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Title II. Employees

Chapter 8. Employment Objectives

§ 8.001. Definitions.

Throughout Title II of these policies, the following definitions shall apply, except where otherwise specified:

- (a) Full-time employee: An individual who is employed at least 30 hours per week in a position with regularly scheduled duties assigned over a 12 month period.
- (b) Part-time employee: An individual who is employed less than 30 hours per week; or an individual employed at least 30 hours per week in a position with duties assigned over less than a 12 month period.
- (c) Active employee: An individual who is currently employed by Dallas County Schools with assigned duties or is on an approved leave of absence. A trainee is not an active employee.
- (d) Substitute bus driver: A bus driver who is not assigned a route or regularly scheduled duties, but may be called to drive on an as-needed basis to cover routes or extracurricular trips.
- (e) Coach driver: A bus driver who is not assigned a route or regularly scheduled duties, but drives his or her own team(s) to extracurricular events.

Adopted 11/18/04; amended 8/27/09

§ 8.002. Objective Criteria for Personnel Decisions

The following objective criteria govern decisions regarding the hiring, dismissal, reassignment, promotion, and demotion of DCS personnel. These criteria are not rank-ordered and may be considered in whole or in part in making such decisions.

- (a) Academic or technical preparation, supported by transcripts.
- (b) Proper certification or licensure for assignment.
- (c) Experience.
- (d) Recommendations and references.
- (e) Evaluations.
- (f) Suitability for the position and professional competence.
- (g) The needs of Dallas County Schools.

Adopted 11/18/04

Chapter 9. Equal Employment Opportunity

§ 9.001. Equal Employment Opportunity

i. Race, Color, National Origin, or Religion

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d

See also 42 U.S.C. § 2000e-2(a),¹ 42 U.S.C. § 2000e-2(e),² and Texas Labor Code § 21.051.³

1

It shall be an unlawful employment practice for an employer--

- (1) 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
- (2) 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)

2

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees ... or for an employer ... controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise

42 U.S.C. § 2000e-2(e)

3

An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

- (1) 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

(footnote continued on next page ...)

ii. Gender

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance

20 U.S.C. § 1681(a)

Harassment on the basis of sex is a violation of Section 703 of Title VII [42 U.S.C. § 2000e-2]. ...

29 C.F.R. § 1604.11(a); see Meritor Savings Bank v. Vinson, 106 S. Ct. 2399 (1986)

See also Texas Labor Code § 21.051⁴ and 42 U.S.C. § 2000e-2(e).⁵

iii. Age

It shall be unlawful for an employer 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 such individual is age 40 or above.

29 U.S.C. § 623 (paraphrased); 29 U.S.C. § 631 (paraphrased); Texas Labor Code § 21.101 (paraphrased)

iv. Disability or Handicap

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the 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 (paraphrased); 34 C.F.R. § 104.11 (paraphrased); Texas Labor Code § 21.051 (paraphrased)

(... footnote continued from previous page)

(2) 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.

Texas Labor Code § 21.051

⁴Quoted in footnote 3 above.

⁵Quoted in footnote 2 above.

It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

29 C.F.R. § 1630.9(a); 42 U.S.C. § 12112(b) (paraphrased)

No qualified handicapped person⁶ shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

34 C.F.R. § 104.11(a)(1)

See also 29 C.F.R. § 1630.8.⁷

§ 9.002. Equal Employment Compliance Coordinators

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 [the Americans with Disabilities Act], 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)

A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with [Section 504 of the Rehabilitation Act of 1973 and its implementing regulations].

34 C.F.R. § 104.7(a)

6

Handicapped persons means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

34 C.F.R. § 104.3(j)(1)

7

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.

29 C.F.R. § 1630.8

Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under [Title IX of the Education Amendments of 1972, as amended], 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 address and telephone number of the employee or employees appointed pursuant to this paragraph.

34 C.F.R. § 106.8(a)

§ 9.003. Notices Regarding Protection from Discrimination

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the [Americans with Disabilities] Act and this part.

28 C.F.R. § 35.106

Every employer ... covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 2000e-10 of this title [the Civil Rights Act of 1964].

42 U.S.C. § 12115

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to Sec. 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

34 C.F.R. § 104.8

§ 9.004. Complaint Procedure Regarding Discrimination⁸

A public entity 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 Americans with Disabilities Act].

28 C.F.R. § 35.107(b)

A recipient that employs fifteen 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 [Section 504]. Such procedures need not be established with respect to complaints from applicants for employment

34 C.F.R. § 104.7(b)

A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by [Title IX].

34 C.F.R. § 106.8(b)

§ 9.005. Definitions Related to Individuals with Disabilities

The term “Disability” means, with respect to an individual –

- (A) a physical or mental impairment that substantially limits one or more of the individual’s major life activities;⁹

⁸Employees may submit complaints through the employee grievance procedures, *see* Policy 13.001. Student complaints may be directed to the DCS administration or may be voiced at a meeting of the Board of Trustees under Policy 4.008.

⁹

(footnote continued on next page ...)

- (B) a record of having such an impairment; or
- (C) being regarded as having such an impairment.

42 U.S.C. § 12102(2); *see* 29 C.F.R. § 1630.2(g); 28 C.F.R. § 35.104; 34 C.F.R. § 104.3(j)(1)

“Qualified individual with a disability” means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, 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 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); *see* 29 C.F.R. §§ 1630.2(m), (n); 34 C.F.R. § 104.3(l)

- (1) The term “reasonable accommodation” means:
 - (i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
 - (ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
 - (iii) Modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.
- (2) Reasonable accommodation may include but is not limited to:
 - (i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(... footnote continued from previous page)

“Major Life Activities” means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

28 C.F.R. § 1630.2(i); *see* 28 C.F.R. § 35.104; 34 C.F.R. § 104.3(j)(2)(ii)

- (ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.
- (3) To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

29 C.F.R. § 1630.2(o); *see also* 42 U.S.C. § 12111(9)

(A) In general

The term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include –

- (i) the nature and cost of the accommodation needed under this chapter;
- (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; and the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (iii) the overall financial resources of the covered entity; the overall size of the business of the covered entity with respect to the number of its employees; the number, type and location of its facilities; and
- (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

42 U.S.C. § 12111(10); *see* 29 C.F.R. § 1630.2(p); 34 C.F.R. § 104.12(c)

§ 9.006. Exceptions to Definitions Related to Individuals with Disabilities

For purposes of this subchapter, the term “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); *see* 29 C.F.R. § 1630.3(a); 28 C.F.R. § 35.104; 29 U.S.C. § 705(20)(C)(i)

For purposes of sections 503 and 504 of this title as such sections relate to employment, 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)

For the purposes of sections 503 and 504 of this title, as such sections relate to employment, such term [“individual with a disability”] does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

29 U.S.C. § 705(20)(D)

The term “qualification standards” may include a requirement that an individual shall not pose a direct threat¹⁰ to the health or safety of other individuals in the workplace.

42 U.S.C. § 12113(b)

10

Direct Threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced 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:

- (1) The duration of the risk;
- (2) The nature and severity of the potential harm;
- (3) The likelihood that the potential harm will occur; and
- (4) The imminence of the potential harm.

29 C.F.R. § 1630.2(r)

§ 9.007. Discrimination Regarding Military Service

- (a) 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 by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.
- (b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

38 U.S.C. §§ 4311(a), (b)

§ 9.008. Religious Freedom

- (a) Subject to Subsection (b), a government agency may not substantially burden a person's free exercise of religion.
- (b) Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person:
- (1) is in furtherance of a compelling governmental interest; and
 - (2) is the least restrictive means of furthering that interest.
- (c) A government agency that makes the demonstration required by Subsection (b) is not required to separately prove that the remedy and penalty provisions of the law, ordinance, rule, order, decision, practice, or other exercise of governmental authority that imposes the substantial burden are the least restrictive means to ensure compliance or to punish the failure to comply.

Texas Civil Practice & Remedies Code § 110.003

§ 9.009. Retaliation

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment ... because he has opposed any practice made an unlawful employment practice by this subchapter [Title VII of the Civil Rights Act of 1964], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a)

- (a) Retaliation. It is unlawful to discriminate against any individual because that individual has opposed any act or practice made unlawful by this part [regulations under the Americans With Disabilities Act] or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this part.
- (b) Coercion, interference or intimidation. It is unlawful to coerce, intimidate, threaten, harass or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected by this part.

