after the person received notice from the local governmental entity of the violation. _Local Gov't Code 176.005(d)_

“Contract” means a written agreement for the sale or purchase of real property, goods, or services. _Local Gov't Code 176.001(1-d)_

No person shall hold or exercise at the same time, more than one civil office of emolument, except for offices listed in Texas Constitution Article XVI, Section 40(a), unless otherwise specifically provided. _Tex. Const. Art. XVI, Sec. 40(a); State v. Pirtle, 887 S.W.2d 921 (Tex. Ct. Crim. App. 1994); Atty. Gen. Op. DM-212 (1993)_

State employees or individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not state officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts, including college districts (other than those in which they are employed). Such state employees or other individuals may not receive a salary for serving as members of such governing bodies, except that a faculty member or retired faculty member of a public institution of higher education may receive compensation for serving as a member of a gov-

It is not a violation of Government Code Chapter 572 or any other statute, rule, regulation, or the common law of the State of Texas for:

1. An employee of an institution of higher education, including a college district, who conceives, creates, discovers, invents, or develops intellectual property, to own or be awarded any amount of equity interest or participation in, or, if approved by the institutional governing board, to serve as a member of the board of directors or other governing board or as an officer or an employee of, a business entity that has an agreement with the state or a political subdivision of the state relating to the research, development, licensing, or exploitation of that intellectual property; or

2. An individual, at the request and on behalf of a university system or an institution of higher education, to serve as a member of the board of directors or other governing board of a business entity that has an agreement with the state or a political subdivision of the state relating to the research, development, licensing, or exploitation of intellectual property in which the university system or institution of higher education has an ownership interest.

The employee or individual must report to the appropriate person or persons at the institution at which the person is employed or on behalf of which the person is serving the name of such business entity in which the person has an interest or for which the person serves as a director, officer, or employee. The governing board of each institution shall include in the appropriate annual report required by Education Code 51.005 the information provided to it under this section during the preceding fiscal year.

Education Code 51.912 [See CT]

In the case of an institution, including a college district, that participates in a loan program under U.S.C. Title 20, the institution will:

1. Develop a code with respect to such loans with which the institution’s officers, employees, and agents shall comply, that:

a. Prohibits a conflict of interest with the responsibilities of an officer, employee, or agent of the institution with respect to such loans; and
b. At a minimum, includes the provisions described in 20 U.S.C. 1094(e);

2. Publish the code of conduct prominently on the institution’s website; and

3. Administer and enforce such code by, at a minimum, requiring that all of the institution’s officers, employees, and agents with responsibilities with respect to such loans be annually informed of the provisions of the code of conduct.


An institution of higher education’s code of conduct shall include the following requirements:

1. Ban on revenue-sharing arrangements: The institution shall not enter into any revenue-sharing arrangement, as defined by 20 U.S.C. 1094(e)(1)(B), with any lender.

2. Gift ban: No officer or employee of the institution who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or agent who has responsibilities with respect to education loans, shall solicit or accept any gift, as defined by 20 U.S.C. 1094(e)(2)(B), from a lender, guarantor, or servicer of education loans.

3. Contracting arrangements prohibited: Except as provided by 20 U.S.C. 1094(e)(3)(B), an officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or an agent who has responsibilities with respect to education loans, shall not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to education loans.

4. Interaction with borrowers: The institution shall not for any first-time borrower, assign, through award packaging or other methods, the borrower’s loan to a particular lender; or refuse to certify, or delay certification of, any loan based on the borrower’s selection of a particular lender or guaranty agency.

5. Prohibition on offers of funds for private loans: The institution shall not request or accept from any lender any offer of funds to be used for private education loans, as defined in 15 U.S.C. 1650, including funds for an opportunity pool loan,
defined by 20 U.S.C. 1094(e)(5)(B), to students in exchange for the institution providing concessions or promises regarding providing the lender with specified number of loans made, insured, or guaranteed under 20 U.S.C. Chapter 28, Subchapter IV and 42 U.S.C. Chapter 34, Subchapter I, Part C; a specified loan volume of such loans; or a preferred lender arrangement for such loans.

6. Ban on staffing assistance: Except as provided by 20 U.S.C. 1094(e)(6)(B), the institution shall not request or accept from any lender any assistance with call center staffing or financial aid office staffing.

7. Advisory board compensation: Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, shall be prohibited from receiving anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses incurred in serving on such advisory board, commission, or group.

20 U.S.C. 1094(e)
## DISCLOSURE

### GENERAL STANDARD

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

### SPECIFIC DISCLOSURES

#### SUBSTANTIAL INTEREST

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

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

#### INTEREST IN PROPERTY

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

#### CONFLICTS DISCLOSURE STATEMENT

The College President, as required by law, and the Vice President for Administrative Services, as required by the Board, shall file conflicts disclosure statements as promulgated by the Texas Ethics Commission and as specified by Local Government Code 176.003–.004. [See BBFA]

#### GIFTS

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

#### ENDORSEMENTS

An employee shall not recommend, endorse, or require students to purchase any product, material, or service in which the employee has a financial interest or that is sold by a company that employs or retains the employee during nonschool hours, unless the product, material, or service is recommended, endorsed, or required for a course the employee teaches and is reasonably related to the subject matter of the course and the course syllabus.

No employee shall require students to purchase a specific brand of supplies if other brands are equal and suitable for the intended instructional purpose.

#### SALES

An employee shall not use his or her position with the College District to attempt to sell products or services, unless the product or service is recommended, endorsed, or required for a course the employee teaches and is reasonably related to the subject matter of the course and the course syllabus.
employee teaches and is reasonably related to the subject matter of the course and the course syllabus.

**HOLDING PUBLIC OFFICE**

College District employees shall not be barred from serving as members of governing bodies of colleges other than those in which they are employed, or of school districts, cities, towns, or other local governmental districts or agencies. However, an employee shall receive no salary for serving as a member of the particular governing body.

**HONORARIUMS**

For purposes of this provision, activities that are traditionally compensated by payment of an honorarium shall not be considered outside employment. However, an employee shall not solicit, accept, or agree to accept an honorarium in consideration for services that the employee would not have been requested to provide but for the employee’s official position or duties.
See the following pages for forms to be used by employees for disclosing potential conflicts of interest:

Exhibit A: Affidavit Disclosing Substantial Interest in a Business Entity or in Real Property, as defined in Local Government Code 171.002 — 2 pages

Exhibit B: Affidavit Disclosing Interest in Property, under Government Code Chapter 553, Subchapter A — 2 pages

ADDITIONAL DISCLOSURE: The College President and any other employees identified by Board policy as being required to file the conflicts disclosure statement, in accordance with Local Government Code 176.003–.004, may access that form on the Texas Ethics Commission Web site at http://www.ethics.state.tx.us/forms/CIS.pdf.
AFFIDAVIT DISCLOSING SUBSTANTIAL INTEREST
IN A BUSINESS ENTITY OR IN REAL PROPERTY

STATE OF TEXAS
COUNTY OF _______________________________

I, ______________________________ (name), as an employee of the __________________ College District, make this affidavit and hereby on oath state the following: I have a substantial interest in:

☐ a business entity, as those terms are defined in Local Government Code Sections 171.001–171.002, that would experience a special economic effect distinguishable from its effect on the public by an action of the Board or the College District. [See BBFA]
or

☐ real property for which it is reasonably foreseeable that an action of the Board or College District will have a special economic effect on the value of the property distinguishable from its effect on the public.

The business entity or real property is (name/address of business or description of property):

________________________________________________________________________.

I ______________________________ have a substantial interest in this business entity or real property as follows: (check all that apply)

☐ Ownership of ten percent or more of the voting stock or shares of the business entity.
☐ Ownership of ten percent or more of the fair market value of the business entity.
☐ Ownership of $15,000 or more of the fair market value of the business entity.
☐ Funds received from the business entity exceed ten percent of my gross income for the previous year.
☐ Real property is involved and I have an equitable or legal ownership with a fair market value of at least $2,500.

The statements contained herein are based on my personal knowledge and are true and correct.

Signed this _______ day of __________________________ (month), _______ (year).

____________________________________
Signature of employee

____________________________________
Title
DATE ISSUED: 8/4/2011
LDU 2011.01
DBD(EXHIBIT)-AJC

ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF _____________________

Sworn to and subscribed before me on this _____ day of ___________ (month), ________ (year).

_____________________________________
Notary Public in and for the state of Texas

NOTE: This affidavit should be filed with the College President, Board President, or a designee before the Board takes action concerning the business entity or real property.
EXHIBIT B

AFFIDAVIT DISCLOSING INTEREST IN PROPERTY

STATE OF TEXAS
COUNTY OF _____________________

I, _______________________________(name), as College President of the ____________________
College District, make this affidavit and hereby on oath state the following:

I have a legal or equitable interest in property to be acquired with public funds, either by pur-
chase or condemnation.

The property is described as follows:

__________________________________________________________________________________.

The nature, type, and amount of interest, including but not limited to percentage of owner-
ship, I have in the property is:

__________________________________________________________________________________.

The interest was acquired on ___________________________ (date).

I swear that the information in this affidavit is personally known by me to be correct and con-
tains the information required by Section 553.002, Government Code.

Signed this ________ day of ______________________ (month), ________ (year).

____________________________________
ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF ________________________________

BEFORE ME, ___________________ (here insert the name and character of the officer administering the oath) on this day personally appeared

_____________________________ (affiant) known to me (or proved to me on the oath of

_____________________________ or through ___________________) (description of identity card
or other document) to be the person whose name is subscribed to the foregoing instrument
and acknowledged to me that he executed the same for the purposes and consideration
therein expressed.

Given under my hand and seal of office this _______ day of ___________________
(month), _____________ (year).

_____________________________________
Notary Public in and for the state of Texas

NOTE: This affidavit should be filed with the county clerk(s) within ten days before the
date on which the property is to be acquired, as provided by Government Code
553.002.
NEPOTISM

PROHIBITED

Except as provided by Government Code 573.043, this policy applies to relationships within the third degree by consanguinity (blood) or within the second degree by affinity (marriage). Gov’t Code 573.002

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

1. The individual is related to the public official within a degree described by Government Code 573.002; or

2. The public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court, and the individual is related to another member of the board, legislature, or court within a degree described by Government Code 573.002.


INDEPENDENT CONTRACTOR

The nepotism law governs the hiring of an individual, whether the employee is hired as an individual or an independent contractor. Atty. Gen. Op. DM-76 (1992)

COMPENSATION OF PROHIBITED EMPLOYEE

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible person if the official knows the individual is ineligible. Gov’t Code 573.083

CONSANGUINITY

Two persons are related to each other by consanguinity if one is a descendant of the other or they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose. Gov’t Code 573.022

An individual’s relatives within the third degree by consanguinity are the individual’s:

1. Parent or child (relatives in the first degree);

2. Brother, sister, grandparent, or grandchild (relatives in the second degree); and

3. Great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of an individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

Gov’t Code 573.023(c)

[See DBE(EXHIBIT)]
There is no distinction under the nepotism statute between half-blood and full-blood relations. Thus, half-blood relationships fall within the same degree as those of the full blood. *Atty. Gen. Op. LO-90-30 (1990)*

Two individuals are related to each other by affinity if they are married to each other or the spouse of one of the individuals is related by consanguinity to the other individual.

The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of the marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

*Gov’t Code 573.024*  
A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example, if two persons are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other person in the second degree by affinity.

A person’s relatives within the second degree by affinity are:

1. The person’s spouse;
2. Anyone related by consanguinity to the person’s spouse within one of the ways named in Government Code 573.023(c) (first or second degree); and
3. The spouse of anyone related to the person by consanguinity in one of the ways named in Government Code 573.023(c) (first or second degree).

*Gov’t Code 573.025*  
All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified, i.e., sworn in. Until the vacancy created by a board member’s resignation is filled by a successor, the board member continues to serve and have the duties and powers of office, and a relative within a prohibited degree of relationship is barred from employment. *Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Op. JM-636 (1987)*

The nepotism prohibitions do not apply to the appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if the individual is employed in the position immediately before the election or appointment of the public official to whom the person is related in a
prohibited degree and that prior employment is continuous for at least:

1. Thirty days, if the public official is appointed; or

2. Six months, if the public official is elected.

\textit{Gov't Code 573.062(a)}

**ABSTENTION**

If an individual continues in a position, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if the action applies only to the individual and is not taken regarding a bona fide class or category of employees. \textit{Gov't Code 573.062(b)} [See DBE(EXHIBIT)]

A “change in status” includes a reassignment within an organization, whether or not a change in salary level accompanies the reassignment. \textit{Atty. Gen. Op. JC-193 (2000)}

For an action to be “taken with respect to a bona fide category of employees,” the officeholder’s action must be based on objective criteria, which do not allow for the preference or discretion of the officeholder. \textit{Atty. Gen. Op. DM-46 (1991)}

**TRADING**

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual’s services are under the public official’s direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:

1. The individual is related to another public official within the prohibited degree; and

2. The appointment, confirmation of the appointment, or vote for the appointment or confirmation of the appointment would be carried out in whole or partial consideration for the other public official appointing, confirming the appointment, or voting for the appointment or confirmation of the appointment of an individual who is related to the first public official within a prohibited degree.

\textit{Gov't Code 573.044}

**FEDERAL FUNDS**

The rules against nepotism apply to employees paid with public funds, regardless of the source of those funds. Thus, the rules apply in the case of a teacher paid with funds from a federal grant. \textit{Atty. Gen. L.A. No. 80 (1974)}
An individual who violates Government Code Chapter 573, Subchapter C or Government Code 573.062 (the nepotism prohibitions) shall be removed from the individual's position. *Tex. Gov't Code 573.081-.082*

An individual commits an offense involving official misconduct if the individual violates Government Code Chapter 573, Subchapter C (Prohibition on Public Officials), Government Code 573.062(b) [see CONTINUOUS EMPLOYMENT and ABSTENTION] or Government Code 573.083 [see COMPENSATION OF PROHIBITED EMPLOYEE]. *Gov't Code 573.084*
These illustrations depict the relationships that violate the nepotism law.

**CONSANGUINITY** (Blood) Kinship

<table>
<thead>
<tr>
<th>First Degree</th>
<th>Parent</th>
<th>Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second Degree</td>
<td>Grandparent</td>
<td>Grandchild</td>
</tr>
<tr>
<td>Third Degree</td>
<td>Great-Grandparent</td>
<td>Great-Grandchild</td>
</tr>
</tbody>
</table>

**AFFINITY** (Marriage) Kinship

Public official's spouse is the prospective employee.

OR

Public official's spouse is prospective employee's:

OR

Prospective employee's spouse is the public official's:

<table>
<thead>
<tr>
<th>First Degree</th>
<th>Parent</th>
<th>Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second Degree</td>
<td>Grandparent</td>
<td>Grandchild</td>
</tr>
</tbody>
</table>

**NOTE:** The spouses of two persons related by blood are not by that fact related. The affinity chart supposes only one affinity relationship between the public official and prospective employee through either of their spouses.
An employee shall not engage in any form of outside employment or business opportunity, for self-employment or another employer, which would compete with, conflict with, or compromise College District interests or adversely affect the employee’s job performance and ability to fulfill all responsibilities to the College District. This prohibition shall extend to the unauthorized use of College District tools and equipment as well as the unauthorized use of application of any confidential information. Activities and conduct resulting from outside employment shall not be conducted while on College District time.

A College District employee is cautioned to carefully consider the demands that additional work activity will create before accepting outside employment. Outside employment shall not be considered an excuse for poor job performance, absenteeism, tardiness, leaving early, refusal to travel, refusal to work overtime, or refusal to work different hours. If outside work activity causes or contributes to job-related problems, it must be discontinued and, if necessary, normal disciplinary procedures shall be followed to deal with the specific problem.

In order to engage in outside employment, an employee shall receive approval for each job from his or her supervisor, the responsible Director or Vice President, and the College President in advance of performing such outside employment. This approval shall be renewed at least annually. The College President reserves the right to withdraw an approval at any time.
A public junior college may not employ or contract with an individual who was a member of the board of the junior college before the first anniversary of the date the individual ceased to be a member of the board of trustees. *Education Code 130.089*

A person or entity, including a college district, that hires or recruits an individual for employment must ensure that the individual properly:

1. Completes section 1—“Employee Information and Verification”—on the Form I-9 at the time of hire and signs the attestation with a handwritten or electronic signature in accordance with 8 C.F.R. 274a.2(h), or if an individual is unable to complete the Form I-9 or needs it translated, someone may assist him or her in accordance with 8 C.F.R. 274a.2(b); and

2. Present to the employer or the recruiter or referrer for a fee documentation as set forth in 8 C.F.R. 274a.2(b)(1)(v) establishing his or her identity and employment authorization within the time limits set forth in 8 C.F.R. 274a.2(b)(1)(ii) through (b)(1)(v).

*8 C.F.R. 274a.2(b)(1)(i)*

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

1. Within three business days of initial hiring.

2. An employer who hires an individual for employment for duration of less than three business days must comply at the time of hire.

An employer will not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.

When an employer hires an individual whom that person or entity has previously employed, if the employer has previously completed the Form I-9 and complied with the verification requirements set forth in 8 C.F.R. 274a.2(b) with regard to the individual, the employer may (in lieu of completing a new Form I-9) inspect the previously completed Form I-9 and, if upon inspection of the Form I-9, the employer determines that the Form I-9 relates to the individual and that the individual is still eligible to work, that previously executed Form I-9 is sufficient if the individual is hired within three years of the date of the initial execution of the Form I-9 and the employer updates the Form I-9 to reflect the date of rehire.
3. If an individual’s employment authorization expires, reverification on the Form I-9 must occur not later than the date work authorization expires.

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

NEW HIRE REPORTING

“Newly hired employee” means an employee who has not been previously employed by the employer or was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

Each Texas employer, including each college district, shall furnish to the State Directory of New Hires (Texas Attorney General’s Office) in the state in which a newly hired employee works a report of all new hires that contains the following seven required data elements: the employee name, the employee address, the employee social security number, the employee’s date of hire, the employer name, the employer address, and the federal employer identification number (FEIN).

Employers, at their option may also provide the following additional information in the report: the employee’s date of birth and the employee’s expected salary or wages, and employer payroll addresses for mailing of notice to withhold child support.

All employers shall report new hire information on a Form W-4 or an equivalent form by first class mail, telephonically, or electronically as determined by the employer and in a format acceptable to the Title IV-D agency. The Title IV-D agency reserves the right to decline any type of form that it deems as illegible or inappropriate for new hire report processing and requests employers who elect to submit new hire reports via hard copy to adopt the Employer New Hire Reporting Form supplied by the IV-D agency.

42 U.S.C. 653a(b)-(c); Family Code 234.104; 1 TAC 55.303(a)-(c)

DEADLINE

Employer new hire reports are due:

1. Not later than 20 calendar days after the date the employer hires the employee; or

2. In the case of an employer transmitting reports electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

Employer new hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.

1 TAC 55.303(d)
An employer college district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105. 42 U.S.C. 653a(d); Family Code 234.105

It shall be unlawful for any federal, state or local government agency, including a college district, to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his or her social security number. 5 U.S.C. 552a Note; PL 93-579, 7(b), 88 Stat. 1896 (1974)

The above provision shall not apply with respect to:

1. Any disclosure which is required by federal statute.
2. The disclosure of a social security number to a federal, state, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual.


It is the policy of the United States that any state (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver’s license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such state (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security. 42 U.S.C. 405(c)(2)(C)

A federal, state, or local agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it. 5 U.S.C. 552a Note; PL 93-579, 7(b), 88 Stat. 1896 (1974)

Each institution of higher education, including each college district, is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person who is an applicant for a security-sensitive position at the institution. The institution may deny employment to an applicant for a security-sensitive position who fails to provide a complete set of fingerprints upon request.
“Security-sensitive position” means an employment position held by an employee who:

1. Handles currency;
2. Has access to a computer terminal;
3. Has access to the personal information or identifying information of another person;
4. Has access to the financial information of the college district or another person;
5. Has access to a master key; or
6. Works in a location designated as a security-sensitive area.

A security-sensitive position shall be so identified in the job description and advertisement for the position.

The criminal history record information may be used only for the purpose of evaluating applicants for employment in security-sensitive positions.

The criminal history record information may not be released or disclosed to any person except on court order or with the consent of the person who is the subject of the criminal history record information.

All criminal history record information shall be destroyed by the chief of police of the institution of higher education as soon as practicable after the individual becomes employed in a security-sensitive position and after the expiration of any probationary term of employment or, if the individual is not hired for a security-sensitive position, after the information is used for its authorized purpose.

Gov’t Code 411.094; Education Code 51.215

A person, agency, department, political subdivision, or other entity that is authorized by Government Code Chapter 411, Subchapter F to obtain from DPS criminal history record information maintained by DPS that relates to another person is authorized to:

1. Obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to that person; or
2. Obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov’t Code 411.087(a)
An institution of higher education, including a college district, may employ a person who has retired under the Teacher Retirement System (Government Code Title 8, Subtitle C Government Code) or the optional retirement program (Government Code Chapter 830) if:

1. The governing board of the institution determines that the employment is in the best interests of the institution; and
2. The person has been retired for at least 30 days before the effective date of the employment, except that a person retired under the optional retirement program may be rehired after retirement without a break in service.

The governing board may pay a person employed an amount considered by the governing board to be appropriate, notwithstanding any other provision of law.

*Education Code 51.964*

An individual who was under the permanent managing conservatorship of the Department of Family and Protective Services on the day preceding the individual’s 18th birthday is entitled to preference in employment with a state agency, including a college district, over other applicants for the same position who does not have a greater qualification. An individual is entitled to an employment preference under this chapter only if the individual is 25 years of age or younger. *Gov’t Code 672.002(a), .005*

**EXCEPTIONS**

This section does not apply to the position of private secretary or deputy of an official or department, or to an individual holding a strictly confidential relation to the employing officer. *Gov’t Code 672.002(b)*

**CONFLICT WITH FEDERAL LAW OR GRANT**

To the extent that this preference conflicts with federal law or a limitation provided by a federal grant to a state agency, this section shall be construed to operate in harmony with federal law or limitation of the federal grant. *Gov’t Code 672.003*

**GRIEVANCE PROCESS**

An individual entitled to an employment preference under this section who is aggrieved by a decision of a state agency to which this section applies relating to hiring the individual, or relating to retaining the individual if the state agency reduces its workforce, may appeal the decision by filing a written complaint with the governing body of the state agency. The governing body of a state agency that receives a written complaint shall respond to the complaint not later than the 15th business day after the date the governing body receives the complaint. The governing body may render a different hiring decision than the decision that is the subject of the complaint.
A program operator may not employ an individual in a position involving contact with campers at a campus program for minors unless:

1. The individual submits to the program operator or the campus program for minors has on file documentation that verifies the individual within the preceding two years successfully completed the training and examination program on sexual abuse and child molestation; or

2. The individual successfully completes the campus program for minors' training and the examination program on sexual abuse and child molestation, which must be approved by the department, during the individual's first five days of employment by the campus program for minors, and the campus program issues and files documentation verifying successful completion.

The requirement does not apply to an individual who is a student enrolled at the institution of higher education or a private or independent institution of higher education, or at which the campus program is conducted, and whose contact with campers program operator district that operates a campus program for minors must:

1. Submit to the Texas Department of State Health Services (DSHS), on the form and within the time prescribed by DSHS, verification that each employee of the campus program for minors has complied with the training and examination requirements and the fee assessed by DSHS; and

2. Retain in the operator's records a copy of the required documentation for each employee until the second anniversary of the examination date.

"Campus program for minors" means a program that:

1. Is operated by or on the campus of an institution of higher education or a private or independent institution of higher education;

2. Offers recreational, athletic, religious, or educational activities for at least 20 campers who are not enrolled at the institution; and attend or temporarily reside at the camp for all or part of at least four days; and

3. Is not a day camp or youth camp as defined by Health and
CONSUMER CREDIT REPORTS
DEFINITIONS

Safety Code 141.002 or a facility or program required to be licensed by the Department of Family and Protective Services.