29 C.F.R. § 1630.12

An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person who, under this chapter:

- (1) opposes a discriminatory practice;
- (2) makes or files a charge;
- (3) files a complaint; or
- (4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

Texas Labor Code § 21.055

No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter [the Occupational Safety and Health Act of 1970] or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

29 U.S.C. § 660(c)(1)

An employer may not suspend or terminate the employment of or otherwise discriminate against an employee for using the [Texas Department of Labor occupational health and safety hotline] to report in good faith an alleged violation of an occupational health or safety law.

Texas Labor Code § 411.082

Chapter 10. Employment Requirements and Restrictions

§ 10.001. Employee Credentials and Records

- (a) Employees in positions requiring specific credentials shall possess valid credentials before any duties are assigned.
- (b) All employees who have earned certificates, licenses, endorsements, or degrees of higher rank since the previous school year must file with the Superintendent:
 - (1) An official college transcript showing the highest degree earned and date conferred; or
 - (2) Proof of the certificate, license or endorsement.
- (c) Dallas County Schools shall maintain current and complete personnel records of all employees according to any applicable legal guidelines and local administrative requirements.

Adopted 11/18/04

§ 10.002. Employment Requirements for School Bus Drivers

- (a) A person under 18 years of age may not operate a school bus¹¹ for the transportation of students.
- (b) A person who is 18 years of age or older may not operate a school bus unless the person holds an appropriate class of driver's license for the vehicle being operated.
- (c) A person may not operate a school bus for the transportation of students unless the person meets the mental and physical capability requirements the department establishes by rule and has passed an examination approved by the department to determine the person's mental and physical capabilities to operate a school bus safely. ... Each school bus operator must pass the examination annually.

¹¹

For purposes of this section, "school bus" includes a school activity bus as defined by Section 541.201.

Texas Transportation Code § 521.022(i)

- (d) A person may not operate a school bus for the transportation of students unless the person's driving record is acceptable according to minimum standards adopted by the department. A check of the person's driving record shall be made with the department annually.
- (e) A person may not operate a school bus for the transportation of students unless the person is certified in school bus safety education or has enrolled in a school bus safety education class under provisions adopted by the department. Effective on the date and under provisions determined by the department, a school bus operator must hold a card that states that the operator is enrolled in or has completed a driver training course approved by the department in school bus safety education. The card is valid for three years.
- (f) Before a person is employed to operate a school bus to transport students, the employer must obtain a criminal history record check. A school district ... that obtains information that a person has been convicted of a felony or misdemeanor involving moral turpitude may not employ the person to drive a school bus on which students are transported unless the employment is approved by the board of trustees of the school district or the board's designee.
- (g) This section does not affect the right of an otherwise qualified person with a hearing disability to be licensed, certified, and employed as a bus operator for vehicles used to transport hearing-impaired students.

Texas Transportation Code §§ 521.022(a)-(g); see 37 Texas Administrative Code § 14.11

A person shall not drive a school bus unless he is physically qualified to do so. Each school bus driver shall undergo and successfully complete an annual physical examination. The results of the examination shall be noted on the Medical Examination Report for Commercial Driver Fitness Determination form A driver shall not operate a school bus unless he has on his person the original, or a photographic copy, of a medical examiner's certificate 391.43 stating that he is physically qualified to drive a commercial motor vehicle.

37 Texas Administrative Code § 14.12

The following standards have been established by the department as minimum requirements to be met by each person seeking to become employed or to remain employed as a school bus driver to drive any motor vehicle while in use as a school bus for the transportation of students:

- (1) the driver's license record of each school bus driver shall be evaluated at least annually by the employer or designated person. "Complete" driver history may be requested from the department for school bus drivers by the employer. Penalty points shall be assessed for those entries which appear in the accompanying tables of traffic law violations and accident involvements according to the School Bus Driver's Driving Record Evaluation, Figure 3 Any person who has accumulated ten or more penalty points shall be considered ineligible to transport students until such time as he/she may become qualified; and
- (2) an applicant for employment as a commercial motor vehicle driver must disclose to the employer any violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the three years preceding the date the application is submitted and any serious traffic violations of which the applicant was convicted during the ten years preceding the date the application is submitted, as well as any suspension, revocation, or cancellation of any driving privilege that resulted from the conviction. For verification purposes, it is strongly recommended that driving records be secured for all new applicants that have held an out-of-state driver's license within the past seven years. These records should include all convictions which would result in mandatory suspension of a driver's license in Texas

37 Texas Administrative Code § 14.14(a)

In addition to satisfying applicable legal requirements, a school bus driver must possess a high school diploma or GED certificate or be currently enrolled and participating in an accredited GED program.

Adopted 9/24/09

§ 10.003. Medical Inquiries

- (1) In general

The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.
- (2) Preemployment
 - (A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity 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 such disability.
 - (B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

42 U.S.C. §§ 12112(d)(1)-(2)

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.

29 C.F.R. § 1630.14(a)

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if –

- (A) all entering employees are subjected to such an examination regardless of disability;
- (B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that –
 - (i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
 - (ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
 - (iii) government officials investigating compliance with this Act shall be provided relevant information on request; and
- (C) the results of such examination are used only in accordance with this subchapter.

42 U.S.C. § 12112(d)(3); see 29 C.F.R. § 1630.14(b)

(c) A covered entity 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.

- (1) Information obtained under paragraph (c) of this section 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:

- (i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
 - (ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
 - (iii) Government officials investigating compliance with this part shall be provided relevant information on request.
- (2) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this part.
- (d) 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.
- (1) Information obtained under paragraph (d) of this section 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:
- (i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
 - (ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
 - (iii) Government officials investigating compliance with this part shall be provided relevant information on request.
- (2) Information obtained under paragraph (d) of this section regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this part.

29 C.F.R. §§ 1630.14(c)-(d); see 42 U.S.C. § 12112(d)(4)

The board of trustees of a school district may adopt a policy providing for placing an educator on leave of absence for temporary disability if, in the board's judgment and in consultation with a physician who has performed a thorough medical examination of the educator, the educator's condition interferes with the performance of regular duties. A policy adopted under this subsection must reserve to the educator the right to present to the board testimony or other information relevant to the educator's fitness to continue the performance of regular duties.

Texas Education Code § 21.409(c)

- (a) Dallas County Schools may designate a physician to perform a medical examina-

tion of an employee and, in that case, shall pay the cost of the examination. If in the Superintendent's discretion the circumstances so require, the employee may be placed on administrative leave with pay, pending the physician's report and Dallas County Schools' decision.

- (b) If it is determined that the employee poses a direct threat to health or safety within Dallas County Schools or that the employee's ability to perform job-related functions is affected, the Superintendent or designee shall determine under what circumstances the employee might continue to perform job-related functions without posing a direct threat to self or others.
- (c) If the employee cannot perform job-related functions without posing a threat to health or safety, the Superintendent or designee may exclude the employee from work. Before being excluded from work, the employee shall be permitted to present evidence to the Superintendent or designee relevant to his or her fitness to continue regular duties.
- (d) The Superintendent may place an employee on temporary disability leave, as appropriate, when in the judgment of the Superintendent in consultation with the physician who has performed the medical exam, the employee's condition interferes with the performance of regular duties.
- (e) Employees with communicable diseases shall follow recommendations of public health officials regarding contact with students and other employees.
- (f) Employees who are excluded from work because of a communicable disease or other medical condition may use any accrued paid leave to which they are entitled or request temporary disability leave, as appropriate.
- (g) Employees who are excluded from work because of a communicable disease may have their employment terminated when all leave to which they are entitled has expired, in accordance with appropriate policies.

Adopted 11/18/04

§ 10.004. Access to Personnel Information

- (a) Information is excepted from the requirements of Section 552.021 [of the Public Information Act] if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that 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 this chapter. The exception to public disclosure created by this subsection is in addition to any exception created by Section 552.024. Public access to personnel information covered by Section 552.024 is denied to the extent provided by that section.
- (b) Information is excepted from the requirements of Section 552.021 if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Texas Government Code § 552.102

- (a) 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.
- (b) 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 this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person’s privacy interests.

Texas Government Code §§ 552.023(a)-(b)

See also Texas Government Code § 552.307.¹²

¹²

- (a) If a governmental body determines that information subject to a special right of access under Section 552.023 is exempt from disclosure under an exception of 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 this subchapter.

(footnote continued on next page ...)

§ 10.005. Conflicts of Interest of Employees

i. Prohibitions

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 benefit¹³ as consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;
- (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 or party official; or
- (4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, 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

....

Texas Penal Code § 36.02(a)

(... footnote continued from previous page)

(b) If a decision is not requested under Subsection (a), the governmental body shall release the information to the person with a special right of access under Section 552.023 not later than the 10th day after the date of receiving the request for information.

Texas Government Code § 552.307

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“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.

Texas Penal Code § 36.01(3)

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.

Texas Penal Code § 36.08(d)

- (a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do 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; or
 - (3) a benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, 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 Title 15, Election Code;
 - (5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code;
 - (6) an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code; or
 - (7) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity.
- (b) Section 36.08 (Gift to Public Servant) does not apply to 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.

(c) Section 36.09 (Offering Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

Texas Penal Code §§ 36.10(a)-(c)

(a) 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.

(b) This section 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 that those services are more than merely perfunctory, or from accepting meals in connection with such an event.

Texas Penal Code §§ 36.07(a)-(b)

(a) The Superintendent shall render the final decision concerning employees who are allegedly engaging in activities or interests that conflict with the proper discharge of their duties.

ii. Reporting

(a) A local government officer shall file a conflicts disclosure statement with respect to a person described by Section 176.002(a) if:

- (1) the person has contracted with the local governmental entity or the local governmental entity is considering doing business with the person; and
- (2) the person:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income; or
 - (B) has given to the local government officer or a family member of the officer one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract described by Subdivision (1) has been executed; or
 - (ii) the local governmental entity is considering doing business with the person.

(a-1) A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

- (1) given by a family member of the person accepting the gift;
- (2) a political contribution as defined by Title 15, Election Code; or
- (3) food, lodging, transportation, or entertainment accepted as a guest.

Texas Local Government Code §§ 176.003(a)-(a-1)

(b) Dallas County Schools extends the requirements for Conflicts Disclosure Statements found in Texas Local Government Code § 176.003 to employees with the job titles of Assistant Superintendent, Chief Internal Auditor, General Counsel, Chief Technology Officer, Executive Director, Director, Chief Financial Officer, Purchasing Agent/Clerk, and Assistant to Chief Financial Officer and to supervisory employees who recommend purchasing decision in excess of \$10,000 annually.¹⁴

Adopted 11/18/04 & 1/26/06; amended 4/20/06, 7/22/10

§ 10.006. Nepotism by Employees

- (a) All DCS employees with hiring or supervisory responsibilities are prohibited from hiring or appointing a family member, or from using their position to influence another DCS employee to hire or appoint a family member.
- (b) “Family member” includes biological, adopted, or foster relationships and is defined as: spouse, child, parent, sibling, grandparent, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, aunt, uncle niece, nephew, great-grandchild, or great-grandparent.
- (c) A DCS employee shall not directly or indirectly supervise or evaluate a family member or be in the line to supervise the family member or influence or affect

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- (a) The local governmental entity may extend the requirements of Sections 176.003 and 176.004 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 Chapter 271. The local governmental entity shall identify each employee made subject to Sections 176.003 and 176.004 under this subsection and shall provide a list of the identified employees on request to any person.
- (b) 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.

Texas Local Government Code §§ 176.005(a)-(b)

decisions regarding the employment, promotion, salary, or other management or personnel transactions regarding the family member.

- (d) The line of supervision includes all levels of administrative supervisors through the chain of command to the Superintendent and not simply the immediate supervisor.
- (e) Both supervisors and applicants must report the names of any relatives in their departments or divisions to which the candidate has applied.
- (f) Candidates who fail to fully disclose family members employed by Dallas County Schools during the initial employment process, as well as employees who fail to fully disclose (within 30 days of the qualifying event) subsequent events that create a work relationship with a family member in violation of this policy, will be subject to disciplinary action up to and including termination of employment.
- (g) Dallas County Schools reserves the right to reassign family members working in the same department whenever there is the potential for a conflict of interest.

Adopted 11/17/05

§ 10.007. Anti-Fraternization Policy

- (a) A manager or supervisor who becomes romantically involved with someone he or she supervises or with someone whose terms and conditions of employment he or she has the ability to influence (including, in the case of a dispatcher, a driver or monitor whose route assignments the dispatcher controls) (a “subordinate employee”) exposes himself/herself and Dallas County Schools to charges of favoritism, improper use of authority, and possibly sexual harassment. Even when no inappropriate conduct is involved, management fraternization with a subordinate employee may appear to others to involve favoritism or improper use of authority. In order to avoid the dangers of fraternization with a subordinate employee, and to help prevent even the appearance of improper conduct, it is Dallas County Schools’ policy that a manager, supervisor, or any other employee who has the authority to directly or indirectly affect the terms and conditions of a subordinate employee shall not fraternize with that employee.
- (b) The fraternization prohibited by this policy includes dating, romantic involvement, sexual relations, or any other type of intimate relationship. Dallas County Schools does not intend this fraternization policy to otherwise discourage friendship or social activities among DCS employees.
- (c) Should a personal relationship prohibited by this policy exist or be formed, the manager or supervisor involved shall immediately notify his or her immediate supervisor. Failure to do so is grounds for discipline.
- (d) Where a personal relationship prohibited by this policy exists or has existed, Dal-

las County Schools will take whatever action it believes is necessary to remove the parties from any continued supervisory lines of authority between them. At a minimum, the supervisor/manager and subordinate employee will not thereafter be permitted to work together on the same matters (including matters pending at the time disclosure of the relationship is made), and the supervisor/manager will be required to withdraw from participation in activities or decisions (including, but not limited to, hiring, evaluations, promotions, compensation, work assignments, and discipline) that may reward or disadvantage the subordinate employee.

- (e) This Policy applies to all DCS employees, and applies without regard to the gender of the participants in a relationship of the kind described.

Adopted 9/21/06; amended 9/20/07

§ 10.008. Improper Gifts and Solicitation

- (a) An employee shall not give or promise to give a gift of a value of \$25 or more to a supervising employee.
- (b) An employee shall not accept or solicit a gift of a value of \$25 or more from a subordinate employee.
- (c) An employee shall not solicit a subordinate employee
 - (1) to make a charitable or political contribution or pledge;
 - (2) to support, oppose, or refrain from supporting or opposing a political candidate, campaign, measure, or party; or
 - (3) to purchase goods or services.
- (d) As used in this section,
 - (1) the term “subordinate employee” means an employee whom the person in question supervises, either directly or through one or more intermediate supervisors, or a driver or monitor whose route assignments the person controls as a dispatcher; and
 - (2) the term “supervising employee” means an employee who supervises the person in question, either directly or through one or more intermediate supervisors, or a dispatcher who controls the person’s route assignments as a driver or monitor.

Adopted 9/20/07

Chapter 11. Employment Practices

§ 11.001. Authority of the Superintendent Regarding Employment

- (a) The Superintendent is delegated all authority to hire, fire, evaluate, promote, demote, appoint, employ, change status, and change compensation of all employees except the Superintendent.
- (b) The Superintendent shall define the qualifications, duties, and responsibilities of all positions and shall ensure that job descriptions are current and accessible to employees and supervisors.