*Education Code 51.976(a)(2), (b)–(d)*

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

“Consumer report” includes any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for employment purposes.

“Consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

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

15 U.S.C. 1681a(d), (f), (h), (k)

A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless:

1. A clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

2. The consumer has authorized in writing (which authorization may be made on the document referred to in item 1) the procurement of the report by that person.

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

EXCEPTION

If a consumer described in 15 U.S.C. 1681b(2)(C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be
procured in connection with that application the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer’s rights under 15 U.S.C. 1681m(a)(3); and the consumer shall have consented orally, in writing, or electronically to the procurement of the report by that person. 15 U.S.C. 1681b(b)(2)(B)

**ADVERSE ACTION**

In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide the consumer to whom the report relates a copy of the report and a description in writing of the person’s rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission. 15 U.S.C. 1681b(b)(3)

**Note:** The following provisions apply to a college district that uses consumer reports.

**ADDRESS DISCREPANCIES**

“Notice of address discrepancy” means a notice sent to a user by a consumer reporting agency described in 15 U.S.C. 1681a(p) pursuant to 15 U.S.C. 1681c(h)(1) that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.

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

If a college district regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, a user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency from whom it received the notice of address discrepancy when the user can form a reasonable belief that the consumer report relates to the consumer about whom the user requested the report, establishes a continuing relationship with the consumer, and regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy relating to the consumer was obtained.

16 C.F.R. 641.1
DISPOSAL OF RECORDS

Any person, including a college district, who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

“Consumer information” means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

“Dispose,” “disposing,” or “disposal” means discarding or abandoning of consumer information, or the sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

Reasonable measures to protect against unauthorized access to or use of consumer information in connection with its disposal include the following examples. These examples are illustrative only and are not exclusive or exhaustive methods for complying with the rule in 16 C.F.R. Part 682:

1. Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so the information cannot practicably be read or reconstructed;

2. Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or

3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of material, specifically identified as consumer information, in a manner consistent with this rule.

16 C.F.R. 682.1(b)–(c), .3
FILLING VACANCIES

The College President or designee shall advertise employment opportunities with the College District and shall establish guidelines for posting notices of vacancies. The guidelines shall advance the Board’s commitment to equal employment opportunities. A current employee shall be eligible to apply for any vacancy for which the employee is qualified.

APPLICATIONS

An individual interested in employment with the College District shall complete an approved employment application. In order to ensure equal employment opportunity compliance, all employment applications shall be processed by the Department of Human Resources.

Information in applications for contractual positions shall be verified before a contract is offered, and information for noncontractual positions shall be verified before hiring or as soon as possible thereafter. Any falsification of either information or credentials shall be cause for dismissal or denial of employment.

EMPLOYMENT

The College District shall follow prudent personnel practices for the recruiting, interviewing, screening, and employing of all personnel. Initial and renewed employment of all professional-level personnel shall be recommended by the College President and approved by the Board.

CONTRACT AUTHORITY

Employment contracts shall not become effective unless and until they are signed by the College President and the employee and are then delivered to the College President.

ORAL AGREEMENTS AND REPRESENTATIONS

No employee other than the College President or specifically designated representative shall have any authority to make oral representations or agreements for employment or for any specified length of time, or to make any other agreement or presentation regarding employment.
### PROPERTY INTEREST

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

### ADMINISTRATOR CONTRACTS

The governing board of an institution of higher education, including a college district, may enter into an employment contract with an administrator who is to be paid in whole or in part from appropriated funds only if, before the date the contract is executed, the governing board determines that the contract is in the best interest of the institution.

A contract entered into by the governing board under this section may not:

1. Provide for employment for more than three years;
2. Allow for severance or other payments on the termination of the contract to exceed an amount equal to the discounted net present cash value of the contract on termination at a market interest rate agreed upon in the contract;
3. Allow for development leave that is inconsistent with Education Code 51.105; or
4. Award tenure in any way that varies from the institution’s general policy on the award of tenure.

The institution of higher education may not pay a salary to a person who is reassigned from an administrative position to a faculty or other position at the institution that exceeds the salary of other persons with similar qualifications performing similar duties.

*Education Code 51.948(a)–(c)*

“Administrator” means a person who has significant administrative duties relating to the operation of the institution, including the operation of a department, college, program, or other subdivision of the institution. *Education Code 51.948(g)(1)*

### FACULTY CONTRACTS

“Contract” means an agreement between an institution of higher education or its authorized agent and a faculty member that establishes the terms of the faculty member’s employment, including the faculty member’s responsibilities and salary, for an academic year. *Education Code 51.943(a)(1)*

“Faculty member” means a person who is employed full time by an institution of higher education as a member of the faculty whose
primary duties include teaching or research. The term does not include:

1. A person employed in the classified personnel system of the institution or a person employed in a similar type of position if the institution does not have a classified personnel system; or

2. A person who holds faculty rank but who spends a majority of the person’s time for the institution engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate or assistant provost, dean, or associate or assistant dean.

*Education Code 51.943(a)(2)*

**OFFER DEADLINE**

Except as provided by Education Code 51.943(c), an institution of higher education, including a college district that determines it is in its best interest to reappoint a faculty member for the next academic year shall offer the faculty member a written contract for that academic year not later than 30 days before the first day of the academic year. *Education Code 51.943(b)*

For the purposes of this section, an institution of higher education is not required to provide an annual contract to tenure or tenure-track faculty but must provide tenure and tenure-track faculty with any written notification required in the institution’s tenure policy of a change in a term of employment according to the policies of the institution, but no later than the 30th day prior to the change. *Education Code 51.943(c)*

This section does not prohibit an institution of higher education from entering into a contract with a faculty member for a period longer than an academic year. *Education Code 51.943(f)*

**NOTICE IF UNABLE TO COMPLY**

If the institution of higher education is unable to comply with Education Code 51.943(b), the institution shall:

1. Provide the faculty member with written notification that the institution is unable to comply;

2. Include in the written notification reasons for its inability to comply; and

3. Specify in the written notification a time by which it will offer a written contract to the faculty member for the applicable academic year.

*Education Code 51.943(d)*

**FAILURE TO OFFER**

If the institution does not offer the faculty member a written contract before the 61st day after the first day of the academic year and the
institutions retains the faculty member for that academic year without a written contract, the institution must retain the faculty member for that academic year under terms and conditions, including terms governing the faculty member’s compensation, that are at least as favorable to the faculty member’s employment for the preceding academic year, unless the institution and the faculty member subsequently enter into a different written contract. *Education Code 51.943(e)*

**NO ADDITIONAL RIGHTS**

Nothing in this section shall be deemed to provide a faculty member who does not hold tenure additional rights, privileges, or remedies or to provide an expectation of continued employment beyond the period of a faculty member’s current contract. *Education Code 51.943(g)*
No College District employee shall carry an expectation of tenure, as the College District does not grant tenure to its employees.
The employment-at-will doctrine is the law of Texas, under which an employer has no duty to an employee regarding continuation of employment. *Jones v. Legal Copy Inc.*, 846 S.W.2d 922 (Tex. App.—Houston [1st Dist.] 1993, no writ)

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


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

**EXCEPTION**

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

**DISMISSAL PROCEDURE**

An at-will employment relationship, standing alone without benefit of recognized exception, triggers no due process requirement or right. *Mott v. Montgomery County, Tex.*, 882 S.W.2d 635 (Tex. App.—Beaumont, 1994)

Termination of employment is a condition of work that is a proper subject for the grievance process. *Fibreboard Paper Products Corp. v. Nat’l Labor Relations Bd.*, 379 U.S. 203 (1964); *Sayre v. Mullins*, 681 S.W.2d 25 (Tex. 1984) [See DGBA]
The College President or designated representatives shall be responsible for hiring at-will employees with appropriate skills and qualifications to fill positions with the College District.

Part-time instructors, who are employed on a course-by-course basis, shall be considered at-will employees.
Employees of the College District shall be employed under an employment contract or on an at-will basis.

**CONTRACT EMPLOYEES**

Contract employees shall include full-time teaching faculty, directors of instruction, and other full-time teaching faculty with administrative responsibilities. Full-time nonteaching professional personnel, including administrative officers, program directors, librarians, and counselors, shall also be employed by contract.

**NONCONTRACT / AT-WILL EMPLOYEES**

Noncontract staff employed on an at-will basis shall include secretarial and clerical staff, paraprofessionals, housekeepers, groundskeepers, maintenance workers, custodial personnel, bookstore personnel, food service personnel, part-time or temporary faculty, and any other position not designated as receiving a contract.

**FULL-TIME, PART-TIME, AND TEMPORARY EMPLOYEES**

For determination of benefits eligibility, the classifications promulgated by the Teacher Retirement System of Texas (TRS) shall govern the definitions of full- and part-time employees. General definitions are as follows:

1. A full-time employee shall be required to work the number of hours designated in a standard workweek or comply with the requirements of teaching a standard work load. [See also DJ(LOCAL)]

2. A part-time employee shall be defined as one who works half or less than half of a standard workweek or a standard work load.

3. A limited full-time employee shall be one who works more than half-time but less than full-time.

4. A temporary employee shall be one who works a full- or part-time schedule but only for a specific period of time, which is less than half of a standard employment year.
The College President or designee shall define the qualifications, duties, and responsibilities of all positions and shall ensure that job descriptions are current and accessible to employees and supervisors.
The governing board of each institution of higher education, including each college district, shall establish faculty compensation policies that, to the greatest extent possible, provide the faculty with an average salary and benefits at least equal to the average of that provided by similar institutions nationwide having a similar role and mission.

The Coordinating Board shall include information relating to national average salary and benefits and shall correlate that information to Texas schools having similar roles and missions, in the master plan for higher education and in the appropriate reports to the legislature.

Education Code 51.908
### FAIR LABOR STANDARDS ACT

#### MINIMUM WAGE AND OVERTIME

Unless an exemption applies, each employer, including each college district, shall pay each of its employees not less than minimum wage for all hours worked. *29 U.S.C. 206(a)*

Unless an exemption applies, an employer shall pay an employee not less than one and one-half times the employee’s regular rate of pay for all hours worked in excess of 40 in any workweek, in accordance with 29 C.F.R. Part 778. *29 U.S.C. 207(a)(1); 29 C.F.R. 778*

### BREAKS FOR NONEXEMPT EMPLOYEES

Rest periods of up to 20 minutes must be counted as hours worked. Coffee breaks or time for snacks are rest periods, not meal periods. *29 C.F.R. 785.18, .19(a)*

Bona fide meal periods of 30 minutes or more are not counted as hours worked if the employee is completely relieved from duty. The employee is not relieved from duty if the employee is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his or her desk is working while eating. It is not necessary that an employee be permitted to leave the premises if the employee is otherwise completely freed from duties during the meal period. *29 C.F.R. 785.19*

### BREAKS FOR NURSING MOTHERS

An employer shall provide a nonexempt employee a reasonable break to express breast milk, each time the employee needs to express breast milk for her nursing child, for one year after the child’s birth. An employer shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

An employer is not required to compensate the employee receiving reasonable break time for any work time spent for such purpose.

An employer that employs fewer than 50 employees is not subject to these requirements if the requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business. *29 U.S.C. 207(r)*

### COMPENSATORY TIME ACCRUAL

Nonexempt employees may receive, in lieu of overtime compensation, compensatory time off at a rate of not less than one and one-half hours for each hour of overtime work, pursuant to an agreement or understanding arrived at between the employer and employee before the performance of the work. Such agreement or understanding may be informal, such as when an employee works...
overtime knowing that the employer rewards overtime with compensatory time.

An employee may accrue not more than 240 hours of compensatory time. If the employee’s overtime work included a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 480 hours of compensatory time. After the employee has reached these limits, the employee shall be paid overtime compensation for additional overtime work.

29 U.S.C. 207(o)(1)-(2), (3)(A); 29 C.F.R. 553.23(c)(1); Christensen v. Harris County, 529 U.S. 576 (2000)

Compensation paid to an employee for accrued compensatory time shall be paid at the regular rate earned by the employee at the time of payment. An employee who has accrued compensatory time off shall be paid for any unused compensatory time upon separation from employment at the rates set forth at 29 U.S.C. 207(o)(4). 29 U.S.C. 207(o)(3)(B), (4)

An employee who has requested the use of compensatory time shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer.

The Fair Labor Standards Act does not prohibit an employer from compelling the use of accrued compensatory time.

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

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

The term “employee employed in a bona fide administrative capacity” shall mean any employee:

1. Compensated on a salary or fee basis at a rate of not less than $455 per week, exclusive of board, lodging, or other facilities;

2. Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
3. Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

29 C.F.R. 541.200(a) The term “employee employed in a bona fide administrative capacity” also includes an employee:

1. Who is compensated for services on a salary or fee basis at a rate of not less than $455 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the educational establishment by which employed; and

2. Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

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

Employees engaged in academic administrative functions include:

1. Department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, and the like;

2. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and

3. Other employees with similar responsibilities.

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

29 C.F.R. 541.204 An “employee employed in a bona fide professional capacity” shall mean any employee:
1. Compensated on a salary or fee basis at a rate of not less than $455 per week, exclusive of board, lodging, or other facilities; and

2. Whose primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

29 C.F.R. 541.300(a)

The term “employee employed in a bona fide professional capacity” also means any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term “educational establishment” means an institution of higher education or other educational institution. The salary basis requirements do not apply to teaching professionals.

Exempt teachers include: regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools’ responsibility in contributing to the educational development of the student.

The possession of an elementary or secondary teacher’s certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. However, a teacher’s certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

29 C.F.R. 541.204(b), .303
OTHER PROFESSIONALS

The professional employee exemption also applies to learned professionals, as described by 29 C.F.R. 541.301; creative professionals, as described by 29 C.F.R. 541.302; and employees engaged in the practice of law or medicine, as described by 29 C.F.R. 541.304.

COMPUTER EMPLOYEES

Computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field are eligible for exemption as professionals. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.

The exemption applies to any computer employee compensated on a salary or fee basis at a rate of not less than $455 per week, exclusive of board, lodging or other facilities and to any computer employee compensated on an hourly basis at a rate not less than $27.63 an hour. In addition, the exemption applies only to computer employees whose primary duty consists of:

1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

2. The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

3. The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties that qualify the employees for exemption under 29 C.F.R. Part 541, Subpart B or Subpart C. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific, or engineering problems of the employer or the employer’s customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion, or other change of status of the other programmers are
given particular weight, generally meets the duties requirements for the executive exemption.

29 C.F.R. 541.400, .402

**SALARY BASIS**

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis as described in 29 C.F.R. 541.600, unless the employee is a teacher or the employee holds a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof. Subject to the exceptions listed in 29 C.F.R. 541.602, an employee must receive the full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. An employer that makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay exempt employees on a salary basis. 29 C.F.R. 541.600, .602(a), .603

**HIGHLY COMPENSATED EMPLOYEES**

An employee with total annual compensation, as described by 29 C.F.R. 541.601, of at least $100,000 is deemed exempt if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in 29 C.F.R. Part 541, Subparts B, C, or D. 29 C.F.R. 541.601

**PARTIAL-DAY DEDUCTIONS**

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

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

Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the work
SAFE HARBOR POLICY

If an employer has a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the college district will not lose the deduction unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

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

29 C.F.R. 541.603(d)

WAGE AND HOUR RECORDS

Every employer shall maintain and preserve payroll or other records for nonexempt employees containing the information required by the regulations under the Fair Labor Standards Act. 29 C.F.R. 516.2(a)

EMPLOYEE WITH MULTIPLE APPOINTMENTS

A full-time employee of an institution of higher education, including a college district, who has appointments to more than one position at the same institution may receive pay for working more than 40 hours in a week if the institution determines that pay in lieu of compensatory time is in the best interests of the institution. Education Code 51.963

PAY INCREASES GENERALLY

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

MERIT SALARY INCREASES

An institution of higher education, including a college district, may grant merit salary increases, including one-time merit payments, to employees described by this section. A merit salary increase made under Education Code 51.962 is compensation for purposes of Government Code Chapter 659, and salary and wages and member compensation for purposes of Government Code Title 8. An institution of higher education may pay a merit salary increase from any funds. Before awarding a merit salary increase, an institution of higher education must adopt criteria for the granting of merit salary increases. To be eligible for a merit salary increase, an employee must have been employed by the institution of higher education for the six months immediately preceding the effective date.
of the increase and at least six months must have elapsed since the employee’s last merit salary increase.

For employees employed by the institution of higher education for more than six months, the requirement that six months elapse between merit salary increases does not apply to a one-time merit payment if the chief administrative officer of the institution of higher education determines in writing that the one-time merit payment is made in relation to the employee’s performance during a natural disaster or other extraordinary circumstance.

*Education Code 51.962*

**SAVING ADVANCES AND LOANS**

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

**PAYMENTS IN EXCESS OF CONTRACTUAL AMOUNT**

A political subdivision, including a college district, may not pay an employee or former employee more than an amount owed under a contract with the employee unless the political subdivision holds at least one public hearing under this section.

Notice must be given of the hearing in accordance with notice of a public meeting under Government Code Chapter 551, Subchapter C.

The governing body of the political subdivision must state the following at the public hearing:

1. The reason the payment in excess of the contractual amount is being offered to the employee or former employee, including the public purpose that will be served by making the excess payment; and

2. The exact amount of the excess payment, the source of the payment, and the terms for the distribution of the payment that effect and maintain the public purpose to be served by making the excess payment.

*Local Gov’t Code 180.007*

**NOTICE REGARDING EARNED INCOME TAX CREDIT**

Not later than March 1 of each year, each employer, including every college district, shall provide to the employee’s information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

1. In person;

2. Electronically at the employee’s last known e-mail address;
3. Through a flyer included, in writing or electronically, as a payroll stuffer; or

4. By mailing the information to the employee at the employee's last known address by U. S. first class mail.

An employer may not satisfy this requirement solely by posting information in the workplace.

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

_Labor Code 104.001–.003_

**PAYDAY LAW EXEMPTION**

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

**INFORMATION REGARDING STAFF COMPENSATION**

“Compensation” includes an emolument provided in lieu of base salary or wages or a supplement to base salary or wages. _Gov't Code 659.026(a)(1)_

“Executive staff” means:

1. The director, executive director, commissioner, administrator, or other individual who is appointed by the governing body of a state agency or by another state officer to act as the chief executive officer or administrative head of the agency and who is not an appointed officer; and

2. Other management or senior-level staff members of a state agency who directly report to the individual listed in item 1.

_Gov't Code 659.026(a)(2)_

**INTERNET POSTING**

A state agency, including a college district, shall make available to the public by posting on the agency's Internet website:

1. The number of full-time equivalent employees employed by the agency;

2. The amount of legislative appropriations to the agency for each fiscal year of the current state fiscal biennium;

3. The agency’s methodology, including any employment market analysis, for determining the compensation of executive staff employed by the agency, along with the name and position of the person who selected the methodology;

4. Whether executive staff are eligible for a salary supplement;

5. The market average for compensation of similar executive staff in the private and public sectors;
6. The average compensation paid to employees employed by the agency who are not executive staff; and

7. The percentage increase in compensation of executive staff for each fiscal year of the five preceding fiscal years and the percentage increase in legislative appropriations to the agency each fiscal year of the five preceding fiscal years.

Gov't Code 659.026(b)

<table>
<thead>
<tr>
<th>GIFTS, GRANTS, AND DONATIONS FOR SALARY SUPPLEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONFLICT OF INTEREST PROVISIONS</td>
</tr>
<tr>
<td>INTERNET POSTING</td>
</tr>
<tr>
<td>REPORTS</td>
</tr>
<tr>
<td>GENERALLY</td>
</tr>
</tbody>
</table>

A state agency, including a college district, by rule shall adopt conflict of interest provisions regarding the acceptance by the agency of a gift, grant, donation, or other consideration to be used as a salary supplement for an employee of the agency. The governing board of an institution of higher education shall adopt the conflict of interest provisions in the same manner as the board adopts other policies applicable to the institution. The agency shall post the conflict of interest provisions on the agency's Internet website. **Gov't Code 659.0201(c)**

A state agency that accepts a gift, grant, donation, or other consideration from a person that the person designates to be used as a salary supplement for an employee of the agency shall post on the agency's Internet website, in addition to the information required by Government Code 659.026, the amount of each gift, grant, donation, or other consideration provided by the person that is designated to be used as a salary supplement for an employee of the agency. The agency may not post the name of the person. **Gov't Code 659.0201(b)**

The state auditor shall adopt a schedule and format for reporting information required by this section that does not require the release of information that identifies an anonymous donor. **Gov't Code 659.0201(h)**

Each state agency receiving a gift, grant, donation, or other consideration from a person that is designated to be used as a salary supplement for a named person, position, or endowment shall report the following information to the state auditor in the form determined by the state auditor:

1. Whether the person making the gift, grant, or donation or providing other consideration to the state agency is an individual or an entity;

2. If the person is an entity, the type of entity;

3. If the entity is a nonprofit entity or organization, whether the entity is classified as a supporting organization by the Internal Revenue Service;
4. If the entity is classified as a supporting organization by the Internal Revenue Service, the type of supporting organization, the name of the supported organization, and any other information relating to that classification;

5. Any internal or external oversight procedures the state agency has established to monitor the use of any gift, grant, donation, or other consideration the agency receives; and

6. How the state agency uses gifts, grants, donations, and other consideration the agency receives, including whether they are used to provide salary supplements for agency employees.

Gov't Code 659.0201(i)

If the person making a gift, grant, or donation or providing other consideration to the state agency for the purpose of a salary supplement is an entity created solely to provide support for the state agency, the entity shall report to the agency:

1. The name of each person who makes gifts, grants, or donations, or provides other consideration to the entity, in an amount or having a value that exceeds $10,000, unless the person has made a request to the entity to remain anonymous; and

2. The amount or value of each specific gift, grant, donation, or other consideration.

A state agency that receives the gift, grant, donation, or other consideration shall compile the information the agency receives into a report and submit the report to the state auditor and the legislature. The state auditor may review the report to identify any conflicts of interest or any other areas of risk. The state auditor shall report the results of the audit to the legislature.

The information provided to the institution of higher education is confidential and is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

Gov't Code 659.0201(d)–(g)
Personnel shall be paid according to a salary schedule or wage scale adopted annually by the Board after a recommendation by the College President. The College District shall have an equitable schedule for the following categories:

1. Faculty;
2. Classified Secretarial/Clerical/Technical employees;
3. Classified Plant Services; and
4. Administrative/Professional.

FACULTY SALARY SCHEDULE

The salary schedule for faculty shall be based on the number of years of teaching experience and college credit earned beyond the highest degree. Original placement on the salary schedule shall be based on criteria approved by the Board.

Compensation shall be awarded for college credit beyond the highest degree for every additional 12 hours of credit earned. Such coursework shall be approved by the Executive Vice President of Instruction.

The faculty salary schedule shall provide for annual step increases through step 35, subject to the availability of funds, and as determined by the Board.

ADMINISTRATIVE / PROFESSIONAL SALARY SCHEDULE

Placement on the administrative/professional salary schedule shall be determined by the job requirements contained in the job description for the position, the position title, formal educational requirements, and experience of the employee. Placement shall be determined in consultation with the appropriate administrator. Original placement shall be based on two-for-one relevant experience, up to step three, and college degree beyond the educational requirements of the position.

INCENTIVE PAY

An administrative/professional employee who has earned a relevant degree from an accredited institution above what is required for the position, as determined by the Director of Human Resources and College Relations and the appropriate administrator, shall receive educational incentive pay above the base pay, effective September 1 of each year, contingent upon available funding.

Incentive pay amounts shall include:

<table>
<thead>
<tr>
<th>Degree Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate’s Degree</td>
<td>$500</td>
</tr>
<tr>
<td>Bachelor’s Degree after Associate’s Degree</td>
<td>$500</td>
</tr>
</tbody>
</table>
DEA(LOCAL)

Bachelor’s Degree with no Associate’s Degree $1000

Master’s Degree $1500

Second Master’s Degree $1000

Doctorate Degree $3000

Current administrative/professional employees who do not meet minimum educational requirements for their position shall have their base salary reduced by amounts equal to the above-defined incentive pay.