See also Texas Education Code §§ 11.1513(a)¹⁵ and 11.201(d).¹⁶

Adopted 11/18/04

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(a) The board of trustees of each independent school district shall adopt a policy providing for the employment and duties of district personnel. The employment policy must provide that:

- (1) the board employs and evaluates the superintendent;
- (2) the superintendent has sole authority to make recommendations to the board regarding the selection of all personnel other than the superintendent, except that the board may delegate final authority for those decisions to the superintendent

Texas Education Code § 11.1513(a)(1)-(2)

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(d) The duties of the superintendent include:

- (1) assuming administrative responsibility and leadership for the planning, organization, operation, supervision, and evaluation of the education programs, services, and facilities of the district and for the annual performance appraisal of the district’s staff;
- (2) ... assuming administrative authority and responsibility for the assignment, supervision, and evaluation of all personnel of the district other than the superintendent;
- * * *
- (4) initiating the termination or suspension of an employee or the nonrenewal of an employee’s term contract;
- * * *
- (10) organizing the district’s central administration;
- * * *

Texas Education Code § 11.201(d)

§ 11.002. Employment-At-Will

The long-standing rule in Texas provides for employment at will, terminable at any time by either party, with or without cause, absent an express agreement to the contrary.

Federal Express Corp. v. Dutschmann, 846 S.W.2d 282, 283 (Tex. 1993)¹⁷

Nothing in these policies, or in the Dallas County Schools Employee Handbook or the procedures, guidelines and rules included therein, are intended to create an employment contract or any property interest in employment for any employee.

Adopted 11/18/04

§ 11.003. Employee Assignment & Evaluation

- (a) The Superintendent or designee has sole authority to notify employees of assignments, compensation rates, and conditions of employment.
- (b) Evaluation of at-will employees shall be conducted by the employee's supervisor, in accordance with administrative procedures.

Adopted 11/18/04

§ 11.004. Employment Vacancies

- (a) The Superintendent or the Superintendent's designee shall establish guidelines for advertising employment opportunities and posting notices of vacancies. These guidelines shall advance the Board's commitment to equal opportunity employment, to recruiting well-qualified candidates and to enhancing career-development opportunities for current employees. For the purposes of this policy, "vacancy" refers to any open position including any newly created position.
- (b) Current DCS employees may apply for any vacancy for which they have appropriate qualifications. Dallas County Schools will give preference in employment decisions to qualified current DCS employees.

Adopted 11/18/04; amended 2/16/06

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[A] narrow exception covers only the discharge of an employee for the sole reason that the employee refused to perform an illegal act.

Sabine Pilot Service, Inc. v. Hauck, 687 S.W.2d 733, 735 (Tex. 1985)

§ 11.005. Employment Application Procedure

All applicants shall complete the application form supplied by Dallas County Schools. Information on applications shall be confirmed before a contract is offered for a contractual position and before hiring or as soon as possible thereafter for a noncontractual position.

Adopted 11/18/04

§ 11.006. Verification of Employment Eligibility

A person or entity that hires or recruits shall verify employment eligibility within three business days of hire or actual commencement of duties for all persons hired after November 6, 1986. Employment eligibility for those employees who continue to be employed after May 31, 1987, shall be verified by examination of documents establishing identity and employment authorization and completion of the I-9 Form promulgated by the United States Citizenship & Immigration Services.

8 C.F.R. § 274a.2(b) (paraphrased)

§ 11.007. Criminal History Record Inquiries

i. Obtaining of Criminal History Record Information

(a) A school district ... or shared services arrangement shall obtain criminal history record information that relates to a person who is not subject to a national criminal history record information review under this subchapter and who is an employee of:

- (1) the district

* * *

(a-1) A school district ... or shared services arrangement may obtain the criminal history record information from:

- (1) the department;
- (2) a law enforcement or criminal justice agency; or
- (3) a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.).

Texas Education Code §§ 22.083(a)-(a-1)

(a) This section applies to a person who is not an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who on or after January 1, 2008, is offered employment by:

- (1) a school district ... or
 - (2) a shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present.
- (b) A person to whom this section applies must submit to a national criminal history record information review under this section before being employed or serving in a capacity described by Subsection (a).
 - (c) Before or immediately after employing or securing the services of a person to whom this section applies, a school district ... or shared services arrangement shall send or ensure that the person sends to the department information that is required by the department for obtaining national criminal history record information, which may include fingerprints and photographs.
 - (d) The department shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code.
 - (e) Each school district ... and shared services arrangement shall obtain all criminal history record information that relates to a person to whom this section applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code, and shall subscribe to the criminal history record information of the person.
 - (f) The school district ... or shared services arrangement may require a person to pay any fees related to obtaining criminal history record information under this section.
 - (g) A school district ... or shared services arrangement shall provide the agency with the name of a person to whom this section applies. The agency shall obtain all criminal history record information of the person through the criminal history clearinghouse as provided by Section 411.0845, Government Code. The agency shall examine the criminal history record information of the person and notify the district ... if the person may not be hired or must be discharged as provided by Section 22.085.

Texas Education Code § 22.0833(a)-(g)

- (a) This subsection applies to a person who is not an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who on or after January 1, 2008, is offered employment by an entity that contracts with a school district ... or shared services arrangement to provide services, if:
 - (1) the employee or applicant has or will have continuing duties related to the contracted services; and
 - (2) the employee or applicant has or will have direct contact with students.

- (b) A person to whom Subsection (a) applies must submit to a national criminal history record information review under this section before being employed or serving in a capacity described by that subsection.
- (c) Before or immediately after employing or securing the services of a person to whom Subsection (a) applies, the entity contracting with a school district ... shall send or ensure that the person sends to the department information that is required by the department for obtaining national criminal history record information, which may include fingerprints and photographs. The department shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code.
- (d) An entity contracting with a school district ... or shared services arrangement shall obtain all criminal history record information that relates to a person to whom Subsection (a) applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code. The entity shall certify to the school district that the entity has received all criminal history record information relating to a person to whom Subsection (a) applies.
- (e) A school district ... or shared services arrangement may obtain the criminal history record information of a person to whom this section applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code.
- (f) In the event of an emergency, a school district may allow a person to whom Subsection (a) or (g) applies to enter school district property if the person is accompanied by a district employee. A school district may adopt rules regarding an emergency situation under this subsection.
- (g) An entity that contracts with a school district ... or shared services arrangement to provide services shall obtain from any law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to an employee of the entity who is employed before January 1, 2008, and who is not subject to a national criminal history record information review under Subsection (b) if:
 - (1) the employee has continuing duties related to the contracted services; and
 - (2) the employee has direct contact with students.
- (h) A school district ... or shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person to whom Subsection (g) applies.

- (i) An entity shall certify to a school district that it has received all criminal history record information required by Subsection (g).

Texas Education Code §§ 22.0834(a)-(i)

- (a) ... a school district ... or shared services arrangement that contracts with a person for transportation services shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to:
 - (1) a person employed by the person as a bus driver; or
 - (2) a person the person intends to employ as a bus driver.
- (b) ... a person that contracts with a school district ... or shared services arrangement to provide transportation services shall submit to the district ... or shared services arrangement the name and other identification data required to obtain criminal history record information of each person described by Subsection (a). If the district ... or shared services arrangement obtains information that a person described by Subsection (a) has been convicted of a felony or a misdemeanor involving moral turpitude, the district ... or shared services arrangement shall inform the chief personnel officer of the person with whom the district ... or shared services arrangement has contracted, and the person may not employ that person to drive a bus on which students are transported without the permission of the board of trustees of the district ... or the chief executive officer of the ... shared services arrangement.

Texas Education Code §§ 22.084(a)-(b)

Before a person is employed to operate a school bus to transport students, the employer must obtain a criminal history record check. A school district ... or shared services arrangement ... that obtains information that a person has been convicted of a felony or misdemeanor involving moral turpitude may not employ the person to drive a school bus on which students are transported unless the employment is approved by the board of trustees of the school district or the board’s designee.

Texas Transportation Code § 521.022(f)

ii. Confidentiality of Criminal History Record Information

Criminal history record information obtained by a school district ... or shared services arrangement in the original form or any subsequent form:

- (1) may not be released to any person except:
 - (A) the individual who is the subject of the information;
 - (B) the Texas Education Agency;

- (C) the State Board for Educator Certification;
- * * *
- (E) by court order;

Texas Government Code § 411.097(d)(1)

- (a) Information collected about a person to comply with [Texas Education Code ch. 22, subch. C, dealing with criminal history records], including the person’s name, address, phone number, social security number, driver’s license number, other identification number, and fingerprint records:
 - (1) may not be released except:
 - (A) to comply with this subchapter;
 - (B) by court order; or
 - (C) with the consent of the person who is the subject of the information;
 - * * *
- (d) Any criminal history record information received by a school district ... or education shared services arrangement or an entity that contracts to provide services to a school district, charter school, or shared services arrangement as provided by this subchapter is subject to Section 411.097(d), Government Code.

Texas Education Code §§ 22.08391(a)(1), (d)

See also Texas Education Code § 22.0835¹⁸ & Texas Government Code §§ 411.097(a)-(b)¹⁹

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- (a) A school district ... or shared services arrangement shall obtain from the [Department of Public Safety] and may obtain from any other law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to:
 - * * *
 - (2) a volunteer or person who has indicated, in writing, an intention to serve as a volunteer with the district
 - * * *
- (c) A person to whom Subsection (a) ... applies must provide to the school district ... or shared services arrangement a driver’s license or another form of identification containing the person’s photograph issued by an entity of the United States government.

(footnote continued on next page ...)

§ 11.008. Discharge of Convicted Employee

(a) A school district ... or shared services arrangement shall discharge or refuse to hire an employee or applicant for employment if the district ... obtains information through a criminal history record information review that:

(... footnote continued from previous page)

(d) A person to whom Subsection (a) applies may not perform any ... volunteer duties until all requirements under Subsections (a) and (c) have been satisfied.

(e) Subsections (a) and (c) do not apply to a person who volunteers or is applying to volunteer with a school district ... or shared services arrangement if the person:

- (1) is the parent, guardian, or grandparent of a child who is enrolled in the district ... for which the person volunteers or is applying to volunteer;
- (2) will be accompanied by a school district employee while on a school campus; or
- (3) is volunteering for a single event on the school campus.

(f) A school district ... or shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person to whom Subsection (e) applies.

(g) A school district ... or shared services arrangement may require a student teacher, volunteer, or volunteer applicant to pay any costs related to obtaining criminal history record information under this section.

Texas Education Code § 22.0835

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(a) A school district ... or education shared services arrangement, or an entity that contracts to provide services to a school district, charter school, or shared services arrangement, is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the department that the district ..., shared services arrangement, or entity is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a person who is:

- (1) an applicant for employment by the district ... or shared services arrangement;

* * *

- (3) an employee of or applicant for employment by an entity that contracts to provide services to a school district ... or shared services arrangement as provided by Section 22.0834, Education Code.

(b) A school district ... or education shared services arrangement is entitled to obtain from the department criminal history record information maintained by the department that the district ... or shared services arrangement is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a person who is a volunteer, student teacher, or employee of the district ... or shared services arrangement.

Texas Government Code §§ 411.097(a)-(b)

- (1) the employee or applicant has been convicted of:
 - (A) a felony offense under Title 5, Penal Code;
 - (B) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or
 - (C) an offense under the laws of another state or federal law that is equivalent to an offense under Paragraph (A) or (B); and
 - (2) at the time the offense occurred, the victim of the offense described by Subdivision (1) was under 18 years of age or was enrolled in a public school.
- (b) Subsection (a) does not apply if the employee or applicant for employment committed an offense under Title 5, Penal Code, and:
- (1) the date of the offense is more than 30 years before:
 - (A) the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007, in the case of a person employed by a school district ... or shared services arrangement as of that date; or
 - (B) the date the person's employment will begin, in the case of a person applying for employment with a school district ... or shared services arrangement after the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007; and
 - (2) the employee or applicant for employment satisfied all terms of the court order entered on conviction.
- (c) A school district ... or shared services arrangement may not allow a person who is an employee of or applicant for employment by an entity that contracts with the district ... or shared services arrangement to serve at the district ... or for the shared services arrangement if the district ... or shared services arrangement obtains information described by Subsection (a) through a criminal history record information review concerning the employee or applicant. A school district ... or shared services arrangement must ensure that an entity that the district ... or shared services arrangement contracts with for services has obtained all criminal history record information as required by Section 22.0834.

(d) A school district ... or shared services arrangement may discharge an employee if the district or school obtains information of the employee’s conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to the State Board of Educator Certification or the district ... or shared services arrangement. An employee discharged under this section is considered to have been discharged for misconduct for purposes of Section 207.044, Labor Code.

* * *

(f) Each school year, the superintendent of a school district ... shall certify to the commissioner that the district ... has complied with this section.

Texas Education Code § 22.085

§ 11.009. New Hire Reporting

In cooperation with the Texas Workforce Commission, the Title IV-D agency shall develop and operate a state directory to which employers in the state shall report each newly hired or rehired employee in accordance with the requirements of 42 U.S.C. Section 653a.

Texas Family Code § 234.102

See also 42 U.S.C. §§ 653a(b)-(c)²⁰ and 1 Texas Administrative Code §§ 55.303(a)-(d).²¹

²⁰

(b) Employer information

(1) Reporting requirement

(A) In general

Except as provided in subparagraphs (B) and (C), each employer shall furnish to the Directory of New Hires of the State in which a newly hired employee works, a report that contains the name, address, and social security number of the employee, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to, the employer.

* * *

(2) Timing of report

Each State may provide the time within which the report required by paragraph (1) shall be made with respect to an employee, but such report shall be made –

(A) not later than 20 days after the date the employer hires the employee; or

(footnote continued on next page ...)

(... footnote continued from previous page)

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

(c) Reporting format and method

Each report required by subsection (b) of this section shall be made on a W-4 form or, at the option of the employer, an equivalent form, and may be transmitted by 1st class mail, magnetically, or electronically.

42 U.S.C. §§ 653a(b), (c)

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(a) ... each Texas employer shall furnish to the State Directory of New Hires in the state in which a newly hired employee works a report of all new hires that contains the following six required data elements found on the employee’s W-4 form:

- (1) the employee name,
- (2) the employee address,
- (3) the employee social security number,
- (4) the employer name,
- (5) the employer address, and
- (6) the Federal Employer Identification Number (FEIN).

(b) Employers, at their option may also provide the following additional information in the report:

- (1) the employee’s date of hire,
- (2) the employee’s date of birth, and
- (3) the employee’s expected salary or wages,
- (4) Employer payroll address for mailing of notice to withhold child support.

(c) All employers shall report new hire information on a Form W-4 or an equivalent form by first class mail, telephonically, electronically or magnetic media as determined by the employer and in a form acceptable to the Title IV-D agency

* * *

(d) To ensure timely receipt of information, Texas employers shall be required to report the hiring or rehiring of persons to the Title IV-D agency. New Hire reports shall be considered timely if postmarked by the due date or if filed electronically, upon receipt by the agency. New Hire reports are due:

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

1 Texas Administrative Code §§ 55.303(a)-(d)

§ 11.010. Employee Handbook

- (a) The Dallas County Schools Employee Handbook consists of the Board Policies listed below and any procedures established by the Superintendent or his designee to implement the Policies.
- (b) The following Board Policies will be included in the handbook:
 - (1) Title II Employees
 - (2) Title III Students
 - (3) Title IV Operations
 - (A) Chapter 20 Buildings, Facilities & Property Use
 - (B) Chapter 26 Dallas County Schools Public Records
- (c) In the event of any conflict with the provisions of the Board Policies, the Board Policies shall govern.
- (d) The handbook will be distributed to every Dallas County Schools employee at the beginning of each school year and be continuously updated.
- (e) A current copy of the handbook will be maintained and made available to every DCS employee at every work site.
- (f) A current copy of the handbook will be maintained on the Dallas County Schools website.
- (g) The handbook and the policies, procedures, guidelines, and rules included therein, do not create an employment contract or any property interest in employment for any employee.

Adopted 11/18/04; amended 8/30/07

§ 11.011. Reasonable Assurance of Employment

DCS employees in positions normally requiring less than 12 months of service annually and who are expected to report to work at the beginning of the following school year may be provided a letter of reasonable assurance of employment.

Adopted 11/18/04

§ 11.012. Absence Policy

Any employee who is absent from work for reasons not otherwise protected by law, for more than six months in a school year, regardless of the reason, will be automati-

cally discharged. Such discharged employees are welcome to reapply for employment when they are able and willing to return to work.