STEP INCREASES

Subject to Board approval, administrative/professional staff shall receive annual step increases, effective September 1 of each year. An employee must have worked at least six continuous months prior to September 1 to receive any step increase.

MOVING FROM ONE CLASSIFICATION TO ANOTHER

An administrative/professional employee moving from one classification to another on the salary schedule shall be placed on the schedule at the base salary for the new position plus years of relevant College District experience at the rate of two-for-one above what is required for the position. Relevant experience shall be determined by the Director of Human Resources and College Relations and the appropriate administrator.

A classified employee moving to an administrative/professional position shall be placed on the schedule at the base salary.

An employee moving down more than one pay grade shall be required to take the salary of the new position.

REQUESTING A FORMAL REVIEW

The supervisor shall request a formal review for an existing position to the Director of Human Resources and College Relations, via his or her administrator, for a change in job title, job description, and/or position upgrade or reclassification. Examples of items that would lead to such a request include change in scope of duty, increase in volume of work, increase in level of administrative responsibilities, and increase in educational requirements.

Any recommendation of the Director of Human Resources and College Relations must be approved by the College President.

The College President shall appoint a standing committee to hear appeals regarding placement on the administrative/professional salary schedule, requests for changes to job titles or job descriptions, and requests for position upgrades or reclassification. Recommendations of this committee shall be submitted to the College President for decision and action, if any is required.
The College President’s decision, which shall be final, shall be communicated to the Director of Human Resources and College Relations.

**CLASSIFIED SALARY SCHEDULE**

Placement on the classified secretarial/clerical/technical salary schedule or the classified plant services salary schedule shall be determined by the job requirements contained in the job description for the position, the position title, formal educational requirements, and experience of the position. Placement shall be determined by the Director of Human Resources and College Relations, whose decision shall be determined by the job evaluation plan adopted by the Board.

Original placement of new employees shall be based upon two-for-one relevant experience, up to step three, and college degree beyond the educational requirements of the position.

**INCENTIVE PAY**

An employee who has earned either an Associate’s Degree or higher, a certificate of completion from an accredited institution equivalent to at least 30 hours of credit courses, or a credential from a nationally recognized certifying organization shall receive incentive pay. Determination of the eligibility for incentive pay shall be made by the Director of Human Resources and College Relations. Incentive pay amounts shall be $250 for a certificate or credential and $350 for an Associate’s Degree or above.

**STEP INCREASES**

Subject to Board approval, each classified employee shall receive an annual step increase. An employee must have worked six continuous months prior to that date to receive the increase. A full year of service shall be counted for classified employees who began employment with the College District anytime between September 1 and March 1.

**MOVING FROM ONE CLASSIFICATION TO ANOTHER**

A classified employee moving to a higher classification shall be placed on the salary schedule equivalent to three full steps in his or her current classification, or step 0 of the new classification, whichever is greater.

An employee moving down more than one pay grade shall be required to take the salary of the new position.

**REQUEST FOR FORMAL REVIEW**

The supervisor shall request a formal review for an existing position to the Director of Human Resources and College Relations, via his or her administrator, for a change in job title, job description, and/or position upgrade or reclassification. Examples of items that would lead to such a request include change in scope of duty, increase in volume of work, increase in level of administrative responsibilities, and increase in educational requirements.
Establishing the classification level shall be determined from the Board-adopted job evaluation plan.

The College President must approve any recommendation of the Director of Human Resources and College Relations.

**APPEALS**

The College President shall appoint an ad hoc committee to hear appeals regarding placement on the classified salary schedule, requests for changes in job titles or descriptions, and requests for position upgrades or reclassification. Recommendations of this committee shall be submitted for the College President for decision and action, if any is required.

The College President’s decision, which shall be final, shall be communicated to the Director of Human Resources and College Relations.

**SALARY OF PART-TIME INSTRUCTORS**

The salary for part-time instructors teaching credit courses shall be paid on a rate per contact hour of scheduled instruction. When a part-time instructor has taught six courses for the College District, the rate of pay shall be increased. Rates for contact hour pay shall be recommended by the College President and approved by the Board.

Part-time instructors teaching noncredit courses shall be paid in one of three ways: a percentage of fees collected for a specified offering, a fixed rate per student, or by special arrangement. The actual salary shall be negotiated by the employee and program planner and must be approved by the appropriate administrator.

**MID-YEAR PAY INCREASES**

A contract employee’s pay shall not be increased after performance on the contract has begun unless there is a change in the employee’s job assignment or duties that warrants additional compensation. Any such changes in pay during the term of the contract shall require Board approval.

**NONCONTRACT EMPLOYEES**

The College President may grant a pay increase to a noncontract employee after duties have begun only when there is a change in the employee’s job assignment or duties, or when an adjustment in the market value of the job warrants additional compensation. The College President shall report any such pay increases to the Board at the next regular meeting.

**CLASSIFICATION OF POSITIONS**

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

**EXEMPT**

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

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

NONEXEMPT

Nonexempt employees may be compensated on an hourly basis or on a salary basis. Employees who are paid on an hourly basis shall be compensated for all hours worked. Employees who are paid on a salary basis are paid for a 40-hour workweek and do not earn additional pay unless the employee works more than 40 hours.

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

Any vacation leave, sick leave, or holiday shall not be considered hours worked for the purpose of calculating overtime.

WORKWEEK DEFINED

For purposes of FLSA compliance, the workweek for College District employees shall be 12:00 a.m. Saturday until 11:59 p.m. Friday.

COMPENSATORY TIME

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

Compensatory time earned by nonexempt employees may not accrue beyond a maximum of 90 hours. If an employee has a balance of more than 90 hours of overtime, the employee shall be required to use compensatory time or, at the College District’s option, shall receive overtime pay.

USE

An employee shall use compensatory time within 90 days of accrual. If an employee has any unused compensatory time remaining at the end of 90 days or at the end of a fiscal year, the employee shall receive overtime pay.

Compensatory time may be used at either the employee’s or the College District’s option. An employee may use compensatory time in accordance with the College District’s leave policies and if such use does not unduly disrupt the operations of the College Dis-
As the College District is required to balance its operating budget each fiscal year, the following provisions provide a framework for the implementation of an employee furlough plan that would allow the College District to balance its budget if it experiences a reduction in state funding or other loss of revenue that causes a significant operating budget deficit.

A furlough is an unpaid leave of absence from work for a specified period of time. During a furlough, an employee shall not be permitted to work nor may the employee use accrued paid leave.

All regular College District employees, whether full-time, part-time, or temporary, may be subject to a furlough, except as otherwise indicated in the policy. A student employee shall not be subject to a furlough. A furlough plan may exclude employees who perform functions deemed essential to the operation of the College District, as approved by the College President.

If circumstances suggest that a significant operating budget deficit may have developed or is developing, the College President shall ask the Board to consider the necessity of a furlough. With approval of the Board, a furlough may be implemented by the College District.

After consultation in accordance with this policy, the College President may adopt a furlough plan that will set forth the furlough time and the period within which it must be taken. The amount of furlough time to be taken by each employee shall be calculated to ensure that all affected employees realize the same percentage reduction in annualized pay. The College President may extend, modify, or cancel a furlough plan after consultation in accordance with this policy. Furlough time shall be scheduled by the supervisor in consultation with the employee, subject to the operational needs of the department or unit. Furlough time shall be scheduled in a way that allows the department or unit to continue to provide a basic level of service and must be taken on days that an employee is normally scheduled to work. Notwithstanding the foregoing, faculty may take furlough time during intersession or spring break.

Employees shall be given notice of a furlough at least 30 days before it is to be taken.

A furlough plan adopted pursuant to this policy may be appealed under policy DGBA.
PAY AND BENEFITS DURING A FURLOUGH PERIOD

Health care, dental care, long-term disability, or any other employee-selected benefits shall not be affected by a furlough. An employee shall continue to accrue vacation and sick leave during a furlough but not family and medical leave (FML) credit. Retirement contributions, both by the employee and the College District, shall be affected by furloughs because the contributions are based on actual earnings. The employee shall remain responsible for making all employee contributions during a furlough period, including health care, dental care, flexible savings accounts, and short-term disability. All miscellaneous authorized deductions shall continue to be made during a furlough period, including charitable donations, college payments, and child support. An employee’s continuous service credit, performance evaluation review date, and employment status shall not be affected by any period of a mandatory furlough.

GIFTS, GRANTS, AND DONATIONS FOR SALARY SUPPLEMENTS

The College District shall not accept gifts, grants, donations, or other consideration designated for use as salary supplements.
DUTY WEAPON, BADGE, AND UNIFORM

On the death of a peace officer employed by a political subdivision of the state or institution of higher education, including a college district, the employing governmental entity shall provide, at no cost, the deceased person’s duty weapon, if any, and badge to the individual’s designated beneficiary, or estate if the individual did not designate a beneficiary. A governmental entity that employs the peace officer shall provide the individual a form on which the individual may designate the individual’s beneficiaries for purposes of this section. If a peace officer or other employee described by Government Code 615.103 dies and is to be buried in the individual’s uniform, the employing governmental entity shall provide the uniform at no cost. Gov’t Code 615.003, .102–.103

SURVIVOR BENEFITS

As soon as practicable after the death of an individual listed under Government Code 615.003, including an individual elected, appointed, or employed as a peace officer by a college district or other political subdivision of the state, that is claimed to meet the requirements of Government Code 615.021(1), the individual’s employing entity shall furnish to the board of trustees of the Employees Retirement System of Texas (ERS) proof of the death in the form and with additional evidence and information required by the board. Gov’t Code 615.003, .041

STATE PAYMENT OF ASSISTANCE

A survivor of an individual listed under Government Code 615.003, including an individual elected, appointed, or employed as a peace officer by a college district or other political subdivision of the state, is eligible for the payment of assistance from the state, as described by Government Code 615.022, if the listed individual died as a result of a personal injury sustained in the line of duty in the individual’s position; and the survivor is the surviving spouse of the listed individual; a surviving child of the listed individual, if there is no surviving spouse; or a surviving parent of the listed individual, if there is no surviving spouse or child. Gov’t Code 615.003, .021(a), .022

CONTINUATION OF HEALTH INSURANCE

A survivor of an individual listed under Government Code 615.071, including an individual elected, appointed, or employed as a peace officer by a college district or other political subdivision of the state, is entitled to purchase or continue to purchase health insurance coverage under Government Code Chapter 615, Subchapter D if the listed individual died as a result of a personal injury sustained in the line of duty in the individual’s position; and the survivor is the surviving spouse of the listed individual, as described by Government Code 615.073; or a dependent of the listed individual, as described by Government Code 615.073. Gov’t Code 615.003, .071-.074
An employing entity shall provide written notice to an eligible survivor of the survivor’s rights under Government Code Chapter 615, Subchapter D not later than the tenth day after the date of the decedent’s death. Not later than the 150th day after the decedent’s death, the employing entity shall send a subsequent written notice by certified mail to any eligible survivor who has not already elected to purchase or continue to purchase coverage on or before that date.

If an eligible survivor is a minor child, the employing entity shall also, at the same time, provide the notice to the child’s parent or guardian, unless, after reasonable effort, the parent or guardian cannot be located.

Gov’t Code 615.075
EDUCATIONAL BENEFITS

A full-time employee, spouse of a full-time employee, and a dependent child under the age of 25 of a full-time employee shall be eligible for the following educational benefits:

1. A waiver of fees, except program specific fees as set by Board action, for any credit course offered by the College District;

2. A waiver of one-half of the tuition for a non-credit course offered by the College District; and

3. A loan of books, exclusive of disposable books such as workbooks, from the College District’s bookstore.
Note: This policy addresses leaves in general. For provisions regarding the Family and Medical Leave Act (FMLA), including family and medical leave for an employee seeking leave because of a relative’s military service, see DECA. For provisions addressing leave for an employee’s military service, see DECB.

The governing board of each college or university supported in whole or in part by state funds shall issue regulations concerning the authorized and unauthorized absence from duty of faculty members, as defined by Education Code 51.101(3) [see DEVELOPMENT LEAVES OF ABSENCE, below], including teaching assistants and research assistants.

Each governing board shall file a copy of these regulations concerning employee absences with the Coordinating Board. Each governing board shall file any amendment to its regulations with the Coordinating Board not later than 30 days after the effective date of the amendment.

Education Code 51.108

PREGNANCY
Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. 29 C.F.R. 1604.10(b)

RELIGIOUS OBSERVANCES
An employer, including a college district, shall reasonably accommodate an employee’s request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of the employer’s business. An employer has met its obligation when it demonstrates that it has offered a reasonable accommodation to the employee. The employer need not further show that each of the employee’s alternative accommodations would result in undue hardship. 42 U.S.C. 2000e(j), 2000e-2(a); 29 C.F.R. 1605.2; Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986)

RELIGIOUS HOLY DAYS
An institution of higher education, including a college district, may not discriminate against or penalize in any way a faculty member who is absent from work for the observance of a religious holy day and gives proper notice of that absence if the customary and generally applicable educational practices of the institution permit general personal absence by faculty members. If personal absence is customarily penalized, the penalty for absence due to observance
of a religious holy day under this section shall be forfeiture of one day’s pay equivalent for each day of absence.

“Proper notice” means that the faculty member shall provide a listing of religious holy days to be observed during the semester to the chairman of the department and shall provide notice of such days in advance to all students whose class would be canceled due to the faculty member’s absence. This notice shall be in writing and shall be personally delivered to the chairman of the department, receipt therefore being acknowledged and dated by the chairman, or shall be sent by certified mail return receipt requested, addressed to the chairman.

A “religious holy day” shall be defined as a holy day observed by a religion whose places of worship are exempt from property taxation under Tax Code 11.20.

Education Code 51.925

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

DEVELOPMENT LEAVES OF ABSENCE For the purposes of this policy on development leaves, “faculty member” shall mean a person who is employed by an institution of higher education, including a college district, on a full-time basis as a member of the faculty or staff and whose duties include teaching, research, administration, including professional librarians, or the performance of professional services. However, the term does not include a person employed in a position that is in the institution’s classified personnel system or a person employed in a similar type of position if the institution does not have a classified personnel system. Education Code 51.101

GRANTING LEAVES OF ABSENCE On the application of a faculty member, the governing board of an institution of higher education may grant a faculty development leave of absence for study, research, writing, field observations, or other suitable purpose, if:

1. The faculty member is eligible by reason of service.
2. The purpose for which a faculty development leave is sought is one for which a faculty development leave may be granted.
3. Granting the leave will not place on faculty development leave a greater number of faculty members than that authorized.

The governing board by regulation shall establish a procedure whereby the applications for faculty development leaves of ab-
sence are received by a committee elected by the general faculty for evaluation and whereby the faculty committee shall then make recommendations to the chief executive officer of the institution of higher education, who shall then make recommendations to the governing board as to which applications should be granted.

*Education Code 51.103*

**SERVICE REQUIRED**

A faculty member shall be eligible to be considered for a faculty development leave when he or she has served as a member of the faculty in the same institution of higher education for at least two consecutive academic years. This service may be as an instructor or as an assistant, associate, or full professor, or an equivalent rank, and must be full-time academic duty but need not include teaching. *Education Code 51.104*

**DURATION AND COMPENSATION**

The governing board may grant to a faculty member development leave either for one academic year at one-half of the faculty member’s regular salary or for one-half academic year at full regular salary. Payment of salary to the faculty member on a development leave may be made from the funds appropriated by the legislature specifically for that purpose or from such other funds as might be available to the institution.

A faculty member on a development leave may accept a grant for study, research, or travel from any institution of higher education or from a charitable, religious, or educational corporation or foundation, from any business enterprise, or from any federal, state, or local governmental agency. An accounting of all grants shall be made to the governing board of the institution by the faculty member.

A faculty member on development leave may not accept employment from any other person, corporation, or government, unless the governing board determines that the employment would be in the public interest to do so and expressly approves the employment.

*Education Code 51.105*

**ADDITIONAL EMPLOYMENT**

**NUMBER ON LEAVE AT ONE TIME**

No more than six percent of the faculty members of any institution of higher education may be on faculty development leave at any one time. *Education Code 51.106*

A faculty member on faculty development leave shall continue to be a member of the Teacher Retirement System of Texas or of the Optional Retirement Program, or of both, just as any other faculty member on full-time duty.
The institution of higher education shall cause to be deducted from the compensation paid to a member of the faculty on faculty development leave the deposit and membership dues required to be paid by him to the Teacher Retirement System of Texas or to the Optional Retirement Program, or both, the contribution for Old Age and Survivors Insurance, and any other amounts required or authorized to be deducted from the compensation paid any faculty member. [See CDDA]

A member of the faculty on faculty development leave is a faculty member for purposes of participating in the programs and of receiving the benefits made available by or through the institution of higher education or the state to faculty members.

*Education Code 51.107*

An employment contract entered into by the governing board of an institution of higher education with an administrator that is to be paid in whole or in part from appropriated funds may not allow for development leave that is inconsistent with Education Code 51.105.

An institution of higher education must require an administrator who receives development leave to:

1. Return to work at the institution for an amount of time equal to the amount of time the administrator received for development leave; or

2. Repay the institution for all the costs of the development leave, including the amount of the administrator’s salary, if any, paid during the leave.

Notwithstanding Education Code 51.948(b)(3), the governing board of an institution may grant development leave at the faculty member’s full, regular salary for one year to a faculty member who has held an administrative position at the institution for more than four years.

“Administrator” means a person who has significant administrative duties relating to the operation of the institution, including the operation of a department, college, program, or other subdivision of the institution.

"Contract" includes a letter of agreement or letter of understanding.

*Education Code 51.948(a)–(b), (d), (f)–(g)*

Uniform enforcement of a reasonable absence-control rule is not retaliatory discharge. For example, an employer that terminates an employee for violating a reasonable absence-control provision.

[Some employees may have protected status even after the expiration of all other leave. See CKE and DAA]
The term “immediate family,” unless otherwise defined in this policy, is defined as:

1. Spouse.

2. Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands in loco parentis.

3. Parent, stepparent, parent-in-law, or other individual who stands in loco parentis to the employee.


5. Grandparent and grandchild.

6. Any person residing in the employee’s household at the time of illness or death.

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

A “workday” for purposes of earning, use, or recording shall mean the number of hours per day equivalent to the employee’s usual assignment, whether full-time or part-time.

A service year, for purposes of earning, using, or recording leave, shall mean the annual anniversary date of the employee’s hire. For example, for an employee hired on January 1, 2011, the employee’s service year would end on December 31, 2011. The employee’s second service year would end on December 31, 2012, and so on.

When an absent employee is eligible for FMLA leave, the College District shall designate the absence as FMLA leave.

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

An employee receiving workers’ compensation income benefits may be eligible for paid or unpaid leave. An absence due to a work-related injury or illness shall be designated as FMLA leave, as applicable.

A full-time employee on a 12-month, non-faculty appointment shall be eligible for paid vacation each service year. A full-time non-faculty employee on a reduced-length contract shall earn vacation leave on a prorated basis according to the length of the employee’s contract.
Vacation time must be scheduled with the employee’s supervisor, but every effort shall be made to satisfy the employee’s request, if leave earned is available.

A full-time, non-faculty employee on a 12-month appointment or reduced length contract must work at least one-half of a month in order to earn vacation leave for that month.

Vacation time shall be earned according to the following schedule for a 12-month, non-faculty employee, depending on the employee’s continuous, uninterrupted years of service with the College District:

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Vacation Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Six months to one year</strong></td>
<td>Five workdays/40 hours</td>
</tr>
<tr>
<td>One–five years</td>
<td>Ten workdays/80 hours</td>
</tr>
<tr>
<td>Five–ten years</td>
<td>12 workdays/96 hours</td>
</tr>
<tr>
<td>Ten or more years</td>
<td>15 workdays/120 hours</td>
</tr>
</tbody>
</table>

**New hires shall not be eligible to take vacation within the first six months of hire.**

Vacation time should be taken in the service year in which it is earned. Any unused vacation time at the end of a service year shall be forfeited and shall not be carried over into the new service year. The College President must approve vacation in all other circumstances.

An employee who submits a letter of resignation shall not be eligible to use vacation leave once such a letter has been received by the College District unless approved by the immediate supervisor in coordination with the Director of Human Resources and College Relations.

Upon separation from employment, any unused vacation earned to date shall be included in the employee’s final paycheck. Any negative balance shall likewise be deducted from the final paycheck. An employee shall not be paid for unearned vacation time.

During an employee’s leave of absence with or without pay, vacation time shall not accrue.

An employee who uses more than his or her annual vacation hours shall have the overage deducted from the employee’s monthly pay. Employees shall be paid only for hours worked or for leave earned.

**SICK LEAVE**

A full-time employee on a 12-month, non-faculty appointment shall acquire eight hours per month of sick leave during the term of the employee’s contract. Full-time, non-faculty employees with a re-
duced length contract shall earn paid sick leave on a prorated basis according to the length of the employee’s contract. Sick leave may accumulate to a maximum of 960 hours. The following provisions shall apply to sick leave:

1. A full-time, non-faculty employee must work at least one-half of a month in order to earn sick leave for that month.

2. During an employee’s use of approved vacation or leave of absence with or without pay, sick leave shall continue to accrue.

3. An employee who uses sick leave must make application for approval upon returning to work. A physician’s statement may be required.

4. Paid sick leave shall be allowed for an employee’s absence from work for which he or she has been scheduled during the first 40 hours of the workweek, up to the amount of the employee’s unused credits.

5. If an employee is absent from work due to an illness or injury covered by workers’ compensation, the employee may use sick leave during the “waiting period” before benefits begin.

6. An employee may use sick leave for medical or dental appointments if it is not possible to schedule these appointments during non-working hours. Requests to use sick leave for this purpose should be submitted to the employee’s supervisor as far in advance as possible.

7. Work-related illness or injury should be reported to the employee’s supervisor as soon as possible but must be made within 30 days of the date of injury. The supervisor shall report the absence to the office of Human Resources as soon as possible or within 30 days.

8. An employee returning from sick leave should notify his or her supervisor of an expected date of return and should report to his or her supervisor before resuming duties.

9. An employee who transfers from one department to another shall retain any unused sick leave.

10. Sick leave may be used to care for an immediate family member who is ill or injured. “Immediate family” for this purpose shall include spouse, son or daughter, parent, parent-in-law, or any other person defined by the College President.

11. Maternity leave shall be treated as any other type of sick leave.
12. An employee shall not be compensated for any unused sick leave upon separation from employment.

BEREAVEMENT LEAVE

A maximum of three days with pay may be granted for an employee's absence due to a death in the employee's immediate family or as approved by the College President. “Immediate family” for this purpose shall include spouse, mother, father, child, brother, sister, grandparents, foster parents, or any other person defined by the College President. Application for bereavement leave must be made as soon as possible and submitted to the employee's supervisor.

PERSONAL LEAVE

Personal leave days may be granted to an employee in extraordinary circumstances. The need for personal leave shall be approved in advance by the Director of Human Resources and College Relations.

EXTENDED LEAVE

An employee may apply for extended leave after all paid leave has been exhausted and in the following circumstances:

1. The employee is not eligible for family and medical leave (FML) benefits [see DECA(LEGAL) and FAMILY AND MEDICAL LEAVE, below];

2. The reason for absence is a qualifying reason for leave in accordance with FML, but the employee has reached his or her FML entitlement; or

3. The reason for absence is not a qualifying reason for leave under the FMLA.

The following provisions shall apply to extended leave:

1. An employee must have worked at least 90 days in order to be eligible for extended leave.

2. The employee shall request extended leave in writing, which must be signed by the employee’s supervisor, the Director of Human Resources and College Relations, and the College President.

3. Written justification from a licensed physician treating the employee may be required, or from other sources, if the leave request is not for an illness or injury.

4. Extended leave shall be without pay.

5. Extended leave shall not be approved for longer than 60 calendar days. After the first 30 days, the employee must reapply for an extension, if needed, every two weeks.
6. At the conclusion of the extended leave period granted to the employee, the employee must return to work, or the employee may be terminated.

7. An authorized extended leave shall not be counted as a break in service.

**PROFESSIONAL DEVELOPMENT LEAVE (WITHOUT PAY)**

Professional development leave without pay for administrative personnel and faculty may be granted by the College President with approval of the Board for a period not to exceed two years. This type of leave may be conditional on finding a suitable substitute for the employee requesting the leave. An employee must have been employed by the College District for at least two years in order to be eligible for professional development leave.

**SABBATICAL LEAVE**

The purpose of sabbatical leave is to benefit the College District and its students by providing faculty and administrative employees with the opportunity to engage in activities leading to professional growth and revitalization. Such leave shall allow eligible employees an extended period of time free from normal contractual obligations in order to pursue legitimate professional goals. Appropriate uses of sabbatical leave include formal study, travel, work experience in one’s administrative area, or any other activity that would contribute substantially to the improvement of administrative or instructional abilities.

**ELIGIBILITY**

Sabbatical leave may be granted to an employee for either one or two consecutive semesters after completion of six years of full-time contractual service as an employee of the College District. An employee awarded two semesters of sabbatical leave shall be eligible for an additional award after a second six-year period of full-time service to the College District.

An employee awarded less than two semesters shall retain the right to the remaining entitlement and will qualify for an additional entitlement at the rate of one semester for each three-year period of full-time service to the College District, not to exceed two semesters.

**APPROVAL**

Sabbatical leave shall require Board approval. The number of sabbatical leaves approved by the Board shall not exceed five percent of the full-time faculty and administrative employees at one time.

**COMPENSATION**

Faculty and administrators shall be encouraged to seek outside funding for sabbaticals. Compensation shall be provided to the employee in accordance with law.

**APPLICATION**

An application for sabbatical leave shall be submitted to the College President by January 15 prior to the school year the leave is to take place.
to be taken. The application must include the reasons for requesting such leave and a detailed sabbatical leave plan. The College President shall submit recommendations for approval of leave requests to the Board at the regular meeting held in March.

Guidelines and procedures related to sabbatical leave, including forms, rating procedures, and reporting requirements, shall be developed by the College President or designee.

**CRITERIA FOR ACCEPTANCE**

Sabbatical leave shall be evaluated according to the value of the proposed activity to the enhancement of the instructional or administrative program of the College District, the value of the proposed activity to the professional growth and development of the applicant, and the past contributions of the applicant, including years and range of service, to the College District.

**LEAVE CONTRACT**

When the Board grants a sabbatical for an employee, the recipient shall sign a contract with the College District, which shall include, but not be limited to, the length of the sabbatical, an assurance that the recipient will return to employment with the College District, and that, upon return, the employee shall submit a written report to the College President summarizing the work completed during the leave.

Time spent on sabbatical leave shall be recognized as equivalent to time spent as a full-time employee of the College District.

**FAILURE TO RETURN FOR AT LEAST ONE ACADEMIC YEAR**

The return of all or part of the sabbatical stipend shall be required for failure to return to employment with the College District at the conclusion of the sabbatical leave for at least one academic year after the completion of the sabbatical in proportion to the percent of time not completed.

**UNEXCUSED ABSENCES**

Except in the case of an authorized absence related to College District business and use of compensatory time that has been approved by an employee’s supervisor, all other absences that do not meet the conditions set forth in this policy shall be considered unauthorized and unexcused.

Unexcused absences shall be charged to an employee if he or she fails to properly and promptly notify the immediate supervisor within the prescribed time. Unexcused absences shall be deducted from an employee’s salary, unless the time is charged to vacation or compensatory time.

Habitual absences, whether excused or unexcused, may result in disciplinary action, up to and including termination. An unauthorized absence by an employee for more than three consecutive days may be considered a voluntary termination of employment with the College District.
FAMILY AND MEDICAL LEAVE

TWELVE-MONTH PERIOD

For purposes of an employee’s entitlement to FMLA leave, the 12-month period shall be the 12-month period measured forward from the date the employee’s first FMLA leave begins.

COMBINED LEAVE FOR SPOUSES

If both spouses are employed by the College District, the College District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks. The College District shall limit military caregiver leave to a combined total of 26 weeks. [See DECA(LEGAL)]

INTERMITTENT OR REDUCED SCHEDULE LEAVE

The College District shall permit use of intermittent or reduced schedule FMLA leave for the care of a newborn child or for the adoption or placement of a child with the employee. [See DECA(LEGAL) for use of intermittent or reduced schedule leave due to a medical necessity.]

CERTIFICATION OF LEAVE

If an employee requests leave, the employee shall provide certification, as required by FMLA regulations, of the need for leave. [See DECA(LEGAL)]

FITNESS-FOR-DUTY CERTIFICATION

If an employee takes FMLA leave due to the employee’s own serious health condition, the employee shall provide, before resuming work, a fitness-for-duty certification. If the College District will require certification of the employee’s ability to perform essential job functions, the College District shall provide a list of essential job functions to the employee with the FMLA designation notice.

FAILURE TO RETURN

If, at the expiration of FMLA leave, the employee is able to return to work but chooses not to do so, the College District may require reimbursement of premiums paid by the College District during the leave. [See DECA(LEGAL), RECOVERY OF BENEFIT COST]

WORKERS’ COMPENSATION

Workers’ compensation is not a form of leave. The workers’ compensation law does not require the continuation of the College District’s contribution to health insurance.

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

An employee eligible for workers’ compensation income benefits may elect in writing to use paid leave. Any paid leave used shall not be offset against workers’ compensation wage benefits.

COURT APPEARANCES

Absences due to compliance with a valid subpoena or for jury duty shall be fully compensated by the College District and shall not be deducted from the employee’s pay or leave balance.
Note: This policy summarizes the Family and Medical Leave Act (FMLA) and implementing regulations, including family and medical leave for an employee seeking leave because of a relative’s military service. For provisions on leaves in general, see DEC. For provisions addressing leave for an employee’s military service, see DECB.

This introductory page outlines the contents of this policy on the FMLA. See the following sections for statutory provisions on:

SECTION I General Provisions pages 2 – 7
1. Applicability to college districts
2. Employee eligibility
3. Qualifying reasons for leave
4. Definitions

SECTION II Leave Entitlement and Use pages 7 – 14
1. Amount of leave
2. Intermittent use of leave
3. Special rules for instructional employees
4. Use of paid leave
5. Continuation of health insurance
6. Reinstatement of employee

SECTION III Notices and Medical Certification pages 14 – 22
1. Notices to employee
2. Notice to employer regarding use of family and medical leave
3. Certification of leave

SECTION IV Miscellaneous Provisions pages 22– 23
1. Preservation of records
2. Prohibition against discrimination
SECTION I: GENERAL PROVISIONS

COVERED EMPLOYER

Public agencies, including college districts, are “covered employers”, without regard to the number of employees employed. Employers covered by the FMLA include any person who acting, directly or indirectly, in the interest of a covered employer to any of the employees of the public agency employer. 29 U.S.C. 2611(4); 29 C.F.R. 825.102, .104(a)

“ELIGIBLE EMPLOYEE”

An “eligible employee” is an employee of a covered employer who:

1. Has been employed by the employer for at least 12 months. The 12 months need not be consecutive, subject to 29 C.F.R. 825.110(b);

2. Has been employed for at least 1,250 hours of service with such employer during the 12 months immediately preceding the commencement of leave; and

3. Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.

29 U.S.C. 2611(2); 29 C.F.R. 825.102, .110

[An employer that has no eligible employees must comply with the requirements at GENERAL NOTICE, below.]

QUALIFYING REASONS FOR LEAVE

Employers covered by the FMLA are required to grant leave to eligible employees:

1. For the birth of a son or daughter, and to care for the newborn child;

2. For placement with the employee of a son or daughter for adoption or foster care. [For the rules regarding leave for, “adoption” and “foster care,” see 29 C.F.R. 825.121];

3. To care for the employee’s spouse, son, daughter, or parent with a serious health condition;

4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job;

5. Because of any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status); and

6. To care for a covered servicemember with a serious injury or illness incurred in the line of duty if the employee is the
spouse, son, daughter, parent, or next of kin of the covered servicemember.

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

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

QUALIFYING EXIGENCY

An eligible employee may take FMLA leave while the employee’s spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty) for one or more of the following qualifying exigencies, as detailed in 29 C.F.R. 825.126:

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

29 C.F.R. 825.126

PREGNANCY OR BIRTH

Both the mother and father are entitled to FMLA leave for the birth of their child and to be with the healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. In addition, the mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. The mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health-care provider during the absence, and even if the absence does not last for more than three consecutive calendar days. The husband is entitled to FMLA leave if needed to care for his pregnant spouse who is incapacitated during her prenatal care or following the birth of a child if the spouse has a serious health condition. [For the definition of “needed to care for,” see 29 C.F.R. 825.124]. 29 C.F.R. 825.120
“Adoption” means legally and permanently assuming the responsibility of raising a child as one’s own. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA leave. 29 C.F.R. 825.112(f)

“Covered active duty or call to covered active duty status” means:

1. In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

2. In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation, as described by 29 C.F.R. 825.102.

29 C.F.R. 825.102, .122(a), .126(a)

“Covered servicemember” means:

1. A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a serious injury or illness; or

2. A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

“Covered veteran” means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

29 C.F.R. 825.102, .122(a), .127(b)

“Foster care” means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the state as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves an agreement between the state and the foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, state action is involved in the removal of the child from parental custody. 29 C.F.R. 825.122(g)
**LEAVES AND ABSENCES**

**FAMILY AND MEDICAL LEAVE**

<table>
<thead>
<tr>
<th>&quot;MILITARY CAREGIVER LEAVE&quot;</th>
<th>&quot;Military caregiver leave&quot; means leave taken to care for a covered servicemember with a serious injury or illness under the FMLA. 29 C.F.R. 825.102</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;NEXT OF KIN OF A COVERED SERVICEMEMBER&quot;</td>
<td>&quot;Next of kin of a covered servicemember&quot; means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember’s next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember’s only next of kin. 29 C.F.R. 825.102, .122(e), .127(d)(3)</td>
</tr>
<tr>
<td>&quot;PARENT&quot;</td>
<td>&quot;Parent&quot; means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents “in law.” 29 C.F.R. 825.102, .122(c)</td>
</tr>
<tr>
<td>&quot;PARENT OF A COVERED SERVICEMEMBER&quot;</td>
<td>&quot;Parent of a covered servicemember” means a covered servicemember’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.” 29 C.F.R. 825.102, .122(j), 127(d)(2)</td>
</tr>
<tr>
<td>&quot;SERIOUS HEALTH CONDITION&quot;</td>
<td>&quot;Serious health condition&quot; means an illness, injury, impairment or physical or mental condition that involves inpatient care as defined in 29 C.F.R. 825.114 or continuing treatment by a health-care provider as defined in 29 C.F.R. 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of 29 C.F.R. 825.113 are met. 29 C.F.R. 825.102</td>
</tr>
</tbody>
</table>
“SERIOUS INJURY OR ILLNESS”

“Serious injury or illness” means:

1. In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating; and

2. In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

   a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating;

   b. A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave;

   c. A physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or

   d. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the U.S. Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

29 C.F.R. 825.102, .127(c)

“SON OR DAUGHTER”

“Son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, as defined at 29 C.F.R. 825.122(d)(3), who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability,” as defined at 29 C.F.R.
“SON OR DAUGHTER OF A COVERED SERVICEMEMBER”

“Son or daughter of a covered servicemember” means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. 29 C.F.R. 825.102, .122(h), .127(d)(1).

“SON OR DAUGHTER ON COVERED ACTIVE DUTY OR CALL TO COVERED ACTIVE DUTY STATUS”

“Son or daughter on covered active duty or call to covered active duty status” means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to active duty status, and who is of any age. 29 C.F.R. 825.102, .122(h), .126(a)(5).

“SPOUSE”

“Spouse” means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized. 29 C.F.R. 825.102, .122(b).

SECTION II: LEAVE ENTITLEMENT AND USE

AMOUNT OF LEAVE

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

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

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

DETERMINING THE 12-MONTH PERIOD

Except with respect to military caregiver leave, an employer is permitted to choose any one of the following methods for determining the 12-month period in which the 12 weeks of leave entitlement occurs:

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

29 C.F.R. 825.200(b)

An eligible employee’s FMLA leave entitlement is limited to a total of 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. The single 12-month period is measured forward from the date an employee’s first FMLA leave to care for the covered servicemember begins, regardless of the method used by the employer to determine the employee’s 12 workweeks of leave entitlement for other FMLA leaves. During the single 12-month period, an eligible employee’s FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. 29 U.S.C. 2612(a)(3)–(4); 29 C.F.R. 825.127(c), .200(f)–(g)

The leave entitlement is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single 12-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period. 29 C.F.R. 825.127(e)(2)

A husband and wife who are eligible for FMLA leave and employed by the same employer may be limited to a combined total of 26 weeks of FMLA leave during the single 12-month period if leave is taken for the birth of a son or daughter or to care for the child after birth, for the placement of a child for adoption or foster care or to care for the child after placement, to care for a parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness. 29 C.F.R. 825.127(f)

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the em-
employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing for several weeks for the Christmas/New Year holiday or an employer closing the plant for retooling or repairs), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement. 29 C.F.R. 825.200(h)

**INTERMITTENT OR REDUCED LEAVE SCHEDULE**

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

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

When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees.

29 U.S.C. 2612(b); 29 C.F.R. 825.202

**TRANSFER TO ALTERNATIVE POSITION**

If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment or if the employer agrees to permit such leave for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than does the employee's regular position. 29 U.S.C. 2612(b)(2); 29 C.F.R. 825.204

**CALCULATING LEAVE USE**

When an employee takes leave on an intermittent or reduced leave schedule basis, the employer must account for intermittent or reduced schedule leave in accordance with 29 C.F.R. 825.205, using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave, provided it is not greater than one hour and provided further that an employ-
ee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken. An employer may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using the shortest increment of leave used to account for any other type of leave. In all cases, employees may not be charged FMLA leave for periods during which they are working. 29 C.F.R. 825.205

SUBSTITUTION OF PAID LEAVE

Generally, FMLA leave is unpaid leave. However, an employee may choose to substitute accrued paid leave for unpaid FMLA leave. If an employee does not choose to substitute accrued paid leave, the employer may require the employee to do so. The term “substitute” means that the paid leave provided by the employer, and accrued pursuant to established policies of the employer, will run concurrently with the unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer’s normal leave policy. When an employee chooses, or an employer requires, substitution of accrued paid leave, the employer must inform the employee that the employee must satisfy any procedural requirements of the paid leave policy only in connection with the receipt of such payment. [See 825.300(c)] If an employee does not comply with the additional requirements in an employer's paid leave policy, the employee is not entitled to substitute accrued paid leave but the employee remains entitled to take unpaid FMLA leave. 29 U.S.C. 2612(d); 29 C.F.R. 825.207(a)

COMPENSATORY TIME

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

FMLA AND DISABILITY LEAVE PLANS

Leave taken pursuant to a disability leave plan would be considered FMLA leave for a serious health condition and counted in the leave entitlement permitted under the FMLA if it meets the criteria set forth in 29 C.F.R. 825.112–825.115. In such cases, the employer may designate the leave as FMLA leave and count the leave against the employee’s FMLA leave entitlement. Because leave pursuant to a disability benefit plan is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee nor the employer may require the substitution of paid leave. However, employers and employees may agree, where state law permits, to have paid leave supplement the disability plan benefits, such as in the case where a plan only provides replacement income for two-thirds of an employee’s salary. 29 C.F.R. 825.207(d)
A serious health condition may result from injury to the employee “on or off” the job. If the employer designates the leave as FMLA leave, the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, neither the employee nor the employer may require the substitution of paid leave. However, an employer and an employee may agree, where state law permits, to have paid leave supplement workers' compensation benefits.

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

29 C.F.R. 825.207(e)

During any FMLA leave, an employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. If an employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. Any other plan changes (e.g., in coverage, premiums, deductibles, and the like) that apply to all employees of the workforce would also apply to an employee on FMLA leave.

Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage, it must be provided by the employer.

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

29 U.S.C. 2614(c); 29 C.F.R. 825.209(a), (c)–(e)
During FMLA leave, the employee must continue to pay the employee’s share of group health plan premiums in accordance with 29 C.F.R. 825.210. If premiums are raised or lowered, the employee would be required to pay the new premium rates. 29 C.F.R. 825.210

Unless an employer has an established policy providing a longer grace period, an employer’s obligations to maintain health insurance coverage cease if an employee’s premium payment is more than 30 days late. In order to terminate the employee’s coverage, the employer must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. If the employer has established policies regarding other forms of unpaid leave that provide for the employer to cease coverage retroactively to the date the unpaid premium payment was due, the employer may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, if the required 15-day notice has been provided.

If coverage lapses because an employee has not made required premium payments, upon the employee’s return from FMLA leave, the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. The employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

29 C.F.R. 825.212

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

An employee’s entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employer’s established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate). 29 C.F.R. 825.209(h)
RIGHT TO REINSTATEMENT

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

MOONLIGHTING DURING FMLA LEAVE

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

PAY INCREASES AND BONUSES

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the employer’s policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave.

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

29 C.F.R. 825.215(c)

“KEY EMPLOYEES”

A “key employee” is a salaried eligible employee who is among the highest paid ten percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed. An employer may deny job restoration to a key employee if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; the employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that such injury
would occur; and in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice. 29 U.S.C. 2614(b); 29 C.F.R. 825.102, .217–.219

SECTION III: NOTICES AND MEDICAL CERTIFICATION

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

If a covered employer has any eligible employees, it shall also provide this general notice to each employee by:

1. Including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist; or

2. By distributing a copy of the general notice to each new employee upon hiring.

In either case, distribution may be accomplished electronically.

Employers may duplicate the text of the DOL prototype notice WHD Publication 1420 or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice.

Where an employer’s workforce is comprised of a significant portion of workers who are not literate in English, the employer shall provide the general notice in a language in which the employees are literate.

29 U.S.C. 2619; 29 C.F.R. 825.300(a)

When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.

Notification of eligibility may be oral or in writing; employers may use DOL optional form WH-381 to provide such notification to employees. The employer is obligated to translate the notice in any situation in which it is required to translate the general notice.
If, at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed, the employer must notify the employee of the change in eligibility status within five business days, absent extenuating circumstances.

29 C.F.R. 825.300(b)

Employers shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The rights and responsibilities notice must include the information described by 29 C.F.R. 825.300(c)(1). The employer is obligated to translate the notice in any situation in which it is required to translate the general notice.

This notice shall be provided to the employee each time the eligibility notice is provided. The notice of rights and responsibilities may be distributed electronically so long as it meets the requirements of 29 C.F.R. 825.300.

If the specific information provided by the notice of rights and responsibilities changes, the employer shall, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed.

29 C.F.R. 825.300(c)

When the employer has enough information to determine whether leave is being taken for an FMLA-qualifying reason, the employer must notify the employee whether the leave will be designated and will be counted as FMLA leave within five business days absent extenuating circumstances. Only one notice of designation is required for each FMLA-qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employer determines that the leave will not be designated as FMLA-qualifying, the employer must notify the employee of that determination.

The designation notice must be in writing. If the leave is not designated as FMLA leave because it does not meet the requirements of the Act, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement. If the information provided by the employer to the employee in the
designation notice changes (e.g., the employee exhausts the FMLA leave entitlement), the employer shall provide, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

The designation notice must include the information required by 29 C.F.R. 825.300(d)(1) (substitution of paid leave), (d)(3) (fitness for duty certification), and (d)(6) (amount of leave charged against FMLA entitlement). For further provisions on designation of leave, see 29 C.F.R. 825.301.

29 C.F.R. 825.300(d)

**Retroactive Designation**

An employer may retroactively designate leave as FMLA leave, with appropriate notice as described above at DESIGNATION NOTICE or with an appropriate designation notice to the employee, if the employer’s failure to timely designate leave does not cause harm or injury to the employee. In addition, an employer and an employee may agree that leave will be retroactively designated as FMLA leave. 29 C.F.R. 825.301(d)

**Employee Notice**

An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave, below. If the employee fails to explain the reasons, leave may be denied. 29 C.F.R. 825.301(b)

**Foreseeable Leave**

An employee must provide at least 30 days’ advance notice before FMLA leave is to begin if the need for leave is foreseeable based upon an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member, or a planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days’ notice is not practicable, the employee must give notice as soon as practicable. For leave due to a qualifying exigency, the employee must provide notice as soon as practicable regardless of how far in advance the leave is foreseeable. The form and content of the notice must comply with 29 C.F.R. 825.302(c).

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

29 C.F.R. 825.302
### UFORESEEABLE LEAVE

When the approximate timing of leave is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employer’s usual and customary notice requirements applicable to such leave. The form and content of the notice must comply with 29 C.F.R. 825.303(b). 29 C.F.R. 825.303(a)

### COMPLIANCE WITH EMPLOYER REQUIREMENTS

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

### CERTIFICATION OF LEAVE

An employer, including a college district, may require that an employee’s FMLA leave be supported by certification, as described below. The employer must give notice of a requirement for certification each time certification is required. At the time the employer requests certification, the employer must advise the employee of the consequences of failure to provide adequate certification. 29 U.S.C. 2613; 29 C.F.R. 825.305(a), (d)

### TIMING

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

### INCOMPLETE OR INSUFFICIENT CERTIFICATION

The employer shall advise an employee if it finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. The employer must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee’s diligent, good faith efforts) to cure any such deficiency. If the employee fails to provide the employer with a complete and sufficient certification, despite the opportunity to cure the certification, or fails to provide any certification, the employer may deny the taking of FMLA leave.
A certification is “incomplete” if one or more of the applicable entries have not been completed. A certification is “insufficient” if it is complete, but the information provided is vague, ambiguous, or non-responsive. A certification that is not returned to the employer is not considered incomplete or insufficient, but constitutes a failure to provide certification.

29 C.F.R. 825.305(c)–(d)

When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, an employer may require the employee to obtain medical certification from a health-care provider that includes the information described at 29 C.F.R. 825.306(a). An employer may use DOL optional form WH-380E when the employee needs leave due to the employee's own serious health condition and optional form WH-380F when the employee needs leave to care for a family member with a serious health condition. An employer may not require information beyond that specified in the FMLA regulations.

While an employee may choose to comply with the certification requirement by providing the employer with an authorization, release, or waiver allowing the employer to communicate directly with the health-care provider, the employee may not be required to provide such an authorization, release, or waiver.

For the definition of “health-care provider,” see 29 C.F.R. 825.102 and 29 C.F.R. 825.125.

29 C.F.R. 825.306

Any receipt of genetic information in response to a request for medical information shall be deemed inadvertent if an employer uses language such as that at 29 C.F.R. 1635.8(b)(1)(i)(B). 29 C.F.R. 1635.8(b)(1)(i)(A) [See DAAA(LEGAL)]

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

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

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

29 C.F.R. 825.307(a)

SECOND AND THIRD OPINIONS

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

29 C.F.R. 825.307(b)–(c)

FOREIGN MEDICAL CERTIFICATION

If the employee or a family member is visiting another country, or a family member resides in another country, and a serious health condition develops, the employer shall accept medical certification as well as second and third opinions from a health-care provider who practices in that country. If the certification is in a language other than English, the employee must provide the employer with a written translation of the certification upon request.

29 C.F.R. 825.307(f)

RECERTIFICATION

An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless 29 C.F.R. 825.308(b) or (c) apply. The employee must provide the requested recertification to the employer within the timeframe requested by the employer, which must allow at least 15 calendar days after the employer’s request, unless it is not practicable under the particular circumstances to do so despite the employee’s diligent, good faith efforts.

The employer may ask for the same information when obtaining recertification as that permitted for the original certification. As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employer may provide the health-care provider with a record of the employee’s absence pattern and ask the health-care provider if the serious
LEAVES AND ABSENCES
FAMILY AND MEDICAL LEAVE

health condition and need for leave is consistent with such a pattern.

Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required.

29 C.F.R. 825.308

ANNUAL MEDICAL CERTIFICATION

Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year, the employer may require the employee to provide a new medical certification in each subsequent leave year. Such new medical certifications are subject to the provisions for authentication and clarification set forth in 29 C.F.R. 825.307, including second and third opinions. 29 C.F.R. 825.305(e)

CERTIFICATION—QUALIFYING EXIGENCY LEAVE

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

The employer may require that the leave for any qualifying exigency be supported by a certification that addresses the information described at 29 C.F.R. 825.309(b). DOL optional form WH-384, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in 29 C.F.R. 825.309. The employer may verify in accordance with 29 C.F.R. 825.309(d).

29 C.F.R. 825.309

CERTIFICATION—MILITARY CAREGIVER LEAVE

When leave is taken to care for a covered servicemember with a serious injury or illness, an employer may require the employee to obtain a certification completed by an authorized health-care provider of the covered servicemember. The employer may request that the health-care provider provide the information described at 29 C.F.R. 825.310(b). In addition, the employer may request that the employee and/or covered servicemember address in the certification the information described at 29 C.F.R. 825.310(c). The employer may require the employee to provide confirmation of a covered family relationship to the seriously injured or ill servicemember pursuant to 29 C.F.R. 825.122(j).
DOL optional form WH-385, WH-385-V, or another form containing the same basic information, may be used by the employer for this certification; however, no information may be required beyond that specified by 29 C.F.R. 825.310. An employer must accept sufficient certification invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside. An employer must accept as sufficient certification of the servicemember’s serious injury or illness documentation indicating the servicemember’s enrollment in the U.S. Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

An employer may seek authentication and/or clarification of the certification under the procedures described above. Second and third opinions, as described above, are not permitted for leave to care for a covered servicemember when the certification has been completed by one of the types of health-care providers identified in 29 C.F.R. 825.310(a)(1)–(4). However, second and third opinions are permitted when the certification has been completed by a health care provider as defined in 29 C.F.R. 825.125 that is not one of the types identified in 29 C.F.R. 825.310(a)(1)–(4). Additionally, recertifications, as described above, are not permitted for leave to care for a covered servicemember.

Where medical certification is requested by an employer, an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee’s diligent, good-faith efforts to obtain such documents.

29 C.F.R. 825.310

An employer may require an employee on FMLA leave to report periodically on the employee’s status and intent to return to work. The employer’s policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee’s leave situation.

29 C.F.R. 825.311(a)

As a condition of restoring an employer who took FMLA leave due to the employee’s own serious health condition, an employer may have a uniformly applied policy or practice that requires all similarly situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee’s health-care provider that the employee is able to resume work.

An employer may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee’s need for FMLA leave. Additionally, an employer may require that
the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, an employer must provide an employee with a list of the essential functions of the employee's job no later than with the designation notice required by 29 C.F.R. 825.300(d) and must indicate in the designation notice that the certification must address the employee's ability to perform those essential functions.

The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

29 C.F.R. 825.312(a)–(c)

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

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

Note: Prototypes of the DOL notice and certification forms are available from the nearest office of the DOL Wage and Hour Division or on the Internet at http://www.dol.gov/whd.

SECTION IV: MISCELLANEOUS PROVISIONS

The FMLA provides that covered employers, including qualified college districts, shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act (FLSA) and the FMLA regulations. Employers must keep these records for no less than three years and make them available for inspection, copying, and transcription by representatives of the DOL upon request.

If an employer is preserving records electronically, the employer must comply with 29 C.F.R. 825.500(b). Covered employers who have eligible employees must maintain records with the data set
forth at 29 C.F.R. 825.500(c). Covered employers with no eligible employees must maintain just the data at 29 C.F.R. 825.500(c)(1). Covered employers in a joint employment situation, see 29 C.F.R. 825.500(e).

Records and documents relating to certifications, recertifications, or medical histories of employees or employees’ family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of the FMLA containing family medical history or genetic information as defined in GINA shall be maintained in accordance with the confidentiality requirements of Title II of GINA [see 29 C.F.R. 1635.9], which permit such information to be disclosed consistent with the requirements of the FMLA. If the Americans with Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements [see 29 C.F.R. 1630.14(c)(1)], except as set forth in 29 C.F.R. 825.500(g).

29 C.F.R. 825.500

The FMLA prohibits interference with an employee’s rights under the law, and with legal proceedings or inquiries relating to an employee's rights. 29 U.S.C. 2615; 29 C.F.R. 825.220
Note: This policy addresses leave for an employee’s military service. For provisions on leaves in general, see DEC. For provisions regarding the Family and Medical Leave Act (FMLA), including family and medical leave for an employee seeking leave because of a relative’s military service, see DECA.

Any person who is absent from a position of employment by reason of voluntary or involuntary service in the uniformed services shall be entitled to certain reemployment rights and benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301-4335, and its regulations at 20 C.F.R. Part 1002 if:

1. Unless notice is precluded by military necessity or is otherwise unreasonable or impossible, the person, or an appropriate officer of the uniformed service in which such service is performed, has given advance written or verbal notice of such service to such person’s employer;

2. The cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years, calculated in accordance with 38 U.S.C. 4312(c); and

3. The person reports to or submits an application for reemployment to such employer in accordance with the provisions of 38 U.S.C. 4312(e) and (f) and 20 C.F.R. Part 1002, Subpart C.

38 U.S.C. 4312(a)–(c); 20 C.F.R. 1002.5(1)

For purposes of federal military leave, “uniformed services” means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; and any other category of persons designated by the president in time of war or emergency. 38 U.S.C. 4303(16)

The term “service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a
period for which a person is absent from employment for the purpose of performing funeral honors duty. 38 U.S.C. 4303(13)

A person who is reemployed under USERRA is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of uniformed service, plus the additional seniority rights, and benefits that such person would have attained if the person had remained continuously employed. 38 U.S.C. 4316(a)

EXCEPTIONS

An employer, including a college district, is not required to reemploy a person if:

1. The employer’s circumstances have so changed as to make reemployment impossible or unreasonable;

2. The person is entitled to reemployment under 38 U.S.C. 4313(a)(3), 4313(a)(4), or 4313 (b)(2)(B), and the reemployment of the person would impose an undue hardship on the employer; or

3. The employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

38 U.S.C. 4312(d)

A person's entitlement to the benefits of 38 U.S.C. Chapter 43 by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

1. A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.

2. A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the U.S. Secretary concerned.

3. A dismissal of such person permitted under or a dropping of such person from the rolls pursuant to 10 U.S.C. 1161(a) (dismissal of commissioned officers).

38 U.S.C. 4304

NOTICE

Each employer shall provide to persons entitled to rights and benefits under 38 U.S.C. Chapter 43 a notice of the rights, benefits, and obligations of such persons and such employers. The requirement for the provision of notice may be met by the posting of the notice
where employers customarily place notices for employees. The U.S. Secretary of Labor shall provide to employers the text of the notice. 38 U.S.C. 4334.

STATE LEAVE FOR MEMBER OF MILITARY OR RESCUE TEAM SHORT TERM

A person who is an officer or employee of the state, a municipality, a county, or another political subdivision of the state, including a college district, and who is a member of the state military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team is entitled to a paid leave of absence from the person’s duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a fiscal year. During a leave of absence, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. Gov’t Code 437.202(a).

CALLED TO DUTY

A service member of the Texas military forces who is ordered to state active duty or to state training or other duty by the governor, the adjutant general, or another proper authority under the law of this state is entitled to the same benefits and protections provided to persons:

1. Performing service in the uniformed services as provided by 38 U.S.C. 4301–4313 and 4316–4319 (USERRA), as that law existed on April 1, 2003; and


Gov’t Code 437.213

A state employee who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty. Gov’t Code 437.202(d).

LONG TERM CHAPTER 437

An employer, including a college district, may not terminate the employment of an employee who is a member of the state military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment. Gov’t Code 437.204(a).
A public employee, other than a temporary employee, who leaves a state position or a position with a local governmental entity, including a college district, to enter active military service is entitled to be reemployed by the state or the local governmental entity; in the same department, office, commission, or board of this state, a state institution, or local governmental entity in which the employee was employed at the time of the employee's induction or enlistment in, or order to, active military service; and in the same position held at the time of the induction, enlistment, or order or to a position of similar seniority, status, and pay. To be entitled to reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions not later than the fifth anniversary after the date of induction, enlistment, or call to active military service and must be physically and mentally qualified to perform the duties of the position.  

Gov't Code 613.001(3), .002

A public employee who cannot perform the duties of the position because of a disability sustained during military service is entitled to reemployment in the department, office, commission, or board of the state, a state institution, or a local governmental entity in a position that the employee can perform and that has like seniority, status, and pay as the former position or the nearest possible seniority, status, and pay.  

Gov't Code 613.003

To be reemployed, a veteran must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service. The application must be made in writing to the head of the department, office, commission, or board of this state, the state institution, or the local governmental entity and have attached to it evidence of the veteran's discharge, separation, or release from military service under honorable conditions.  

Gov't Code 613.004

A person reemployed under Government Code Chapter 613 shall not be discharged without cause before the first anniversary of the date of the reemployment.  

Gov't Code 613.005

“Military service” means service as a member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, the Texas National Guard, or the Texas State Guard.  

Gov't Code 613.001(2)
An employee of a public junior college who is engaged in official business may participate in the comptroller’s contract for travel services. *Gov't Code 2171.055(f); 34 TAC 20.301(b)(2)(E)*
### TRAVEL
Prior approval for all travel, including prepaid expenses, shall be obtained before any expenses are incurred.

Exception shall occur only because of emergency, employee contract, or by an authority that supersedes this policy. In the case of an exception, written justification for the exception shall be presented to the College President or designee.

### REIMBURSEMENT
An employee shall be reimbursed for authorized mileage incurred while performing duties related to the job only if such travel is at the request of the employee’s immediate supervisor and is approved by the College President or designee.

Employees shall be reimbursed for other reasonable travel expenditures according to the current schedule adopted by the Board and subject to IRS regulations.

### DOCUMENTATION REQUIRED
For any authorized expense incurred, the employee shall submit a statement, with receipts to the extent feasible, documenting actual expenses and in accordance with administrative procedures.

### EXCEPTION
Expenses for meals associated with authorized travel shall be paid to employees on a per diem basis. No receipts shall be required for expenses paid on a per diem basis.
An employer, including a college district, shall not require the retirement of any employee on the basis of age. 29 U.S.C. 623; Education Code 51.922

Membership in the Teacher Retirement System of Texas includes all employees of the public school system, such as college district employees. Gov’t Code 822.001–.002; Atty. Gen. Op. H-871 (1976)

The governing board of each institution of higher education, including each college district, shall provide an opportunity to participate in the optional retirement program (ORP) to all faculty members in the component institutions governed by the board. Eligibility to participate in the optional retirement program is subject to rules adopted by the Coordinating Board, 19 Administrative Code 25.1–25.6. Gov’t Code 830.101(a)–(b); 19 TAC 25.4(e)

“Faculty member” means a person who is employed by an institution of higher education, including a college district, on a full-time basis in any of the following positions:

1. A member of the faculty whose duties include teaching or research.
2. An administrator responsible for teaching and research faculty.
3. An athletic coach, associate athletic coach, or assistant athletic coach whose primary activity is coaching.
4. A professional librarian, a president, a chancellor, a vice president, a vice chancellor, or other professional staff person whose national mobility requirements are similar to those of faculty members and who fills a position that is subject to nationwide searches in the academic community.

Gov’t Code 821.001

An employee who meets the eligibility criteria in 19 Administrative Code 25.4(a) shall be provided an ORP election period during which an election to participate in ORP may be made by signing and submitting the appropriate forms to the ORP employer. The initial ORP eligibility date shall be the first day of employment in an ORP-eligible position. The ORP election period shall begin on an employee’s initial ORP eligibility date and shall end on the earlier of the date the employee makes an ORP election by signing and submitting the appropriate forms to the ORP employer; or the 90th calendar day after the employee’s initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility
date falls on a weekend or holiday, the deadline shall be extended until the first working day after the 90th calendar day.

An employee who is eligible to elect ORP shall have only one opportunity during his or her lifetime, including any future periods of employment in Texas public higher education, to elect ORP in lieu of the applicable retirement system, and the election may never be revoked. Failure to elect ORP during the 90-day ORP election period shall be a default election to continue membership in the applicable retirement system.


Each ORP employer shall, within 15 business days of an ORP-eligible employee's initial ORP eligibility date, provide written notification to the ORP-eligible employee that indicates the beginning and ending dates of his or her ORP election period and the local procedures for submitting the election form and additional required paperwork. 19 TAC 25.4(f)(3)

An institution of higher education, including a college district, may establish a governmental excess benefit arrangement as provided by Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)) for the purpose of providing to participants in the optional retirement program any portion of a participant’s benefits that would otherwise be payable under the terms of the program except for the limitation on benefits imposed by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Section 415). The governing board of an institution of higher education may take any action necessary to establish and implement a governmental excess benefit arrangement authorized in accordance with Government Code 830.004(c). Gov’t Code 830.004(c)
All College District employees shall be required to participate in a retirement program. Part-time employees who are not members of the Teacher Retirement System (TRS) or an optional retirement program shall be required to participate in a retirement program selected by the College District.
College district employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to his or her official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.


A state or local governmental entity, including a college district, may not suspend or terminate the employment of, or take other adverse personnel action against, a public 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.

A report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or the federal government that the employee in good faith believes is authorized to:

1. Regulate under or enforce the law alleged to be violated in the report; or
2. Investigate or prosecute a violation of criminal law.

*Gov't Code 554.002*

A supervisor who in violation of Government Code Chapter 554 suspends or terminates the employment of a public employee or takes an adverse personnel action against the employee is liable for a civil penalty not to exceed $15,000. *Gov't Code 554.008*

“Public employee” means an employee or appointed officer other than an independent contractor who is paid to perform services for a state or local governmental entity. *Gov't Code 554.001(4)*

“Law” means a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance. *Gov't Code 554.001(1)*

A “good faith belief that a violation of the law occurred” means that:

1. The employee believed that the conduct reported was a violation of law; and
2. The employee’s belief was reasonable in light of the employee’s training and experience.

*Wichita County v. Hart*, 917 S.W.2d 779 (Tex. 1996)

A “good faith belief that an entity is an appropriate law enforcement authority” means:

1. The employee believed the governmental entity was authorized to:
   a. Regulate under or enforce the law alleged to be violated in the report, or
   b. Investigate or prosecute a violation of criminal law; and

2. The employee’s belief was reasonable in light of the employee’s training and experience.


A public employee whose employment is suspended or terminated or who is subjected to an adverse personnel action in violation of Government Code 554.002 is entitled to sue for injunctive relief, actual damages, court costs, and reasonable attorney fees, as well as other relief specified in Government Code 554.003. A public employee whose employment is suspended or terminated in violation of Government Code Chapter 554 is entitled to reinstatement to the employee’s former position or an equivalent position, compensation for wages lost during the period of suspension or termination, and reinstatement of fringe benefits and seniority rights lost because of the suspension or termination. *Gov’t Code 554.003*

**WHISTLEBLOWER COMPLAINTS**

A public employee whose employment is suspended or terminated or who is subjected to an adverse personnel action in violation of Government Code 554.002 is entitled to sue for injunctive relief, actual damages, court costs, and reasonable attorney fees, as well as other relief specified in Government Code 554.003. A public employee whose employment is suspended or terminated in violation of Government Code Chapter 554 is entitled to reinstatement to the employee's former position or an equivalent position, compensation for wages lost during the period of suspension or termination, and reinstatement of fringe benefits and seniority rights lost because of the suspension or termination. *Gov’t Code 554.003*

**INITIATE GRIEVANCE**

A public employee must initiate action under the grievance or appeal procedures of the employing state or local governmental entity relating to suspension or termination of employment or adverse personnel action before suing under Chapter 554.

The employee must invoke the applicable grievance or appeal procedures not later than the 90th day after the date on which the alleged violation of Chapter 554 occurred or was discovered by the employee through reasonable diligence.

*Gov’t Code 554.006(a)–(b)*

**LEGAL ACTION**

If a final decision is not rendered before the 61st day after the date procedures are initiated under Government Code 554.006(a), the employee may elect to:

1. Exhaust the applicable procedures, in which event the employee must sue not later than the 30th day after the date
those procedures are exhausted to obtain relief under Government Code Chapter 554; or

2. Terminate procedures, in which event the employee must sue within time remaining under Government Code 554.005 to obtain relief under Government Code Chapter 554.

*Gov’t Code 554.006(c)–(d)*

**BURDEN OF PROOF**

A public employee who sues under Chapter 554 has the burden of proof, except that if the suspension or termination of, or adverse personnel action against, a public employee occurs not later than the 90th day after the date on which the employee reports a violation of law, the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report. *Gov’t Code 554.004(a)*

**AFFIRMATIVE DEFENSE**

It is an affirmative defense to a suit under Chapter 554 that the employing state or local governmental entity would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under Chapter 554 of a violation of law. *Gov’t Code 554.004(b)*

**NOTICE OF RIGHTS**

A state or local governmental entity shall inform its employees of their rights under Chapter 554 by posting a sign in a prominent location in the workplace. The attorney general shall prescribe the design and content of the sign. *Gov’t Code 554.009*

**FIREARMS AND AMMUNITION**

A public or private employer, including a college district, may not prohibit an employee who holds a license to carry a concealed handgun under Government Code Chapter 411, Subchapter H, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the college district provides for employees. *Labor Code 52.061*

Labor Code 52.061 does not apply to a vehicle owned or leased by a public or private employer and used by an employee in the course and scope of the employee's employment, unless the employee is required to transport or store a firearm in the official discharge of the employee's duties. *Labor Code 52.062(a)*

Section 52.061 does not authorize a person who holds a license to carry a concealed handgun under Government Code Chapter 411, Subchapter H, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition to possess a firearm or ammunition on any property where the possession of a firearm or ammunition
is prohibited by state or federal law. Section 52.061 does not prohibit an employer from prohibiting an employee who holds a license to carry a concealed handgun under Government Code Chapter 411, Subchapter H, or who otherwise lawfully possesses a firearm, from possessing a firearm the employee is otherwise authorized by law to possess on the premises of the employer’s business. *Labor Code 52.062(a)–(b)*

"Premises" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. *Penal Code 46.035(f)(3)*

**IMMUNITY**

Except in cases of gross negligence, a public or private employer, or the employer’s principal, officer, director, employee, or agent, is not liable in a civil action for personal injury, death, property damage, or any other damages resulting from or arising out of an occurrence involving a firearm or ammunition that the employer is required to allow on the employer’s property under this section.

The presence of a firearm or ammunition on an employer’s property under the authority of this section does not by itself constitute a failure by the employer to provide a safe workplace.

For purposes of Labor Code 52.063, a public or private employer, or the employer’s principal, officer, director, employee, or agent, does not have a duty:

1. To patrol, inspect, or secure any parking lot, parking garage, or other parking area the employer provides for employees or any privately owned motor vehicle located in a parking lot, parking garage, or other parking area; or

2. To investigate, confirm, or determine an employee’s compliance with laws related to the ownership or possession of a firearm or ammunition or the transportation and storage of a firearm or ammunition.

*Labor Code 52.063*

**PROHIBITIONS**

A state officer or employee, including a college district employee, may not use official authority or influence or permit the use of a program administered by the state agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose. A state employee may not coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of anything of value to a person or political organization for a political purpose. *Gov’t Code 556.004(c)–(d)*
NOTICE BY ELECTRONIC MEDIA

If a state law requires an institution of higher education, including a college district, to provide written notification to its officers or employees of any requirement, right, duty, or responsibility provided by state law, the institution may provide the notification by use of electronic media.

An institution of higher education may adopt rules and guidelines to ensure that notification provided by electronic media is effective and that any required notification is provided to officers and employees who do not have access to electronic media.

*Education Code 51.965*

PROTECTION OF NURSES

A person, including a college district, may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against a nurse who refuses to engage in an act or omission as provided by Occupations Code 301.352(a-1) or a person who advises a nurse of the nurse’s rights under Occupations Code 301.352. *Occupations Code 301.352(a)*

A nurse may refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the Board of Nurse Examiners under Occupations Code Chapter 301, Subchapter I; that constitutes a minor incident, as defined at Occupations Code Section 301.419; or that violates Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes grounds for reporting the nurse to the Board of Nurse Examiners or is a violation of Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners. *Occupations Code 301.352(a-1)*

IMMUNITY FOR SHELTER WORKERS

A service member of the Texas military forces ordered into service of this state by proper authority is not personally liable in the person’s private capacity for any act performed or for any contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration, management, or conduct of the department in business, programs, or other related affairs, under the limited waiver of governmental immunity provided by the Texas Tort Claims Act (Civil Practice and Remedies Code Chapter 101). *Gov't Code 437.222*

An officer or employee of a state or local agency, including a college district, is considered for purposes of Government Code 437.222 to be a member of the Texas military forces ordered into active service of the state by proper authority and is considered to be discharging a duty in that capacity if the person is performing an activity related to sheltering or housing individuals in connection
with the evacuation of an area stricken or threatened by disaster.

Gov't Code 418.006
### RIGHTS
A state employee, including a college district employee, has the rights of freedom of association and political participation guaranteed by the state and federal constitutions except as provided by Government Code 556.004. *Gov't Code 556.003*

### LABOR ORGANIZATIONS
An individual may not be denied public employment, including employment by the college district, because of the individual's membership or nonmembership in a labor organization. *Gov't Code 617.004*

"Labor organization" means any organization in which employees participate and that exists in whole or in part to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions. *Gov't Code 617.001*

### COLLECTIVE BARGAINING PROHIBITED
An official of the state or of a political subdivision of the state, including a college district, may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees. An official of the state or of a political subdivision of the state may not recognize a labor organization as the bargaining agent for a group of employees. *Gov't Code 617.002(a), (c)*

### STRIKES PROHIBITED
Public employees may not strike or engage in an organized work stoppage against the state or a political subdivision of the state. The right of an individual to cease work may not be abridged if the individual is not acting in concert with others in an organized work stoppage. *Gov't Code 617.003(a), (c)*

### PENALTIES
A public employee who violates Government Code 617.003(a) forfeits all civil service rights, reemployment rights, and any other rights, benefits, or privileges the employee enjoys as a result of public employment or former public employment. *Gov't Code 617.003(b)*
A college district shall take no action abridging the freedom of speech or the right of the people to petition the board for redress of grievances. U.S. Const. Amend. I, XIV

The board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. But when the board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys. Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819, 828 (1995); City of Madison v. Wis. Emp. Rel. Comm’n, 429 U.S. 167, 174 (1976); Pickering v. Bd. of Educ., 391 U.S. 563, 568 (1968) [See DG]

The citizens, including college district employees, shall have the right, in a peaceable manner, to assemble together for their common good and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance. Tex. Const. Art. I, Sec. 27

There is no requirement that the board negotiate or even respond to complaints. However, the board must stop, look, and listen and must consider the petition, address, or remonstrance. Profs’l Ass’n of College Educators v. El Paso County Cmty District, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref’d n.r.e.)

A recipient of federal financial assistance that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by 34 C.F.R. Part 104 (Section 504 of the Rehabilitation Act of 1973 regulations). Such procedures need not be established with respect to complaints from applicants for employment. 34 C.F.R. 104.7(b), .11

A public entity, including a college district, that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the 28 C.F.R. Part 35 (Americans with Disabilities Act regulations). 28 C.F.R. 35.107(b), .140

Each recipient of federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by 34 C.F.R. Part 106 (Title IX of the Education Amendments of 1972 regulations). 34 C.F.R. 106.8(b); North Haven Bd of Educ. v. Bell, 456 U.S. 512 (1982)
Government Code Chapter 617 (prohibition against collective bargaining and strikes, see DGA) does not impair the right of employees to present grievances concerning their wages, hours of employment, or conditions of work, either individually or through a representative that does not claim the right to strike. *Gov't Code 617.005*

The term “conditions of work” should be construed broadly to include any area of wages, hours, or conditions of employment, and any other matter that is appropriate for communications from employees to employer concerning an aspect of their relationship. *Att'y Gen. Op. JM-177 (1984); Corpus Christi Fed. of Teachers v. Corpus Christi Indep. Sch. Dist., 572 S.W.2d 663 (Tex. 1978)*

The statute protects grievances presented individually or individual grievances presented collectively. *Lubbock Prof'l Firefighters v. City of Lubbock*, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.)