Adopted 11/18/04

§ 11.013. Assignment of Buses and Routes

- (a) Buses are assigned to routes and not to drivers or monitors.
- (b) Bus assignments may be changed at any time.
- (c) Routes are assigned to service centers by Dallas County Schools and may be moved at any time.

Adopted 10/19/06; amended 5/29/08

§ 11.014. Assignment of Routes

- (a) Except where special arrangements are required by law, bus drivers must be able to operate any bus assigned to them by Dallas County Schools, including the bus regularly assigned to their route and any temporary substitute bus assigned as a result of vehicle maintenance or other scheduling needs.
- (b) Assignment of drivers and monitors to regular and special needs routes will be made in August prior to the start of the school year.
- (c) Drivers and monitors will be selected for routes according to seniority and any special qualifications established for particular routes (such as special needs routes).
 - (1) Except as provided in paragraph (c)(2), employment of a driver or monitor at a school served by a route will not be considered a special qualification for that route.
 - (2) A driver or monitor who was assigned during the 2006-07 school year to a route serving a school at which the driver was employed will be considered to have a special qualification for routes serving that school as long as the driver or monitor remains continuously employed at the school and is continuously assigned to a route serving the school. (Continuous employment or assignment means employment or assignment for at least nine months each school year.)
- (d) Drivers and monitors who have five or fewer missed days (ten AM or PM shifts) during the regular school year will be eligible to bid on summer school routes according to their seniority. Drivers and monitors who have missed more than five days (ten AM or PM shifts) will be eligible to bid on summer school routes if available, according to their seniority, after those who meet the attendance requirement. Jury duty, bereavement leave, assault leave, workers' compensation

leave, FMLA leave, other medical leave approved by the Extended Leave Committee, approved professional leave, and military leave will not count as missed shifts for this purpose. Missing any portion of a shift (AM or PM), which results in a stand-by or substitute bus driver covering all or part of the shift, will count as an absence for this purpose.

- (e) During a school year, assignment of drivers and monitors to any new routes or any existing routes that may be vacated by a driver or monitor will be made on the same basis as selections made at the beginning of that school year. A driver or monitor may switch routes during the school year a maximum of two times per semester.
- (f) If a route is moved during a school year from one service center to another, the assigned driver and/or monitor will have the option of moving with the route or staying at the same service center.
- (g) Substitute bus drivers are not assigned to a route, but may be called to drive on an as-needed basis to cover routes. Coach drivers are not assigned to routes.
- (h) The Superintendent or his designee always reserves the right to cancel, add, or change route assignments at any time or to assign or reassign employees to service centers, routes, or buses in special circumstances when in the best interest of DCS and the school districts it serves.

Adopted 10/18/04; amended 5/16/07, 8/30/07, 5/29/08, 7/16/09, 9/24/09, 5/20/10

§ 11.015. Assignment of Trips (such as field trips)

- (a) Special trips are assigned to service centers by Dallas County Schools.
- (b) The opportunity for trips is offered to all drivers and monitors, equally, on a rotating basis, subject to:
 - (1) any special qualifications established for particular trips;
 - (2) any conflicts with assigned routes;
 - (3) finalized disciplinary actions; and
 - (4) minimizing overtime.
- (c) Drivers and monitors may accept or decline any trips that are offered.
- (d) An employee who is absent for more than two shifts during the week immediately prior to the field trip selection process is not eligible to participate in the field trip selection process.
 - (1) Missing any portion of a shift (AM or PM), which results in a stand-by or

substitute bus driver covering all or part of the shift, will count as an absence for this purpose.

- (2) Jury duty, bereavement leave, assault leave, approved professional leave, workers' compensation leave, FMLA leave, DCS-mandated medical leave, and military leave will not count as missed shifts for purposes of field trip selection eligibility.
- (e) Substitute bus drivers and coach drivers are not eligible for regular rotational assignment to field trips, but substitute drivers may bid on field trips scheduled to occur during regular route times. Substitute bus drivers may be assigned to field trips on an as-needed basis when regular drivers are unavailable. Coach drivers may be assigned to drive their own teams to extracurricular events.
- (f) Sponsors, coaches, or event coordinators frequently request specific drivers. Dallas County Schools cannot accommodate requests for particular drivers in following (b) above.

Adopted 11/17/05; amended 10/18/07, 7/16/09, 9/24/09

Chapter 12. Employee Compensation and Benefits

§ 12.001. Salary & Wages

- (a) The salary schedules and hourly wage rates shall be set annually by the Superintendent and approved by the Board of Trustees. Hourly wage rates and salaries for nonexempt employees shall meet or exceed minimum wages under the Fair Labor Standards Act.²²
- (1) Hourly wage rate schedules for drivers and monitors shall be graduated according to experience level.
 - (2) Experience for drivers consists of employment in a monitor position for DCS or a bus driving position requiring a commercial driver's license for DCS, another school district, a contract carrier providing school bus service to a school district, a public mass transit system, or a common carrier, plus 50% of time spent in full-time employment or self-employment as a driver of tractor-trailer trucks requiring a Class A or B commercial driver's license.
 - (3) Experience for monitors consists of employment as a bus driver for DCS or a bus monitor for DCS, another school district, or a contract carrier providing school bus service to a school district; plus 50% of time spent employed in a bus driving job requiring a commercial driver's license for another school district or a contract carrier providing school bus service to a school district.
 - (4) One year of service is defined as working at least 90 business days in a year. Time spent on workers' compensation leave, assault leave, or military leave will be counted towards the 90 business days required for a year of experience.
 - (5) It is the employee's responsibility to request any corrections to his or her years of service or experience level by submitting a written request to the Human Resources Department.
- (b) Nonexempt employees²³ are compensated for hours worked beyond their sched-

²²

Unless an exemption applies, an employer shall pay each of its employees not less than minimum wage.

29 U.S.C. §§ 206(a), (b) (paraphrased)

²³

(footnote continued on next page ...)

uled workday at the appropriate hourly rate of pay,²⁴ or by being permitted to flex their work schedules within the same week.²⁵

(... footnote continued from previous page)

The minimum wage and overtime provisions do not apply to any employee employed in a bona fide executive, administrative, or professional capacity.

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis. Subject to the exceptions listed in the rule, an employee must receive the full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. An employer that makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis.

29 U.S.C. § 213(a)(1) (paraphrased); 29 C.F.R. § 541.602(a) (paraphrased)

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(a) (1) 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 in excess of forty in any workweek.

* * *

(n) In the case of an employee of an employer engaged in the business of operating a ... motorbus carrier (regardless of whether or not such ... carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee’s employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee’s regular employment.

29 U.S.C. §§ 207(a)(1) (paraphrased), (n)

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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.

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).

(footnote continued on next page ...)

- (c) Dallas County Schools will maintain and preserve payroll information or other records for nonexempt employees required by the regulations implementing the Fair Labor Standards Act.

Adopted 11/18/04; amended 8/30/07, 5/29/08, 8/27/09, 7/22/10

§ 12.002. Health Care Insurance

A district shall participate in the uniform group coverage program established under Texas Insurance Code Chapter 1579 and implemented by the Teacher Retirement System of Texas (TRS). The cost of the coverage provided under the program shall be paid by the state, the district, and the employees in the manner provided by Texas Insurance Code Chapter 1579.

Texas Education Code § 22.004(a), (c) (paraphrased); Texas Insurance Code §§ 1579.051, 1579.101 (paraphrased)

(a) Except as provided by Section 1579.204, participation in the program is limited to employees of participating entities who are full-time employees²⁶ and to part-time employees²⁷ who are participating members in the Teacher Retirement System of Texas.

(... footnote continued from previous page)

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 the employer from compelling the use of accrued compensatory time.

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

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Full-time employee--A participating member who:

- (A) is currently employed by a participating entity;
- (B) is eligible for membership in the Teacher Retirement System of Texas based on current full-time service as described by §25.1 of this title (relating to Full-Time Service), or based on current employment as a bus driver as described by §25.2 of this title (relating to Bus Drivers); and

(footnote continued on next page ...)

(b) An employee described by Subsection (a) who applies for coverage during an open enrollment period prescribed by the trustee is automatically covered by the catastrophic care coverage plan unless the employee:

- (1) specifically waives coverage under this chapter;
- (2) selects a higher tier coverage plan; or
- (3) is expelled from the program.

Texas Insurance Code § 1579.202

A part-time employee who is not a participating member in the Teacher Retirement System of Texas is eligible to participate in the program only if the employee pays all of the premiums and other costs associated with the health coverage plan selected by the employee.

Texas Insurance Code § 1579.204

(... footnote continued from previous page)

(C) is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) or the State University Employees Uniform Insurance Benefits Act (Chapter 1601, Insurance Code) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, Insurance Code, also known as TRS-Care).

34 Texas Administrative Code § 41.33(2)

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Part-time employee--An individual who is currently employed by a participating entity for 10 hours or more each week; and:

- (A) is not a full-time employee;
- (B) is not a retiree who waived coverage under the health benefits program under the Texas Public School Retired Employees Group Benefits Act, Chapter 1575, Insurance Code, also known as TRS-Care; and
- (C) is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) or the State University Employees Uniform Insurance Benefits Act (Chapter 1601, Insurance Code) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, Insurance Code, also known as TRS-Care).

34 Texas Administrative Code § 41.33(6)

- (a) A participating employee may select coverage in any coverage plan offered by the trustee.
- (b) The employee is not required to continue participation in the coverage plan initially selected and may select a higher or lower tier coverage plan than the plan initially selected by the employee in the manner provided by rules adopted by the trustee.
- (c) If the combined contributions received from the state and the employing participating entity under Subchapter F exceed the cost of a coverage plan selected by the employee, the employee may use the excess amount of contributions to obtain coverage under a higher tier coverage plan or to pay all or part of the cost of coverage for the employee’s dependents.
- (d) A married couple, both of whom are eligible for coverage under the program, may pool the amount of contributions to which the couple are entitled under the program to obtain coverage for themselves and dependent coverage.

Texas Insurance Code § 1579.203

Each district shall report the district’s compliance with this section to the executive director of the Teacher Retirement System of Texas not later than March 1 of each even numbered year in the manner required by the board of trustees of the Teacher Retirement System of Texas. ...

Texas Education Code § 22.004(d)

- (a) Subject to statutory restrictions,²⁸ the Board or the Superintendent annually shall determine the amount Dallas County Schools will contribute to employees’ health insurance premiums as part of the employee compensation and benefits system in the annual budget. The Board may distinguish between full-time and part-time employees, as those terms are defined for other benefits, for purposes of its contribution to employees’ health insurance premiums.
- (b) Dallas County Schools will contribute to the cost of the employee’s health insurance benefits as long as the employee is in active service or on approved paid personal leave, military leave, or family and medical leave and the employee

²⁸

A school district [or] other educational district ... shall for each fiscal year use to provide health coverage an amount equal to the number of participating employees of the district ... multiplied by \$1800.

Texas Insurance Code § 1581.052(a)

contributes his or her share of the health insurance cost.²⁹

- (c) An employee on workers’ compensation leave is considered to be on unpaid leave from work once the employee becomes eligible to earn workers’ compensation wage benefits. The employee may continue health insurance benefits under the COBRA provisions.³⁰
- (d) Substitute bus drivers and coach drivers are only employed on an as-needed or temporary basis and thus may not be eligible for the same benefits as full-time or

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- (a) An employee covered by the program shall pay that portion of the cost of coverage selected by the employee that exceeds the amount of the state contribution under Section 1579.251 and the participating entity contribution under Section 1579.252.
- (b) The employee may pay the employee’s contribution under this subsection from the amount distributed to the employee under Subchapter D, Chapter 22, Education Code.
- (c) Notwithstanding Subsection (a), a participating entity may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

Texas Insurance Code § 1579.253

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In accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA), a political subdivision shall offer continuation coverage under any group health insurance plan established after July 1, 1986, to the following qualified beneficiaries for the stated period of time:

- (a) To the employee for 18 months after a termination (other than for gross misconduct) or reduction in hours. An employee providing notice of being disabled under Title II or XVI of the Social Security Act before the end of the initial 18 months of coverage shall be offered up to 29 months of continuation coverage.
- (b) To dependents of the covered employee for 36 months after the employee becomes eligible for Medicare benefits.
- (c) To dependents of the covered employee for 36 months after the employee’s death or the divorce or legal separation of the employee from a spouse.
- (d) To a dependent child for 36 months after the child ceases to be a dependent under the terms of the plan.

42 U.S.C. §§ 300bb-1 (paraphrased), 300bb-2 (paraphrased)

The plan may require premium payments not to exceed 102 percent of the usual cost of the plan for continuation coverage. Individuals entitled to 29 months of continuation coverage may be required to pay premiums not to exceed 150 percent of the usual cost for any month after the 18th month. The qualified beneficiary may choose to pay the premiums in monthly installments. In no event may payment be required before the day that is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage.

42 U.S.C. § 300bb-2(3) (paraphrased)

part-time employees.

- (1) If a substitute bus driver becomes eligible to participate in the Texas School Employees Uniform Group Health Coverage Program by virtue of the number of hours actually worked, the driver may become eligible to enroll for certain voluntary benefits.³¹
- (2) If a substitute bus driver's actual hours work qualify the driver for benefits, it is the driver's responsibility to request such benefits by submitting a written request to the Human Resources Office on the appropriate form.
- (3) If a substitute bus driver elects to receive benefits after becoming eligible but later no longer qualifies for such benefits based on the number of hours actually worked, the driver's insurance coverage will be subject to termination.

See also 42 U.S.C. § 300gg(a)³² and 45 C.F.R. § 146.111(a)(1)(i).³³

³¹See Texas Insurance Code ch. 1579; 34 Texas Administrative Code chs. 25 & 41.

³²

Subject to subsection (d) of this section, a group health plan, and a health insurance issuer offering group health insurance coverage, may, with respect to a participant or beneficiary, impose a preexisting condition exclusion only if –

- (1) such exclusion relates to a condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date;
- (2) such exclusion extends for a period of not more than 12 months (or 18 months in the case of a late enrollee) after the enrollment date; and
- (3) the period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage (if any, as defined in subsection (c)(1) of this section) applicable to the participant or beneficiary as of the enrollment date.

42 U.S.C. § 300gg(a)

³³

(footnote continued on next page ...)

Adopted 11/18/04; amended 8/27/09

§ 12.003. Employment Calendar and Holidays

- (a) Full-time employees will work all weekdays, excluding holidays and approved personal leave days, unless otherwise scheduled by the Superintendent or his designee. The Dallas County Schools official work calendar or holidays will be set by the Superintendent by September 1, annually.
- (b) Full-time employees who are scheduled to work 226 or more days during a school year may also take up to ten days off, without pay, during the school year. These days must be pre-approved by the employee's immediate supervisor. These days are not cumulative, except that a maximum of five days may be carried over to the next year with written approval of the Superintendent. Any days carried over must be used in the school year to which they are carried over, or they are forfeited.
- (c) Employees may, with written consent of the Superintendent, be allowed extra days off, without pay, in cases of exceptional need.
- (d) All bus drivers and monitors will receive one paid holiday at Easter and two paid holidays at Christmas. Substitute bus drivers and coach drivers are not eligible for these paid holidays.

Adopted 11/18/04; amended 6/22/06, 9/20/07, 8/27/09

(... footnote continued from previous page)

A preexisting condition exclusion means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the effective date of coverage under a group health plan or group health insurance coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that day. A preexisting condition exclusion includes any exclusion applicable to an individual as a result of information relating to an individual's health status before the individual's effective date of coverage under a group health plan or group health insurance coverage, such as a condition identified as a result of a pre-enrollment questionnaire or physical examination given to the individual, or review of medical records relating to the pre-enrollment period.

45 C.F.R. § 146.111(a)(1)(i)

§ 12.004. Personal and Other Forms of Leave

A state minimum personal leave program consisting of five days per year personal leave with no limit on accumulation and transferable among districts shall be provided for school district employees. School districts may provide additional personal leave beyond this minimum. The board of trustees of a school district may adopt a policy governing an employee's use of personal leave granted under this subsection, except that the policy may not restrict:

- (1) the purposes for which the leave may be used; or
- (2) the order in which an employee may use the state minimum personal leave and any additional personal leave provided by the school district.