A college district cannot deny an employee’s representative, including an attorney, the right to represent the employee at any stage of the grievance procedure, so long as the employee designates the representative and the representative does not claim the right to strike. *Lubbock Prof'l Firefighters v. City of Lubbock*, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.; *Sayre v. Mullins*, 681 S.W.2d 25 (Tex. 1984)

A college district should meet with employees or their designated representatives at reasonable times and places to hear grievances concerning wages, hours of work, and conditions of work. The right to present grievances is satisfied if employees have access to those in a position of authority to air their grievances. However, that authority is under no legal compulsion to take action to rectify the matter. *Att'y Gen. Op. H-422 (1974); Corpus Christi Indep. Sch. Dist v. Padilla*, 709 S.W.2d 700 (Tex. App.—Corpus Christi 1986, no writ)

Government Code Chapter 551 does not require a governmental body, including a college district board of trustees, to conduct an open meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of an employee or to hear a complaint or charge against an employee. This section does not apply if the employee who is the subject of the deliberation or hearing requests a public hearing. *Gov't Code 551.074 [See BDA]*

A board may conduct a closed meeting on an employee complaint to the extent required or provided by law. *Gov't Code 551.082 [See BDA]*
Before bringing suit, a public employee, including a college district employee, must initiate action under the grievance or appeal procedures of the employing state or local governmental entity relating to suspension or termination of employment or adverse personnel action before suing under Government Code Chapter 554 (whistle-blowers). Gov't Code 554.006 [See DG]
The Board encourages employees to discuss their concerns with their supervisor or other appropriate administrator who has the authority to address the concerns. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level. Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.

An employee may initiate the formal process described below by timely filing a written complaint. Even after initiating the formal complaint process, employees are encouraged to seek informal resolution of their concerns. An employee whose concerns are resolved may withdraw a formal complaint at any time.

The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or “mini-trial” at any level.

Complaints alleging a violation of law by a supervisor may be made to the College President or designee. Complaint forms alleging a violation of law by the College President may be submitted directly to the Board or designee.

The College District shall inform employees of this policy through appropriate College District publications.

Neither the Board nor any College District employee shall unlawfully retaliate against an employee for bringing a concern or complaint.

Whistleblower complaints shall be filed within the time specified by law. Such complaints shall first be filed in accordance with LEVEL TWO, below. Time lines for the employee and the College District set out in this policy may be shortened to allow the Board to make a final decision within 60 days of the initiation of the complaint. [See DG]

In this policy, the terms “complaint” and “grievance” shall have the same meaning, as “complainant” and “grievant” have the same meaning.

Employee complaints shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with DGBA after the relevant complaint process:

**GUIDING PRINCIPLES**

**INFORMAL PROCESS**

**FORMAL PROCESS**

**COMPLAINTS AGAINST SUPERVISORS**

**NOTICE TO EMPLOYEES**

**FREEDOM FROM RETALIATION**

**WHISTLEBLOWER COMPLAINTS**

**COMPLAINTS**

**OTHER COMPLAINT PROCESSES**
1. Complaints alleging discrimination, including violations of Title IX (gender), Title VII (sex, race, color, religion, national origin), ADEA (age), or Section 504 (disability). [See DIA]

2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violations of Title VII. [See DIA]

3. Complaints concerning retaliation relating to discrimination and harassment. [See DIA]

4. Complaints concerning a commissioned peace officer who is an employee of the College District. [See CHA]

5. Complaints concerning an employment preference for former foster children. [See DC]

6. Complaints arising from the dismissal of term contract faculty members. [See DMAA]

7. Complaints concerning the nonrenewal of term contract employees and those arising from the nonrenewal of term contract faculty members. [See DMAB]

Complaints and appeal notices may be filed by hand-delivery, by electronic communication, including e-mail and fax, or by U.S. Mail. Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee by the close of business on the deadline. Filings submitted by electronic communication shall be timely filed if they are received by the close of business on the deadline, as indicated by the date/time shown on the electronic communication. Mail filings shall be timely filed if they are postmarked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three days after the deadline.

The College District shall make reasonable attempts to schedule conferences at a mutually agreeable time. If the employee fails to appear at a scheduled conference, the College District may hold the conference and issue a decision in the employee’s absence.

At Levels One and Two, “response” shall mean a written communication to the employee from the appropriate administrator. Responses may be hand-delivered, sent by electronic communication to the employee’s e-mail address of record, or sent by U.S. Mail to the employee’s mailing address of record. Mailed responses shall be timely if they are postmarked by U.S. Mail on or before the deadline.
“Days” shall mean College District business days, unless otherwise noted. In calculating time lines under this policy, the day a document is filed is “day zero.” The following business day is “day one.”

“Representative” means any person who or an organization that does not claim the right to strike and is designated by the employee to represent him or her in the complaint process.

The employee may designate a representative through written notice to the College District at any level of this process. If the employee designates a representative with fewer than three days’ notice to the College District before a scheduled conference or hearing, the College District may reschedule the conference or hearing to a later date, if desired, in order to include the College District’s counsel. The College District may be represented by counsel at any level of the process.

Complaints arising out of an event or a series of related events shall be addressed in one complaint. Employees shall not file separate or serial complaints arising from any event or series of events that have been or could have been addressed in a previous complaint.

When two or more complaints are sufficiently similar in nature and remedy sought to permit their resolution through one proceeding, the College District may consolidate the complaints.

All time limits shall be strictly followed unless modified by mutual written consent.

If a complaint or appeal notice is not timely filed, the complaint may be dismissed, on written notice to the employee, at any point during the complaint process. The employee may appeal the dismissal by seeking review in writing within ten days from the date of the written dismissal notice, starting at the level at which the complaint was dismissed. Such appeal shall be limited to the issue of timeliness.

Each party shall pay its own costs incurred in the course of the complaint.

Complaints and appeals under this policy shall be submitted in writing and shall contain the following information:

- The name of the grievant and relevant contact information, including address, telephone number, and e-mail address;
- A brief statement of the action or decision giving rise to the complaint;
The date on which the action or decision giving rise to the complaint occurred; and

A statement identifying any representative the grievant intends to bring to a grievance meeting.

Copies of any documents that support the complaint should be attached to the complaint. If the employee does not have copies of these documents, they may be presented at the Level One conference. After the Level One conference, no new documents may be submitted by the employee unless the employee did not know the documents existed before the Level One conference.

A complaint or appeal that is incomplete in any material aspect may be dismissed but may be refilled with all the required information if the refiling is within the designated time for filing.

LEVEL ONE

A complaint must be filed:

1. Within 15 days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance; and

2. With the Executive Vice President of Instruction.

The Executive Vice President of Instruction shall notify the Chair of the College District’s Grievance Committee, who shall then schedule a conference with the employee within 15 days after receipt of the written complaint.

The conference held by the Grievance Committee shall allow the complainant to present argument and any relevant information in support of the grievance and shall allow College District administration an opportunity to respond to the concerns raised by the complainant and present any relevant information. Generally, this conference shall not include cross examination of witnesses. The Chair of the committee may set reasonable time limits for the conference.

After this conference, the Grievance Committee may deliberate in private or conduct further investigation to reach its decision. The Chair of the Committee shall provide the employee the written response of the Grievance Committee within ten days following the conference. In reaching a decision, the Grievance Committee may consider information provided at the Level One conference and any other relevant documents or information the Committee believes will help resolve the complaint.

LEVEL TWO

If the employee did not receive the relief requested at Level One or if the time for a response has expired, the employee may request a
conference with the College President or designee to appeal the Level One decision.

The appeal notice must be filed in writing within ten days of the date of the written Level One response or, if no response was received, within ten days of the Level One response deadline. Information required in this appeal notice includes all that is listed at SUBMISSION OF COMPLAINTS AND APPEALS, above, along with a specific statement of how and why the complainant disagrees with the Level One decision.

After receiving notice of the appeal, the Chair of the Grievance Committee shall prepare and forward a record of the Level One complaint to the office of the College President. The employee may request a copy of the Level One record.

The Level One record shall include:

1. The original complaint and any attachments.
2. All other documents submitted by the employee at Level One.
3. The written response issued at Level One and any attachments.
4. All other documents relied upon by the Grievance Committee in reaching the Level One decision.

The College President or designee shall schedule a conference within ten days after the appeal notice is filed. The conference shall be limited to the issues and documents presented by the employee at Level One and identified in the Level Two appeal notice. At the conference, the employee may provide information concerning any documents or information relied upon by the Grievance Committee for the Level One decision. The College President or designee may set reasonable time limits for the conference.

The College President or designee shall provide the employee a written response within ten days following the conference. In reaching a decision, the College President or designee may consider the Level One record, information provided at the Level Two conference, and any other relevant documents or information the College President or designee believes will help resolve the complaint.

Recordings of the Level One and Level Two conferences, if any, shall be maintained with the Level One and Level Two records.

LEVEL THREE

If the employee did not receive the relief requested at Level Two or if the time for a response has expired, the employee may request a conference with the Board to appeal the Level Two decision.
The appeal notice must be filed in writing within ten days after receipt of a response or, if no response was received, within ten days of the response deadline at Level Two. Information required for this appeal notice includes what is listed at SUBMISSION OF COMPLAINTS AND APPEALS, above, along with a specific statement of how and why the employee disagrees with the decision made at Level Two. In addition, if the employee desires that the Board hear his or her complaint in open session, this request must be stated in the appeal notice.

After receiving notice of the appeal, the College President or designee shall prepare and forward a record of the Level Two complaint to the Board. The employee may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.
2. The written response issued at Level Two and any attachments.
3. All other documents relied upon by the College President or designee in reaching the Level Two decision.

The College President or designee shall inform the employee of the date, time, and place of the Board meeting at which the complaint will be on the agenda for presentation to the Board.

The appeal shall be limited to the issues and documents considered at Level Two, except that if at the Level Three hearing the administration intends to rely on evidence not included in the Level Two record, the administration shall provide the employee notice of the nature of the evidence at least three days before the hearing.

Any request of the complainant to hear the complaint in open session shall be considered by the Board, but the College District shall determine whether the complaint will be presented in open or closed meeting in accordance with the Texas Open Meetings Act and other applicable law. [See BD]

The presiding officer may set reasonable time limits and guidelines for the presentation including an opportunity for the employee and administration to each make a presentation and provide rebuttal and an opportunity for questioning by the Board. The Board shall hear the complaint and may request that the administration provide an explanation for the decisions at the preceding levels.

In addition to any other record of the Board meeting required by law, the Board shall prepare a separate record of the Level Three
The Level Three presentation, including the presentation by the employee or the employee’s representative, any presentation from the administration, and questions from the Board with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board shall then consider the complaint. It may give notice of its decision orally or in writing at any time up to and including the next regularly scheduled Board meeting. If the Board does not make a decision regarding the complaint by the end of the next regularly scheduled meeting, the lack of a response by the Board upholds the administrative decision at Level Two.
The modern concept of academic freedom, which the College District adopts, took form in the 19th century in Germany, and it embraces both freedom in teaching (lehrfreiheit) and freedom in learning (lernfreiheit). According to many professional education associations in the United States, academic freedom is summed up in two statements. First, the instructor is entitled to full freedom in research and in the expression of those results, and second, the instructor is entitled to freedom in the classroom for discussion of his or her subject, but the instructor should be careful not to introduce controversial material that has no relationship to the subject being taught.

Academic freedom is accompanied by recognized responsibilities: the preserving of scholarly objectivity; the refraining from utilizing the classroom forum for extraneous purposes; and the distinguishing of the instructor’s personal role from his or her instructional or academic role. The freedoms accorded by academic freedom exist elsewhere in a democratic society, but it is in the institutional context of higher education that academic freedom becomes distinctive.
The grounds and facilities of the College District shall be made available to employees or employee organizations, when such use does not conflict with use by, or any of the policies and procedures of, the College District. The requesting employees or employee organization shall pay all expenses incurred by their use of the facilities in accordance with a fee schedule developed by the Executive Vice President for Instruction.

An “employee organization” is an organization composed only of College District faculty and staff or an employee professional organization.

REQUESTS
To request permission to meet on College District premises, interested employees or employee organizations shall file a written request in accordance with administrative procedures and to the following officials:

- For the main campus – the administrative assistant to the Executive Vice President for Instruction
- For Hanson-Sewell Center – the Director of Educational Services for Camp County
- For Omaha Center – the Director of Educational Services for Morris County

The employees or the employee organization making the request shall indicate that they have read and understand the policies and rules governing use of College District facilities and that they will abide by those rules.

APPROVAL
The official shall approve or reject the request in accordance with provisions and deadlines set out in this policy and administrative procedures, without regard to the religious, political, philosophical, or other content of the speech likely to be associated with the employees’ or employee organization’s use of the facility.

Approval shall not be granted when the official has reasonable grounds to believe that:

1. The College District facility requested is unavailable, inadequate, or inappropriate to accommodate the proposed use at the time requested;
2. The applicant is under a disciplinary penalty or sanction prohibiting the use of the facility;
3. The proposed use includes nonpermissible solicitation;
4. The proposed use would constitute an immediate and actual danger to the peace or security of the College District that
available law enforcement officials could not control with rea-
sonable efforts;

5. The applicant owes a monetary debt to the College District
    and the debt is considered delinquent;

6. The proposed activity would disrupt or disturb the regular ac-
    ademic program;

7. The proposed use would result in damage to or defacement
    of property or the applicant has previously damaged College
    District property; or

8. The proposed activity would constitute an unauthorized joint
    sponsorship with an outside group.

The official shall provide the applicant a written statement of the
grounds for rejection if a request is denied.

ANNOUNCEMENTS
AND PUBLICITY

In accordance with administrative procedures, all employees and
employee organizations shall be given access on the same basis
for making announcements and publicizing their meetings and ac-

IDENTIFICATION

Employees and employee organizations using College District fa-
cilities must provide identification when requested to do so by a
College District representative.

VIOLATIONS

Failure to comply with the policy and procedures regarding em-
ployee use of College District facilities shall result in appropriate
administrative action, including but not limited to, suspension of an
employee’s or employee organization’s use of College District facil-
ities, and/or other disciplinary action in accordance with the Col-
lege District’s policies and procedures and the employee hand-

APPEALS

Decisions made by the administration under this policy may be ap-
pealed in accordance with DGBA(LOCAL).
PUBLIC SERVANTS

All college district employees are public servants and therefore subject to Title 8 of the Penal Code, regarding offenses against public administration, including bribery and corrupt influence (Chapter 36), perjury and other falsification (Chapter 37), obstructing governmental operation (Chapter 38), and abuse of office (Chapter 39). *Penal Code 1.07(a)(41), Title 8* [See DBD and BBFA]

DRUG AND ALCOHOL ABUSE PROGRAM

A person other than an individual shall not receive a grant from a Federal agency unless the person agrees to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition [see DI(EXHIBIT)];

2. Establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace; the grantee's policy of maintaining a drug-free workplace; available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed on employees for drug abuse violations;

3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by item 1;

4. Notifying the employee in the statement required by item 1 that as a condition of employment in the grant the employee will abide by the terms of the statement; and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after the conviction;

5. Notifying the granting agency within ten days after receiving notice under item 4 from an employee or otherwise receiving actual notice of a conviction;

6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by 41 U.S.C. 8104; and

7. Making a good faith effort to continue to maintain a drug-free workplace through the implementation of items 1 to 6.

*41 U.S.C. 8103(a)(1)*
SEX OFFENDER REGISTRATION

Not later than the later of the seventh day after the date on which the person begins to work or the first date the applicable authority by policy allows the person to register, a person required to register under Code of Criminal Procedure Chapter 62 who is employed or carries on a vocation at a public or private institution of higher education in this state shall report that fact to:

1. The authority for campus security for that institution; or
2. If an authority for campus security for that institution does not exist the local law enforcement authority of:
   a. The municipality in which the institution is located; or
   b. The county in which the institution is located, if the institution is not located in a municipality.

The person described above shall provide the authority for campus security or the local law enforcement authority all information the person is required to provide under Code of Criminal Procedure 62.051(c). The person shall notify the authority for campus security or the local law enforcement authority not later than the seventh day after the date of termination of the person’s status as a worker at the institution.

The authority for campus security or the local law enforcement authority shall promptly forward to the administrative office of the institution any information received from the person under Code of Criminal Procedure 62.153 and any information received from the Texas Department of Public Safety under Code of Criminal Procedure 62.005.

This section does not impose the requirements of public notification or notification to public or private primary or secondary schools on:

1. An authority for campus security; or
2. A local law enforcement authority, if those requirements relate to a person about whom the authority is not otherwise required by Code of Criminal Procedure Chapter 62 to make notifications.

[See also GAA]

*Code of Criminal Procedure 62.153(a)–(d), (f)*
All College District employees shall perform their duties in accordance with state and federal law, College District policy, and ethical standards.

All College District personnel shall recognize and respect the rights of students, other employees, and members of the community and shall work cooperatively with others to serve the best interests of the College District.

Employees wishing to express concern, complaints, or criticism shall do so through appropriate channels. [See DGBA]

The College District holds all employees to the ethical standards expressed in the Texas Community College Teachers Association Code of Professional Ethics.


Employees shall comply with the standards of conduct set out in this policy and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to their status as College District employees. Violation of any policies, regulations, or guidelines may result in disciplinary action, including termination of employment. [See DCC and DM series]

Electronic media includes all forms of social media, such as text messaging, instant messaging, electronic mail (e-mail), web logs (blogs), electronic forums (chat rooms), video-sharing websites, editorial comments posted on the Internet, and social network sites. Electronic media also includes all forms of telecommunication, such as landlines, cell phones, and web-based applications.

An employee shall comply with the College District’s requirements for records retention and destruction to the extent those requirements apply to electronic media. [See CIA]

Employees shall be held to the same professional standards in their public use of electronic media as they are for any other public conduct. If an employee’s use of electronic media violates state or federal law or College District policy, or interferes with the employee’s ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment.

All employees shall adhere to College District safety rules and regulations and shall report unsafe conditions or practices to the appropriate supervisor.
GOOD JUDGMENT STANDARD
The Board does not feel a need to establish rigid rules and regulations regarding employee behavior. An employee shall always demonstrate good judgment and a sense of responsibility in his or her conduct, exhibiting professional dignity and decorum befitting his or her position.

DRESS
Professional employees and office personnel shall dress in a professional manner. Classified personnel shall dress in a reasonable, clean manner that shows a high level of discretion and taste.

TOBACCO USE
The College District prohibits the use of any type of tobacco products, including electronic cigarettes, on College District grounds and in College District buildings, facilities, and vehicles in order to provide students, employees, and visitors a safe and healthy environment. This prohibition shall also apply to spaces leased by the College District. The use of tobacco products, including electronic cigarettes, shall be permitted in designated areas and private vehicles parked on College District property provided any residue is retained within the vehicle. [See also FLBD and GFA]

ALCOHOL AND DRUGS
A copy of this policy, the purpose of which is to eliminate drug abuse from the workplace, shall be provided each employee upon employment and shall be available online at www.ntcc.edu for review thereafter.

Employees shall not manufacture, distribute, dispense, possess, use, or be under the influence of any of the following substances during working hours while at the College District or at College District-related activities during or outside of usual working hours:

1. Any controlled substance or dangerous drug as defined by law, including but not limited to marijuana, any narcotic drug, hallucinogen, stimulant, depressant, amphetamine, or barbiturate.

2. Alcohol or any alcoholic beverage.

3. Any abusable glue, aerosol paint, or any other chemical substance for inhalation.

4. Any other intoxicant, or mood-changing, mind-altering, or behavior-altering drugs.

An employee need not be legally intoxicated to be considered “under the influence” of a controlled substance.

EXCEPTIONS
An employee who manufactures, possesses, or dispenses a substance listed above as part of the employee’s job responsibilities, or who uses a drug authorized by a licensed physician prescribed for the employee’s personal use shall not be considered to have violated this policy.
The College President is authorized by the Board to permit the serving and consumption of alcohol at appropriate College District functions.

NOTICE

Each employee shall be given a copy of the College District’s notice regarding a drug-free workplace upon employment. [See DI(EXHIBIT)] Thereafter, the notice shall be made available for review online at www.ntcc.edu.

ARRESTS, INDICTMENTS, CONVICTIONS, AND OTHER ADJUDICATIONS

An employee shall notify his or her immediate supervisor within three calendar days of any arrest, indictment, conviction, no contest or guilty plea, or other adjudication of the employee for any felony or offense involving moral turpitude.

MORAL TURPITUDE

Moral turpitude includes but is not limited to:

1. Dishonesty, fraud, deceit, theft, or misrepresentation;

2. Deliberate violence;

3. Base, vile, or depraved acts that are intended to arouse or gratify the sexual desire of the actor;

4. Felony possession, transfer, sale, distribution, or conspiracy to possess, transfer, sell, or distribute any controlled substance defined in Chapter 481 of the Health and Safety Code;

5. Acts constituting public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct, if any two or more acts are committed within any 12-month period; or


PROHIBITED CONDUCT

In this policy, the term “prohibited conduct” shall include all forms of assault, discrimination, harassment, and retaliation as defined by DIA and FFD, even if the behavior does not rise to the level of unlawful conduct.

College District officials or their agents shall investigate all allegations of harassment, and officials shall take prompt and appropriate disciplinary action against employees found to have engaged in conduct constituting harassment, violence, or retaliation. [See DGBA, DIA, FFD, and FLD, as applicable]

ABUSE OF POWER

A College District employee is prohibited from engaging in any romantic or sexual relationship resulting from any overt romantic or sexual advances upon a student to whom the employee has professional responsibilities to teach, advise, counsel, or otherwise facilitate the student’s academic career.
An administrator or supervisor at any level shall be prohibited from engaging in any romantic or sexual relationship resulting from making any overt romantic or sexual advances toward any employee or member of the College District community for which the administrator or supervisor has supervisory responsibilities or whose terms and conditions of employment could be affected by the administrator or supervisor.

Complaints may be initiated by any student, employee, or other member of the College District community who is or has been in a romantic or sexual relationship or who is or has been the subject of overt romantic or sexual advances. Complaints may also be initiated by third parties who allege they have been specifically adversely affected by such a relationship.

Any person associated with the College District—whether employee, student, guest, or other—who believes he or she has been or is being subjected to any form of harassment or other prohibited conduct should bring the matter to the attention of his or her dean, to the immediate supervisor, or to the executive director of human resources/Title IX coordinator for campus safety, in accordance with the procedures in the pertinent policies. [See DGBA, DIA, FFD, and FLD, as appropriate]

No procedure or step in these policies shall have the effect of requiring the employee or student alleging harassment to present the matter to a person who is the subject of the complaint nor shall a harassment complaint be dismissed because it is not filed within the time lines set forth in DGBA or FLD.

College District officials, for purposes of this policy, shall be the ADA/Section 504 coordinator, the Title IX coordinator, and the College President. [See DIA and FFD]
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.  

**U.S. Const. Amend. IV; Tex. Const. Art. I, Sec. 9**

A governmental entity, including a college district, may search an employee or an employee’s property if:

1. The governmental entity has reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct or that the search is necessary for a non-investigatory, work-related purpose; and

2. The search is reasonably related in scope to the circumstances that justified the interference in the first place.


**Blood, urine, and breath tests of public employees to determine drug use are searches under the Fourth Amendment of the U.S. Constitution.  Skinner v. Railway Labor Executives Ass’n, 489 U.S. 602 (1989)**

A governmental entity, including a college district, may conduct drug tests, without a warrant and without individualized suspicion, when the test serves special governmental needs that outweigh the individual’s privacy expectation.  **Skinner v. Railway Labor Executives Ass’n, 489 U.S. 602 (1989); Nat’l Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989)**

**Random alcohol and drug testing of employees in “safety-sensitive” positions may be permissible when the intrusiveness of the search is minimal and the governing board of a governmental entity is able to demonstrate that the drug-testing program furthers its interest in ensuring the physical safety of students.  “Safety-sensitive” positions include those that involve the handling of potentially dangerous equipment or hazardous substances in an environment including a large number of children.  Aubrey v. School Board of LaFayette Parish, 148 F.3d 559 (5th Cir. 1998)**

---

**Note:** The following testing requirements apply to every employee who operates a commercial motor vehicle and is subject to commercial driver’s license requirements in accordance with federal regulations.

**TESTING OF DRIVERS**

An employer, including a college district, shall conduct testing, in accordance with federal regulations, of commercial motor vehicle
operators for use of alcohol or a controlled substance that violates law or federal regulation. 49 U.S.C. 31306; 49 C.F.R. Part 382

“COMMERCIAL MOTOR VEHICLE”

A “commercial motor vehicle” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

1. Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

2. Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or

3. Is designed to transport 16 or more passengers, including the driver; or

4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F).

Each employer shall ensure that all alcohol or controlled substances testing conducted under 49 C.F.R. Part 382 complies with the procedures set forth in 49 C.F.R. Part 40. 49 C.F.R. 382.105

No driver shall refuse to submit to a preemployment controlled substance test required under 49 C.F.R. 382.301, a post-accident alcohol or controlled substances test required under 49 C.F.R. 382.303, a random alcohol or controlled substances test required under 49 C.F.R. 382.305, a reasonable suspicion alcohol or controlled substances test required under 49 C.F.R. 382.307, a return-to-duty alcohol or controlled substances test required under 49 C.F.R. 382.309, or follow-up alcohol or controlled substances test required under 49 C.F.R. 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions. 49 C.F.R. 382.211

Each employer shall provide educational materials that explain the requirements of 49 C.F.R. Part 382 and the employer’s policies and procedures with respect to meeting these requirements. The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under Part 382 and to each driver subsequently hired or
transferred into a position requiring driving a commercial motor vehicle. Each employer shall provide written notice to representatives of employee organizations of the availability of this information. The materials to be made available to drivers shall include detailed discussion of at least the items listed at 49 C.F.R. 382.601. Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

49 C.F.R. 382.601

REPORTS

An employer required to conduct alcohol and drug testing of an employee who holds a commercial driver’s license under Transportation Code Chapter 522 under federal safety regulations as part of the employer’s drug testing program or consortium, as defined by 49 C.F.R. Part 382, shall report the following information to the Department of Public Safety:

1. A valid positive result on an alcohol or drug test performed and whether the specimen producing the result was a dilute specimen.

   “Valid positive result” means an alcohol concentration of 0.04 or greater on an alcohol confirmation test, or a result at or above the cutoff concentration levels listed in 49 C.F.R. 40.87 on a confirmation drug test.

   “Dilute specimen” means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

2. A refusal to provide a specimen for an alcohol or drug test.

3. An adulterated specimen or substituted specimen, as those terms are defined by 49 C.F.R. 40.3, on an alcohol or drug test performed.

For purposes of this requirement, “employee” means any person who is designated in a U.S. Department of Transportation (DOT) agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to preemployment testing.

Transp. Code 644.251–.252; 49 C.F.R. 40.3
The College District reserves the right to conduct searches when the College District has reasonable cause to believe that a search will uncover evidence of work-related misconduct. The College District may search the employee, the employee’s personal items, work areas, lockers, and private vehicles parked on College District premises or worksites or used in College District business.

**Note:** The following provisions apply to employees who are covered by the federal Department of Transportation (DOT) rules.

The College District shall establish an alcohol and controlled substances testing program to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by the drivers of commercial motor vehicles. The primary purpose of the testing program is to prevent impaired employees from performing safety-sensitive functions.

The following constitute drug-related violations:

1. Refusing to submit to a required test for alcohol or controlled substances.
2. Providing an adulterated, diluted, or a substituted specimen on an alcohol or drug test.
3. Testing positive for alcohol, at a concentration of 0.04 or above, in a postaccident test.
4. Testing positive for controlled substances in a postaccident test.
5. Testing positive for alcohol, at a concentration of 0.04 or above, in a random test.
6. Testing positive for controlled substances in a random test.
7. Testing positive for alcohol, at a concentration of 0.04 or above, in a reasonable suspicion test.
8. Testing positive for controlled substances in a reasonable suspicion test.

The College President shall designate a College District official who shall be responsible for ensuring that information is disseminated to employees regarding prohibited driver conduct, alcohol and controlled substances tests, and the consequences that follow positive test results.

With specific Board approval, the College President may contract on behalf of the College District with outside consultants and con-
tractors and work with a consortium of other local governments to secure the testing services, educational materials, and other component elements needed for this program.

Under such contract, the consortium shall be responsible for implementing, directing, administering, and managing the alcohol and controlled substances program within the U.S. Department of Transportation guidelines. The consortium shall serve as the principal contact with the laboratory and for collection activities in assuring the effective operation of the testing portion of the program.

Only supervisors specifically trained in accordance with federal regulations may, based upon reasonable suspicion, remove a driver from a safety-sensitive position and require testing for alcohol and/or controlled substances. The determination of reasonable suspicion shall be based on specific observations of the appearance, behavior, speech, or body odors of the driver whose motor ability, emotional equilibrium, or mental acuity seems to be impaired. Such observations must take place just preceding, during, or just after the period of the workday that the driver is on duty.

The observations may include indication of the chronic and withdrawal effects of controlled substances. Within 24 hours of the observed behavior, the supervisor shall provide a signed, written record documenting the observations leading to a controlled substance reasonable suspicion test.

In addition to the consequences established by federal law, a College District employee confirmed to have violated the College District’s policy pertaining to alcohol or controlled substances shall be subject to College District-imposed discipline, as determined by his or her supervisor(s) and the College President. Such discipline may include any appropriate action from suspension without pay during the period of removal from safety-sensitive functions, up to and including termination of employment.

In cases where a driver is also employed in a nondriving capacity by the College District, disciplinary action imposed for violation of alcohol and controlled substances policies shall apply to the employee’s functions and duties that involve driving. Additionally, upon recommendation of the employee’s supervisor, disciplinary measures up to and including termination of employment with the College District may be considered.

A driver tested under this policy and found to have an alcohol concentration of 0.02 or greater, but less than 0.04, shall be suspended without pay from driving duties for 24 hours. A subsequent violation may subject the driver to termination in accordance with Board policy.
CHILD ABUSE 
REPORTING POLICY 
AND TRAINING

Each institution of higher education shall adopt a policy governing the reporting of child abuse and neglect as required by Family Code Chapter 261 for the institution and its employees. The policy must require each employee of the institution to report child abuse and neglect in the manner required by Family Code Chapter 261.

Each institution of higher education shall provide training for employees who are professionals as defined by Family Code 261.101 in prevention techniques for and the recognition of symptoms of sexual abuse and other maltreatment of children and the responsibility and procedure of reporting suspected occurrences of sexual abuse and other maltreatment. The training must include:

1. Techniques for reducing a child's risk of sexual abuse or other maltreatment;
2. Factors indicating a child is at risk for sexual abuse or other maltreatment;
3. The warning signs and symptoms associated with sexual abuse or other maltreatment and recognition of those signs and symptoms; and
4. The requirements and procedures for reporting suspected sexual abuse or other maltreatment as provided by Family Code Chapter 261.

*Education Code 51.9761*

REPORTING ABUSE 
AND NEGLECT

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 Family Code Chapter 261, Subchapter B. *Family Code 261.101(a)*

A person or professional shall make a report in the manner required by Family Code 261.101(a) or (b), as applicable, if the person or professional has cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of:

1. Another child; or
2. An elderly or disabled person as defined by Human Resources Code 48.002.

*Family Code 261.101(b-1)*

PROFESSIONAL 
EMPLOYEES

If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Penal Code 21.11 (indecency with a
child), and the professional has cause to believe that the child has been abused as defined by Family Code 261.001 or 261.401, 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 Penal Code 21.11 (indecency with a child). A professional may not delegate to or rely on another person to make the report.

"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, and employees of a clinic or health care facility that provides reproductive services.

*Family Code 261.101(b)*

A report shall be made to:

1. Any local or state law enforcement agency;
2. The Department of Family and Protective Services (DFPS);
3. The state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or
4. The agency designated by the court to be responsible for the protection of children.

A report, other than a report under item 3, must be made to DFPS if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

*Family Code 261.103*
**HAZARD COMMUNICATION ACT NOTICE**

An employer, including a college district, shall post and maintain adequate notice, at locations where notices are normally posted, informing employees of their rights under this chapter. If the director does not prepare the notice under Health and Safety Code 502.008, the employer shall prepare the notice promulgated by the Texas Department of State Health Services (DSHS) in the workplace. *Health and Safety Code 502.017(a)*

**EDUCATION AND TRAINING**

An employer shall provide an education and training program for employees who use or handle hazardous chemicals. “Employee” means a person who may be or may have been exposed to hazardous chemicals in the person’s workplace under normal operating conditions or foreseeable emergencies, and includes a person working for a political subdivision of this state. Workers such as office workers or accountants who encounter hazardous chemicals only in nonroutine, isolated instances are not employees for purposes of these requirements. *Health and Safety Code 502.003(10), .009(a)*

An employer shall develop, implement, and maintain at the workplace a written hazard communication program for the workplace in accordance with Health and Safety Code 502.009. An employer shall keep the written hazard communication program and a record of each training session given to employees, including the date, a roster of the employees who attended, the subjects covered in the training session, and the names of the instructors. Those records shall be maintained for at least five years by the employer. The department shall have access to those records and may interview employees during inspections. *Health and Safety Code 502.009(g)*

**WORKPLACE CHEMICAL LIST**

For the purpose of worker right-to-know, an employer shall compile and maintain a workplace chemical list that contains the information described by Health and Safety Code 502.005 for each hazardous chemical normally present in the workplace or temporary workplace in excess of 55 gallons or 500 pounds or in excess of an amount that DSHS determines by rule for certain highly toxic or dangerous hazardous chemicals. The workplace chemical list may be prepared for the workplace as a whole or for each work area or temporary workplace and must be readily available to employees and their representatives. All employees shall be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals. *Health and Safety Code 502.005(a), (c)*

The employer shall update the workplace chemical list as necessary but at least by December 31 each year. Each workplace chemical list shall be dated and signed by the person responsible for compiling the information. An employer shall maintain a work-
place chemical list for at least 30 years. *Health and Safety Code 502.005(b), (d)*

**LABELING**

A label on an existing container of a hazardous chemical may not be removed or defaced unless it is illegible, inaccurate, or does not conform to the OSHA standard or other applicable labeling requirement. Primary containers must be relabeled with at least the identity appearing on the material safety data sheets (MSDS), the pertinent physical and health hazards, including the organs that would be affected, and the manufacturer’s name and address. Except as provided by Subsection (b), secondary containers must be relabeled with at least the identity appearing on the MSDS and appropriate hazard warnings.

An employee may not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use of the employee who performs the transfer.

*Health and Safety Code 502.007*

**MATERIAL SAFETY DATA SHEETS**

An employer shall maintain a legible copy of a current manufacturer’s MSDS for each hazardous chemical purchased. If the employer does not have a current MSDS for a hazardous chemical when the chemical is received at the workplace, the employer shall request an MSDS in writing from the manufacturer or distributor in a timely manner or shall otherwise obtain a current MSDS. Material safety data sheets shall be readily available, on request, for review by employees or their designated representatives at each workplace. *Health and Safety Code 502.006(b)–(c)*

**PROTECTIVE EQUIPMENT**

Employees shall be provided with appropriate personal protective equipment. *Health and Safety Code 502.017(b)*
The College District shall maintain a drug-free environment and shall establish, as needed, a drug-free awareness program complying with federal requirements. [See DH] The program shall provide applicable information to employees in the following areas:

1. The dangers of drug use and abuse in the workplace.
2. The College District’s policy of maintaining a drug-free environment. [See DH(LOCAL)]
3. Drug counseling, rehabilitation, and employee assistance programs that are available in the community, if any.
4. The penalties that may be imposed on employees for violation of drug use and abuse prohibitions.

All fees or charges associated with drug/alcohol abuse counseling or rehabilitation shall be the responsibility of the employee.
The following pages include an exhibit, in compliance with the Drug-Free Workplace Act, that is required for distribution to all college district employees, and an exhibit pointing to useful federal and state websites containing information on commonly abused drugs and the legal penalties for possession and use.

Exhibit A: Drug-Free Workplace Notice — 1 page
Exhibit B: Sources for Information on Illegal Drugs — 1 page
EXHIBIT A

DRUG-FREE WORKPLACE NOTICE

The college district prohibits the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances, illegal drugs, inhalants, and alcohol in the workplace.

Employees who violate this prohibition will be subject to disciplinary sanctions. Sanctions may include:

- Referral to drug and alcohol counseling or rehabilitation programs;
- Referral to employee assistance programs;
- Termination from employment with the college district; and
- Referral to appropriate law enforcement officials for prosecution.

As a condition of employment, an employee must:

- Abide by the terms of this notice; and
- Notify the college president, in writing, if the employee is convicted for a violation of a criminal drug statute occurring in the workplace. The employee must provide the notice in accordance with college district policy.

This notice complies with the requirements of the federal Drug-Free Workplace Act (41 U.S.C. 702).
EXHIBIT B

SOURCES FOR INFORMATION ON ILLEGAL DRUGS

- Commonly Abused Drugs
  http://www.nida.nih.gov/drugsofabuse.html

- Federal Trafficking Penalties
  http://www.usdoj.gov/dea/agency/penalties.htm

- Comparative Pharmacological Profiles of Abused Drugs
  http://www.tcada.state.tx.us/research/slang/compare98.pdf
**GRIEVANCE POLICIES**

**SECTION 504**
A recipient of federal financial assistance that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by 34 C.F.R. Part 104 (Section 504 of the Rehabilitation Act regulations). Such procedures need not be established with respect to complaints from applicants for employment. 34 C.F.R. 104.7(b)

**AMERICANS WITH DISABILITIES ACT**
A public entity, including a college district, that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by 28 C.F.R. Part 35 (Americans with Disabilities Act regulations). 28 C.F.R. 35.107(b), .140

**TITLE IX**
A recipient of federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action which would be prohibited by 34 C.F.R. Part 106 (Title IX regulations). 34 C.F.R. 106.8(b); North Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982)

**COMPLIANCE COORDINATOR**
A recipient of federal financial assistance that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with 34 C.F.R. 104. 34 C.F.R. 104.7(a)

**ADA**
A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph. 28 C.F.R. 35.107(a), .140

**TITLE IX**
Each recipient of federal financial assistance shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under 34 C.F.R. Part 106 (Title IX regulations), including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office

**Note:** This policy addresses employee complaints of discrimination, harassment, and retaliation. For legally referenced material relating to discrimination, harassment, and retaliation, see DAA(LEGAL). For harassment of students, see FFD.
address, and telephone number of the employee or employees. 34 C.F.R. 106.8(b)
Note: This policy addresses discrimination, harassment, and retaliation targeting College District employees. In this policy, the term “employees” includes former employees and applicants for employment. For the College District’s response to discrimination, harassment, and retaliation targeting students, see FFD.

STATEMENT OF NONDISCRIMINATION
The College District prohibits discrimination, including harassment, against any employee on the basis of race, color, religion, gender, national origin, age, disability, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of College District policy.

DISCRIMINATION
Discrimination against an employee is defined as conduct directed at an employee on the basis of race, color, religion, gender, national origin, age, disability, or any other basis prohibited by law, that adversely affects the employee’s employment.

HARASSMENT
Prohibited harassment of an employee is defined as physical, verbal, or nonverbal conduct based on an employee’s race, color, religion, gender, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee’s work performance;
2. Creates an intimidating, threatening, hostile, or offensive work environment; or
3. Otherwise adversely affects the employee’s performance, environment, or employment opportunities.

EXAMPLES
Examples of prohibited harassment may include offensive or derogatory language directed at another person’s religious beliefs or practices, accent, skin color, gender identity, or need for workplace accommodation; threatening or intimidating conduct; offensive jokes, name-calling, slurs, or rumors; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other stereotypes; or other types of aggressive conduct such as theft or damage to property.

SEXUAL HARASSMENT
Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. Submission to the conduct is either explicitly or implicitly a condition of an employee’s employment, or when submission
to or rejection of the conduct is the basis for an employment action affecting the employee; or

2. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee’s work performance or creates an intimidating, threatening, hostile, or offensive work environment.

**EXAMPLES**

Examples of sexual harassment may include sexual advances; touching intimate body parts; coercing or forcing a sexual act on another; jokes or conversations of a sexual nature; and other sexually motivated conduct, communication, or contact.

**RETRIALATION**

The College District prohibits retaliation against an employee who makes a claim alleging to have experienced discrimination or harassment, or another employee who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation.

An employee who intentionally makes a false claim, offers false statements, or refuses to cooperate with a College District investigation regarding harassment or discrimination is subject to appropriate discipline.

**EXAMPLES**

Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, unjustified negative evaluations, unjustified negative references, or increased surveillance.

**PROHIBITED CONDUCT**

In this policy, the term “prohibited conduct” includes discrimination, harassment, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

**EQUAL OPPORTUNITY COMMITTEE**

An Equal Opportunity Committee shall be appointed by the College President and shall be charged with evaluating the equal opportunity program of the College District and making recommendations necessary to ensure the effectiveness of the program. In addition, the Committee may hear certain individual grievances related to alleged violations of the equal opportunity program.

**REPORTING PROCEDURES**

An employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced prohibited conduct should immediately report the alleged acts. The employee may report the alleged acts to his or her immediate supervisor.

Alternatively, the employee may report the alleged acts to one of the College District officials below.
For the purposes of this policy, College District officials are the ADA/Section 504 Coordinator, the Title IX Coordinator, and the College President.

REPORTING PROCEDURES SPECIFIC TO ADA

Specific to a complaint concerning provisions of the Americans with Disabilities Act (ADA), as amended, complaints shall be filed within 30 College District business days directly to the ADA/Section 504 Coordinator listed below. A written determination as to the validity of the complaint and a description of any resolution shall be issued by the ADA/Section 504 Coordinator no later than 30 College District business days after the initial filing of the complaint.

DEFINITION OF COLLEGE DISTRICT OFFICIALS

The College District designates the following person to coordinate its efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended:

Position: Director of Human Resources
Address: 2886 FM 1735 Chapel Hill Road, Mount Pleasant, TX 75455
Telephone: (903) 434-8121

TITLE IX COORDINATOR

Reports of discrimination based on sex, including sexual harassment, may be directed to the Title IX Coordinator. The College District designates the following person to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended:

Position: Director of Human Resources
Address: 2886 FM 1735 Chapel Hill Road, Mount Pleasant, TX 75455
Telephone: (903) 434-8121

OTHER ANTI-DISCRIMINATION LAWS

The College President or designee shall serve as Coordinator for purposes of College District compliance with all other antidiscrimination laws.

ALTERNATIVE REPORTING PROCEDURES

An employee shall not be required to report prohibited conduct to the person alleged to have committed it. Reports concerning prohibited conduct, including reports against the Title IX Coordinator, may be directed to the College President or designee.

A report against the College President may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.
TIMELY REPORTING

Reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair the College District’s ability to investigate and address the prohibited conduct.

NOTICE OF REPORT

Any College District supervisor who receives a report of prohibited conduct shall immediately notify the appropriate College District official listed above and take any other steps required by this policy.

INVESTIGATION OF THE REPORT

The College District may request, but shall not insist upon, a written report. If a report is made orally, the College District official shall reduce the report to written form.

Upon receipt or notice of a report, the College District official shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the College District official shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.

If appropriate, the College District shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.

The investigation may be conducted by the College District official or a designee or by a third party designated by the College District, such as an attorney. When appropriate, the supervisor shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

CONCLUDING THE INVESTIGATION

Absent extenuating circumstances, the investigation should be completed within ten College District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation.

The investigator shall prepare a written report of the investigation. The report shall be filed with the College District official overseeing the investigation.

COLLEGE DISTRICT ACTION

If the results of an investigation indicate that prohibited conduct occurred, the College District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.
The College District may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.

**DISCIPLINARY ACTION RELATED TO SEXUAL HARASSMENT SPECIFICALLY**

Disciplinary action associated with sexual harassment includes:

1. First stage—a letter of reprimand, with a terminal life of two years, written and placed in the guilty party’s personnel file and action taken to provide appropriate relief to the aggrieved party.

2. Second stage—a letter of reprimand and suspension without pay or leave of absence for a period of time and action taken to provide appropriate relief to the aggrieved party.

3. Third stage—termination of employment of the guilty party and action taken to provide appropriate relief to the aggrieved party.

These actions shall not be mandatory and shall be dictated by the severity of each case. In the event of suspension or termination, existing procedures for administrative, faculty, or classified staff personnel shall be followed.

An admission of guilt, acknowledgment of a verbal warning, and a promise not to commit such conduct in the future, as well as action taken to provide appropriate relief to the aggrieved party may suffice, depending on the situation.

**CONFIDENTIALITY**

To the greatest extent possible, the College District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

**APPEAL**

A complainant who is dissatisfied with the outcome of the investigation may appeal through DGBA(LOCAL), with the Equal Opportunity Committee serving the same functions as the Grievance Committee as listed in that policy.

The complainant may have a right to file a complaint with appropriate state or federal agencies.

**RECORDS RETENTION**

Retention of records shall be in accordance with the College District’s records retention procedures. [See CIA]

**ACCESS TO POLICY**

This policy shall be made available to College District employees on the College District’s website. Copies of the policy shall be readily available at the College District administrative offices.
The governing board of each institution of higher education in the state shall adopt rules and regulations concerning faculty academic workloads. In adopting the rules, each institution shall recognize that classroom teaching, basic and applied research, and professional development are important elements of faculty academic workloads by giving appropriate weight to each activity when determining the standards for faculty academic workloads. An institution may give the same or different weight to each activity and to other activities recognized by the institution as important elements of faculty academic workloads. The established rules and regulations of each institution's rules and regulations shall be reported to the Coordinating Board and included in the operating budgets of each institution. *Education Code 51.402(b)*
ASSIGNMENT

All employees shall be subject to assignment and reassignment by the College President at any time.

An employee shall not directly or indirectly supervise another employee who is related within the third degree by consanguinity (blood) or by affinity (marriage) within the second degree. [See also DBE(EXHIBIT) for descriptions of the College District’s nepotism prohibitions related to job assignment]

FACULTY WORK LOAD

Faculty members who teach courses without laboratory components shall be assigned to 15 contact hours per semester. Those faculty members who teach courses with a laboratory component shall be assigned 18 contact hours per semester, with the exception of Allied/Health Science faculty, who will be assigned 21 contact hours per semester, and Cosmetology. In addition, faculty members shall host a minimum of ten office hours per week. They shall also be expected to be involved in the life of the College District through committee work, academic advising, student organization sponsorship, and participation in campus activities.

Faculty receiving release time for administrative or other duties shall still be expected to adhere to a 40-hour workweek Monday through Friday. An employee and his or her supervisor shall determine the appropriate number and scheduling of on-campus hours for the discharge of the assigned duties.

TEACHING OVERLOADS

A faculty member who wishes to teach above the standard work load described above shall request permission from his or her supervisor prior to the scheduling of classes and no less than 30 days prior to the beginning of the term for which the employee seeks the overload. Overloads shall be limited to no more than six contact hours above the standard work load and shall not be permitted if the higher work load negatively impacts the quality of the faculty member’s job performance in instructional or other areas. Any exceptions shall be approved by the Executive Vice President for Instruction and only after a written justification and assurance has been provided that no compromise of instructional quality or other job responsibilities will occur.

TEACHING OUTSIDE NORMAL WORK HOURS

Full-time administrators, professionals, and classified personnel may teach the equivalent of two three-credit hour courses per semester for pay outside of their normal working hours with the written endorsement from the immediate supervisor and appropriate administrator.

TEACHING DURING WORK HOURS

Full-time administrators, professional, and classified personnel shall not be permitted to teach courses during their normal work hours. Exceptions may be permitted by the Executive Vice President for Instruction in emergency or special situations, such as
teaching college camp, customized training programs, or other selected continuing adult education courses. Any exceptions shall be approved in writing by the employee's supervisor and the appropriate administrator.
The governing board of each institution of higher education, including each college district, shall establish a program or a short course the purpose of which is to assist faculty members whose primary language is not English to become proficient in the use of English and ensure that courses offered for credit at the institution are taught in the English language and that all faculty members are proficient in the use of the English language, as determined by a satisfactory grade on the “Test of Spoken English” of the Educational Testing Service or a similar test approved by the board.

A faculty member may use a foreign language to conduct foreign language courses designed to be taught in a foreign language. This section does not prohibit a faculty member from providing individual assistance during course instruction to a non-English-speaking student in the native language of the student.

The cost of such English proficiency course as determined by the Coordinating Board shall be paid by the faculty member lacking proficiency in English. A faculty member must take the course until deemed proficient in English by his or her supervisor. The cost will be deducted from said faculty member’s salary.

*Education Code 51.917*

---

**Note:** For training regarding child abuse, see DHC.
Professional development shall be defined as the continuous process of acquiring new knowledge and skills that relate to one’s profession, job responsibilities, or general work environment. It plays an important role in fulfilling the strategic plan of the College District. Professional development shall ensure that the College District maintains trained, informed, motivated employees, regardless of job classification.

The College District expects each employee to progress professionally from year to year. The College District provides resources for professional development for each employee, including classified and professional staff, as well as faculty personnel.

Each College District employee shall participate in a minimum of three professional development activities or experiences approved by his or her supervisor each year. Professional development may include activities that enhance job skills, increase efficiency and productivity, or prepare the employee for career advancement. Professional development for faculty members may also provide opportunities for classroom skill enhancement, increase knowledge in the specific academic discipline, or promote an awareness of changes and advances in the educational environment.

Each year during the annual evaluation process, the supervisor and the employee shall consider mandated training, the need for training due to changes in the workplace, and any areas that need improvement based on the employee’s present job responsibilities. The employee and the supervisor shall determine the nature and scope of any indicated professional development. The plan for professional development shall be documented on the evaluation form for the coming year. It shall be the responsibility of the employee to see that the plan is followed and fulfilled.

The supervisor shall coordinate with HR and CE to transcript appropriate professional development hours completed by an employee. The supervisor shall ensure that professional development hours for his or her employees are maintained in the electronic professional development tracking database. In addition, each employee shall maintain records of his or her personal professional development activities.

It is recommended that an employee seek prior approval from his or her supervisor for the employee’s professional development activities. However, the supervisor may approve an activity already completed. In any case, a request for approval must be presented to the supervisor by the employee.
JOB DESCRIPTIONS

The duties and responsibilities of each position within the College District shall be written in job descriptions, which the immediate supervisor of each position shall be responsible for maintaining, updating, and providing to each employee the supervisor hires for the particular position. The Director of Human Resources and College Relations shall maintain copies of all job descriptions and shall act in an advisory capacity as to the content of the job descriptions.

PROGRESSIVE DISCIPLINE

The College District shall encourage progressive discipline to address most employment difficulties. The following steps are not prescriptive, but rather serve to illustrate examples of common employment difficulties and consequences. Nothing in this policy shall modify an at-will employment relationship or create any rights to tenure.

The following steps may be followed progressively, depending on the severity of the offense and/or the detrimental impact of the offense on the College District.

If reassignment or relocation of an employee is being recommended for reasons related to discipline, the Director of Human Resources and College Relations shall be consulted prior to any action. The College President, in consultation with the human resources department, reserves the ability to suspend an employee at any time, pending an investigation of allegations of work-related misconduct, or when in the best interest of the College District.

DISCIPLINARY VIOLATIONS

Unacceptable behaviors include, but shall not be limited to, nonperformance, inappropriate conduct, unacceptable attendance, and violation of Board policy. The impact, severity, and intent of the actions, as well as any past disciplinary actions, shall be considered in determining the appropriate level of consequence for a disciplinary violation.

CLASSIFICATION 1

Classification 1 includes:

- Tardiness or absenteeism;
- Abuse of or excessive number of personal calls;
- Uncooperative behavior;
- Loitering or loafing during work hours;
- Failure to follow departmental procedures or directions;
- Reckless or careless behavior;
- Failure to meet performance expectations;
- Unauthorized operation of tools, machinery, or equipment; and
• Selling property, soliciting, collecting, or accepting contributions on College District property or on College District time without specific authorization from the administration.

CLASSIFICATION 2 Classification 2 includes:
• Making false, vicious, or malicious statements concerning another;
• Failure to follow specified job instructions;
• Use of profane, obscene, vile, abusive, or degrading language, gestures, or images;
• Excessive personal use of College District computer equipment; and
• Failing to maintain effective professional working relationships.

CLASSIFICATION 3 Classification 3 includes:
• Removal of College District records or property without appropriate approval;
• Unauthorized release of confidential records or information;
• Misuse of College District property; and
• Insubordination.

CLASSIFICATION 4 Classification 4 includes:
• Absence from work without notification;
• Unauthorized use of College District equipment, time, or resources for personal gain or profit;
• Sexual harassment or sexual misconduct;
• Willful abuse of or deliberate damage to College District property or to another employee’s property;
• Inappropriate disclosure of confidential or privileged information;
• Assault;
• Selling, delivering, or giving to another person, or possessing, using, or being under the influence of marijuana or other controlled substance, another dangerous drug, or an inhalant not being used as directed by the person’s physician;
• Selling, delivering, possessing, or using, or being under the influence of, intoxicants while in the scope of employment;
• Willfully or negligently committing or omitting an act or refusing or failing to follow a policy or official directive;
• Engaging in behavior that endangers the life, health, and safety of any person;
• Theft;
• Academic dishonesty;
• Forging or falsifying an official college record;
• Possession of a firearm, other than at the firing range or in a parked and locked vehicle in a parking lot or structure, or possession of an illegal knife, club, or other prohibited weapon;
• Providing false or misleading information in College District employment applications;
• Committing a violation of DH(LOCAL) or DH(EXHIBIT); and
• Engaging in conduct incorporating the elements of an offense under Texas Penal Code Title 8, Offenses Against Public Administration.

An employee who demonstrates unacceptable performance or behavior that has been identified in this policy shall be subject to discipline, up to and including dismissal. The impact, severity, and intent of the actions, as well as any past disciplinary actions, shall be considered in determining the appropriate level of discipline. Disciplinary consequences shall frequently fall within the following steps.

1. Counseling, verbal or written—This level of discipline may respond to behavior that causes a minor disruption to the morale, educational mission, or operations of the College District.
2. Written reprimand—This level of discipline may respond to behavior that the employee has not corrected or has repeated, or if the employee’s behavior otherwise is a moderate disruption to the morale, educational mission, or operations of the College District.
3. Final written warning—This level of discipline may respond to behavior that the employee has not corrected or to repeated unacceptable behavior, or if the employee’s behavior otherwise is a serious disruption to the morale, educational mission, or operations of the College District.
4. Termination—This level of discipline may respond to behavior that the employee has not corrected or to repeated unacceptable behavior, or if the employee's behavior otherwise is a severe disruption to the morale, educational mission, or operations of the College District.
Institutions of higher education, including college districts, shall conduct end-of-course student evaluations of faculty and shall develop a plan to make evaluations available on the institutions' websites. *Education Code 51.974(h); 19 TAC 4.227(10), .228(e)*
ANNUAL EVALUATIONS

All College District employees shall be evaluated in the performance of their duties at least annually. The performance of assigned duties and other job-related criteria shall provide the basis of an employee’s evaluation and appraisal. Employees shall be informed of the criteria for which they will be evaluated. The administration of the College District shall develop forms and procedures necessary for facilitation of the evaluation process. Ratings from the evaluation and appraisal process shall be based on the evaluation instrument and cumulative performance data gathered by supervisors throughout the year.

FACULTY EVALUATIONS

Each full-time faculty member shall be evaluated through a procedure administered by the Executive Vice President for Instruction or designee. The elements of the evaluation shall include supervisors, students, and a self-evaluation. A part-time faculty member shall be evaluated by the Directors of Instruction using observations, student evaluations, and other appropriate means.

RESULTS

Results of any evaluation shall be reviewed with each employee by the supervisor preparing the evaluation.
Contractual employees who are demoted during the term of the contract shall be afforded notice and a hearing. *Kelleher v. Flawn*, 761 F.2d 1079 (1985)
AT-WILL EMPLOYEES

At-will employees may be dismissed at any time for any reason not prohibited by law or for no reason, as determined by the needs of the College District. At-will employees who are dismissed may request review of that decision through DGBA(LOCAL) and shall receive pay through the end of the last day worked.

EXIT INTERVIEWS AND EXIT REPORTS

An exit interview shall be conducted, if possible, and an exit report shall be prepared for every employee who leaves employment with the College District.
Any employee may be dismissed for good cause before the completion of the term fixed in his or her contract.

Before any employee is dismissed, the employee shall be given reasonable notice in writing of the proposed action and the grounds, set out in sufficient detail to fairly enable him or her to show any error that may exist.

If, upon written notification, the employee desires to be heard and to contest the proposed action of the board, he or she shall give the board written notice. The hearing shall be set on a date that affords the employee reasonable time to prepare an adequate defense.

_Cleveland Bd. of Educ. v. Loudermill_, 470 U.S. 532 (1985); _Ferguson v. Thomas_, 430 F.2d 852 (5th Cir. 1970); _Bexar Cty. Sheriff’s Civ. Serv. v. Davis_, 802 S.W.2d 659 (Tex. 1990)

The board may conduct the hearing in open session or in closed session unless the employee requests a public hearing, in which case the hearing shall be open to the public. _Gov’t Code 551.074_

At the hearing before the board, the employee may employ counsel. The employee also has the right to hear the evidence upon which the charges are based, to cross-examine all adverse witnesses, and to present evidence of innocence or extenuating circumstances. Prior to dismissal, the board shall determine the existence of good cause for termination. Such determination shall be based solely on the evidence presented in the hearing. _Ferguson v. Thomas_, 430 F.2d 852 (5th Cir. 1970)

A faculty member at an institution of higher education, including a college district, has a right to present a grievance, in person, to a member of the institution’s administration designated by the governing board of the institution on an issue related to the nonrenewal or termination of the faculty member’s employment at the institution.

An institution may not by contract, policy, or procedure, restrict a faculty member’s right to present a grievance under this section. An institution may adopt a method for presenting, reviewing, and acting on a grievance filed under this section.

“Faculty member” means a person employed full time by an institution of higher education as a member of the institution’s faculty, including professional librarians, whose duties include teaching, research, administration, or the performance of professional services. The term does not include a person who holds faculty rank but who spends the majority of the person’s time for the institution engaged in managerial or supervisory activities, including a chan-
cellor, vice chancellor, president, vice president, provost, associate or assistant provost, dean, or associate or assistant dean.

*Education Code 51.960*

**SUSPENSION**

The employee may be suspended with pay pending the outcome of the dismissal hearing. *Moore v. Knowles*, 482 F.2d 1069 (5th Cir. 1973)
TERM CONTRACTS
TERMINATION MID-CONTRACT

An employee may be terminated mid-contract for good cause as determined by the Board following a hearing held for that purpose in accordance with law.

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

The Board designates the Director of Human Resources and College Relations as the person to whom an employee may present a grievance under Education Code 51.960 on an issue related to his or her dismissal. It is recommended that the employee file a request to present the grievance within ten business days after final action on the dismissal proceeding.

Once a request to present a grievance has been filed, the conference shall be scheduled within seven business days.

The employee may appeal the decision of the Director of Human Resources and College Relations under DGBA beginning at the appropriate level.
The board of trustees may decide by vote or inaction not to offer any employee further employment with the college district beyond the term of the contract for any reason or no reason. *Perry v. Sindermann, 408 U.S. 593 (1972)*; *Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972)*

A faculty member at an institution of higher education, including a college district, has a right to present a grievance, in person, to a member of the institution’s administration designated by the governing board of the institution on an issue related to the nonrenewal or termination of the faculty member’s employment at the institution.

An institution may not by contract, policy, or procedure, restrict a faculty member’s right to present a grievance under this section. An institution may adopt a method for presenting, reviewing, and acting on a grievance filed under this section.

“Faculty member” means a person employed full time by an institution of higher education as a member of the institution’s faculty, including professional librarians, whose duties include teaching, research, administration, or the performance of professional services. The term does not include a person who holds faculty rank but who spends the majority of the person’s time for the institution engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate or assistant provost, dean, or associate or assistant dean.

*Education Code 51.960*
An employee may be nonrenewed by the Board at the end of the employee’s contract term on the recommendation of the College President. The employee may be nonrenewed for any reason or no reason provided that the decision shall not be based on an employee’s exercise of rights guaranteed by law or be based unlawfully on an employee's race, color, religion, sex, national origin, disability, or age.

The employee may request an appearance before the Board providing that a request for such appearance is made in writing to the College President within ten days of the employee’s receipt of the letter of nonrenewal. The College President shall notify the employee of the date of the appearance and the procedures to be followed. Notice shall be given at least ten days prior to the scheduled appearance.

The Board designates the Director of Human Resources and College Relations as the person to whom a faculty member may present a grievance under Education Code 51.960 on an issue related to his or her nonrenewal.

It is recommended that the faculty member file a request to present the grievance within ten business days after final action on the non-renewal proceeding.

Once a request to present a grievance has been filed, the conference shall be scheduled within seven business days.

The faculty member may appeal the decision of the Director of Human Resources and College Relations under DGBA beginning at the appropriate level.
Definitions used in this policy are as follows:

1. “Reduction in force (RIF)” means the dismissal of an instructor, professor, administrator, or other professional employee before the end of a contract term for reasons of financial exigency or program change. Nonrenewal of an employee’s term contract is not a “reduction in force” as used in this policy.

2. “Financial exigency” means any decline in the Board’s financial resources brought about by decline in enrollment, cuts in funding, decline in tax revenues, or any other actions or events that create a need for the College District to reduce financial expenditures for personnel.

3. “Program change” means any elimination, curtailment, or reorganization of a curriculum offering, program, or school operation because of a lack of student response to particular course offerings, legislative revisions to program funding, failure to meet standards of graduation and post-graduation employment expectations, or a reorganization or consolidation of two or more divisions or departments.

All contracts shall, unless excepted by the Board, contain a provision that a reduction in force may take place when the Board determines that a financial exigency or program change requires that the contract of one or more instructors, administrators, or other professional employees be terminated. Such a determination constitutes the necessary cause for dismissal.

A reduction in force may be implemented in one, several, or all employment areas. Employment areas shall be defined as:

1. Administration.
2. Associate degree programs.
3. Certificate degree programs.
4. Remedial and other programs.
5. Academic support programs, such as library or computer programs.
6. Counseling and support programs.
7. Other noninstructional professional staff.

Using the following criteria, the College President shall determine which particular employees shall be RIFed and shall submit the recommendation to the Board. These criteria are listed in order of importance; the College President shall apply them sequentially to
the selected employment areas until the number of staff reductions necessary have been identified, i.e., if all necessary reductions can be accomplished by applying the certification criteria, it is not necessary to apply the performance or subsequent criteria.

1. Certification: Appropriate degree certificate and/or endorsement for current assignment required by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) or the Coordinating Board.

2. Performance: Employee’s effectiveness as reflected by the most recent written evaluations and/or other appraisal documentation.

3. Seniority: Years of service in the College District.

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

BOARD ACTION
After considering the College President’s recommendation, the Board shall determine which employees shall be dismissed. Each employee shall be given a statement of the reasons and conditions requiring such dismissal and shall, upon request, be given a hearing in accordance with the policy for termination during his or her contract. [See DMAA and DMB]

APPEALS
Appeals of a dismissal due to a reduction in force shall be handled through the hearing afforded under DMAA or DMB, as appropriate, rather than the grievance policy.

EXCEPTION
Appeals of a dismissal due to a reduction in force of a former foster child entitled to an employment preference [see DC] shall be handled through the hearing afforded under DC.

RIGHTS OF EMPLOYEES SUBJECT TO RIF
An employee dismissed pursuant to this policy, if subsequently re-employed by the College District, shall be credited with the amount of local sick leave that had accrued at the time of dismissal.

REEMPLOYMENT
Upon written request, an employee dismissed pursuant to this policy shall be notified in writing of any subsequent availability of the position for a period of one calendar year following the effective date of such dismissal. The notice shall be mailed to the address that was on file for the former employee at the time of dismissal, unless the College District has been notified in writing of a change of address. A former employee so notified must respond to the Board in writing within ten calendar days of receipt of such notification if the person wishes to be considered for the position. Any individual who responds shall be considered for employment on the same basis as all other applicants.
All resignations shall be submitted in writing to the College President or designee. The employee shall give reasonable notice and shall include in the letter a statement of the reasons for resigning. A prepaid certified or registered letter of resignation shall be considered submitted upon mailing.

Any employee serving under a term contract may resign his or her position and leave the employment of the College District effective at the end of the contract term without penalty, provided the employee submits a letter of resignation, in accordance with administrative regulations and the provisions at GENERAL REQUIREMENTS, above.

The College President or designee shall be authorized to accept a term contract employee’s resignation effective at the end of the contract term.

An employee serving under a term contract wishing to resign prior to the end of the contract term must submit a letter of resignation in accordance with the provisions at GENERAL REQUIREMENTS. The consent of the Board or its designee is required for resignations effective prior to the end of the contract term.

The College President or designee shall be authorized to accept the resignation of an at-will employee at any time.

At the next Board meeting, the College President shall provide to the Board a list of the employees who have resigned since the last Board meeting.

Once submitted and accepted, the resignation of an employee serving under a term contract may not be withdrawn without the consent of the College President.
Teaching shall be the primary responsibility of instructional faculty members employed by the College District. Under the supervision of the Executive Vice President for Instruction, the following shall be the duties and responsibilities of all faculty members:

1. Be familiar with the mission, goals, and objectives of the College District.

2. Teach students in assigned classes in accordance with course descriptions published in the catalog and the course syllabus, and within institutional policies and procedures.

3. Meet classes regularly and punctually, and be prepared to conduct them as effectively as possible.

4. Maintain attendance and scholastic records, and submit reports as required.

5. Keep up to date in the teaching field and continue professional growth through graduate courses, a professional organization, travel, staff development activities, community service, research, work experience, or other related activity.

6. Post and maintain regular office hours for consultation with students.

7. Cooperate in the development of curriculum and preparation of syllabi, and with the selection of textbooks, library materials, instructional materials, equipment, and supplies.

8. Assist in the advisement of students, in cooperation with the counseling staff, and refer students whose scholastic or personal needs require special attention to the counseling service.

9. Participate in the faculty evaluation program.

10. Assist on a voluntary basis in the advisement and registration process.

11. Attend faculty meetings and graduation.

12. Participate on committees and councils of the College District.

13. Participate in College Districtwide activities, such as social, cultural, and professional events.

14. Participate in the College District’s recruitment and public relations endeavors.

15. Maintain good, solid relationships with discipline counterparts in secondary and four-year institutions.
The Board may honor and further recognize designated persons by conferring upon them the title of President Emeritus and authorize certain benefits to accompany the title.

**DEFINITION**

President Emeritus shall be defined as an honorary title given without any compensation that the Board may elect to confer upon a retired College President for exceptional service to the institution.

**CONSIDERATION**

Persons to be considered as recipients of the title President Emeritus shall retire from the position of College President of Northeast Texas Community College with at least five years of honorable and distinguished service to the College District.

To become and remain a President Emeritus, one shall:

1. Retire from the College District;
2. Have served a minimum of five years as College President;
3. Have reached the age of 55 or above;
4. Have demonstrated dedicated, honorable, and distinguished service to the institution; and
5. Have no full-time employment in an institution of higher learning subsequent to retirement.

Once granted, the Emeritus title shall remain in force until the death of the holder, unless rescinded by the Board.

**BENEFITS**

Awards received by each person designated as President Emeritus, in addition to the title, shall include:

1. A resolution adopted by the Board naming and honoring the individual as President Emeritus;
2. A presidential portrait that will continue to be displayed with the appropriate title;
3. Complimentary passes to all on-campus athletic events for the recipient and spouse;
4. Library resources and services, available under the same conditions as faculty and staff; and
5. Invited participation to selected department and College District functions.

The title of President Emeritus shall carry with it no material benefit other than that of the honor associated with its granting.

**IMPLEMENTATION**

The Board Chairperson shall instruct the Board Secretary to place the resolution on the agenda for full consideration. If the Board
votes in support, the titles shall be immediately conferred to the individual.

DISTINGUISHED PROFESSOR EMERITUS

The Board may, in the spring semester, bestow the honorary distinction and title of Distinguished Professor Emeritus, to retiring faculty members who meet certain criteria.

CRITERIA

The honor Distinguished Professor Emeritus shall be bestowed only if all of the following criteria are met:

1. The faculty member holds the rank of Full Professor at the time of retirement;
2. The faculty member retires with 25 years or more of teaching service in higher education, at the College District or other recognized college or university;
3. The faculty member has at least ten consecutive years of full-time teaching service with the College District immediately prior to the time of retirement (periods of approved leave, such as sabbatical leave, maternity/paternity leave, military leave, etc. shall count toward years of service);
4. The faculty member has continued to meet the College District’s standards of performance in all areas normally expected for Full Professorship in his or her discipline; and
5. The faculty member is the recipient of the Northeast Texas Community College Teaching Excellence Award as a Piper nominee or submits a portfolio evidencing outstanding performance in the areas of service, teaching, and leadership (rubric for evaluation of portfolio must be approved by the College District administration).

PRIVILEGES AND BENEFITS

In addition to the standard benefits provided to all retired faculty and staff members, a person granted Distinguished Professor Emeritus status shall receive the following privileges and benefits:

1. Listings in appropriate College District catalogs and directories as Distinguished Professor Emeritus, along with the year granted the title;
2. Invitations to major College District functions;
3. Mailed notices of campus functions and social gatherings;
4. A permanent faculty e-mail account;
5. The use of the learning resource center and athletic facilities;
6. Waiver of tuition and fees for courses taken at the College District, limited to six credit hours per semester, subject to current College District policy.

7. Continuance of full-time employee privileges as stated in the College District policy manual with respect to loan of textbooks, exclusive of disposable books such as workbooks, from the college store;

8. A free parking permit;

9. An invitation to take part in the academic procession at commencement and march at the head of the faculty;

10. Acknowledgment of each attended commencement;

11. Invitation to attend Faculty Senate meetings and gatherings;

12. Free admission for self and a guest to all Theatre Northeast productions, College District musical concerts, and athletic competitions, excluding Whatley Series events;

13. Invitation to mentor and consult with full-time and part-time faculty;

14. Access and input with the College District newsletter and alumni newsletter;

15. Be honored at an appropriate venue, to be determined by the College District; and

16. If the Faculty Senate wishes to raise funds in honor of the Distinguished Professor Emeritus for a student scholarship or departmental need, funds shall be contributed through the NTCC Foundation and shall be awarded at the discretion of the Faculty Senate or appointees.

By January 15 of the spring term, retired faculty or faculty who will retire by August 31 of that year may submit an application for the Distinguished Professor Emeritus award to the President of the Faculty Senate.

The Faculty Senate President shall forward these applications to the Faculty Senate Awards Committee for review according to the guidelines and rubric for evaluation.

The Faculty Senate Awards Committee shall submit qualified applicants to the Faculty Senate for recommendation to the Executive Vice President of Instruction by February 15.

The Executive Vice President of Instruction shall present these applications to the College President’s Cabinet. After approval by the
College President's Cabinet, the College President shall announce the selection(s) to the Board at the March meeting.