Texas Education Code § 22.003(a)

- (a) Full-time employees who work 11 months per year shall earn an additional half-day of personal leave. Full-time employees who work 12 months per year shall earn an additional day of personal leave.
- (b) Employees with two or more years of service with Dallas County Schools will be paid for all unused, accumulated State personal leave days upon retirement, or upon the death of the employee, as long as the employee was considered to be an "active" employee at the time of death. Payment will be made at the employee's current daily rate of pay. Retirement is defined by the rules set by the Texas Teacher Retirement System (TRS). Employees hired on or after August 1, 2010, will only be eligible for reimbursement for a maximum of 60 total State personal leave days, whether earned at DCS or brought over from another district.
- (c) As an incentive to reduce employee absenteeism, an employee may be paid for up to 5 unused personal leave days earned in the current school year, as long as the employee has accumulated more than 30 days. The employee will also keep for future use the unused days for which the employee was paid. Bus drivers and monitors are not required to accumulate 30 days to be eligible for this incentive.
- (d) Personal leave is to be used concurrent with family and medical leave.
- (e) The Board may adopt a policy governing the use of earned personal leave to insure that such use does not interfere with the needs and operation of Dallas County Schools. If a personal leave request is denied, and the employee is absent, the employee's absence from work will be unexcused and the employee's pay will be reduced.
- (f) An employee must be allowed to take leave for observance of a holy day observed by the employee's religion.
- (g) All employees are allowed three days bereavement leave with pay and without deduction from their accrued personal leave in the case of death of a spouse,

child, parent current parent-in-law, or sibling. The use of bereavement leave and up to two days accumulated personal leave as additional bereavement leave does not affect a driver/monitor's attendance bonus. Additional days of absence will be charged against the employee's accrued personal leave balance. Substitute bus drivers and coach drivers are not eligible for bereavement leave.

- (h) Each employee is required to request leave on the form prescribed by the Superintendent. All leave days must be approved by the employee's supervisor. For salaried employees whose scheduled work days are less than a full year, this form must be prepared and approved for each day not in the office.

Adopted 11/18/04; amended 4/20/06, 8/27/09, 6/24/10

§ 12.005. Assault Leave

- (b) In addition to all other days of leave provided by this section or by the school district, an employee of a school district who is physically assaulted during the performance of the employee's regular duties is entitled to the number of days of leave necessary to recuperate from all physical injuries sustained as a result of the assault. At the request of an employee, the school district must immediately assign an employee to assault leave and, on investigation of the claim, may change the assault leave status and charge the leave against the employee's accrued personal leave or against an employee's pay if insufficient accrued personal leave is available. Days of leave taken under this subsection may not be deducted from accrued personal leave. The period provided by this subsection may not extend more than two years beyond the date of the assault. Notwithstanding any other law, assault leave policy benefits due to an employee shall be coordinated with temporary income benefits due from workers' compensation so that the employee's total compensation from temporary income benefits and assault leave policy benefits equals 100 percent of the employee's weekly rate of pay.
- (c) For purposes of Subsection (b), an employee of a school district is physically assaulted if the person engaging in the conduct causing injury to the employee:
- (1) could be prosecuted for assault; or
 - (2) could not be prosecuted for assault only because the person's age or mental capacity makes the person a non-responsible person for purposes of criminal liability.
- (c-1) Any informational handbook a school district provides to employees in an electronic or paper form or makes available by posting on the district website must include notification of an employee's rights under Subsection (b) in the relevant section of the handbook. Any form used by a school district through which an employee may request leave under this section must include assault leave under Subsection (b) as an option.

Texas Education Code §§ 22.003(b)-(c-1)

§ 12.006. Catastrophic Illness Leave

- (a) Extended leave for catastrophic illness or injury is to provide additional paid leave days to employees in the event the employee or the employee's spouse, child or parent (not including, however, parents of the employee's spouse or stepchildren not legally adopted by the employee) has an unexpected, extended illness, surgery, or a temporary disability due to an injury or illness.
- (b) All employees are automatically eligible for extended leave after completing twelve months of employment with Dallas County Schools.
- (c) Extended leave days will be granted only for absences from working days and will not be granted for holidays, vacation days, or other days for which the employee is not paid. The maximum number of extended leave days that may be granted to an employee during the school calendar year is thirty workdays. Not more than fifteen of these thirty workdays may be granted for care for the employee's spouse, child or parent. If an employee receives less than thirty days and returns to work, the employee may, if the need arises, submit another request for extended leave, so long as the school calendar year maximums are not exceeded. Each separate injury/illness applied for must meet the criteria for extended leave.
- (d) An employee is not eligible for extended leave under the following circumstances:
 - (1) The employee is a substitute bus driver or coach driver;
 - (2) The employee is receiving workers' compensation benefits;
 - (3) The employee resigns;
 - (4) The employee falsifies the application for extended leave; or
 - (5) Dallas County Schools determines that the employee does not meet eligibility requirements for extended leave.
- (e) The Extended Leave Committee, which shall approve or disapprove all requests, shall be made up of:
 - (1) The Director of Human Resources, who shall serve as permanent chair of the committee.
 - (2) The following members, appointed by the Superintendent for a one-year term:
 - (A) One Area Director recommended by the Director of Transportation.

- (B) Three bus drivers or monitors. The members will be selected utilizing a “random” selection process initiated by the Director of Human Resources. Drivers or monitors not selected for the committee shall serve as alternates in the event a driver or monitor member cannot complete a term.
- (C) Two non-management salaried personnel. The members will be selected utilizing a “random” selection process initiated by the Director of Human Resources. Non-management salaried staff not selected for the committee shall serve as alternates in the event a non-management salaried member cannot complete a term.

Adopted 11/18/04; amended 1/26/06, 8/27/09

§ 12.007. Leave Without Pay

After all personal and vacation leave has been used, an employee may be approved to be absent from work for up to, but not more than, six months on leave without pay, unless the employee’s absence falls under the protection of the Family and Medical leave Act or is otherwise approved by the Superintendent.

Adopted 11/18/04; amended 3/22/07

§ 12.008. Voting Leave

Any employee who does not have two consecutive non-work hours while the polls are open on election day will be given up to two hours off with pay in order to vote, unless more time is required by state law. An employee must notify a supervisor before Election Day if time is needed. Substitute bus drivers and coach drivers are not eligible for voting leave.

Adopted 11/18/04; amended 8/27/09

§ 12.009. Jury Duty

- (a) A school district may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against a school district employee because of the employee’s compliance with a summons to appear as a juror.
- (b) For each regularly scheduled workday on which a non-salaried employee serves in any phase of jury service, a school district shall pay the employee the employee’s normal daily compensation.
- (c) An employee’s accumulated personal leave may not be reduced because of the employee’s service in compliance with a summons to appear as a juror.

Texas Education Code § 22.006

- (a) Dallas County Schools employees who receive jury pay may retain such pay in

addition to their wages or salary.

- (b) Substitute bus drivers, coach drivers, and employees who are not in active service at the time of the jury duty will not be paid.

Adopted 11/18/04

§ 12.010. Leave for Federal Military Service

- (a) 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 by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.
- (b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

38 U.S.C. §§ 4311(a)-(b)

- (a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if –
 - (1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to 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; and
 - (3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

- (b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

* * *

- (d) (1) An employer is not required to reemploy a person under this chapter if –
- (A) the employer’s circumstances have so changed as to make such re-employment impossible or unreasonable;
 - (B) in the case of a person entitled to reemployment under subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313, such employment would impose an undue hardship on the employer; or
 - (C) the employment from which the person leaves to serve in the uniformed services is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

* * *

38 U.S.C. §§ 4312(a)-(d)

- (a) Subject to subsection (b) ..., a person entitled to reemployment under section 4312, upon completion of a period of service in the uniformed services, shall be promptly reemployed in a position of employment in accordance with the following order of priority:
- (1) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for less than 91 days –
 - (A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, the duties of which the person is qualified to perform; or
 - (B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, only if the person is not qualified to perform the duties of the position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

- (2) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for more than 90 days –
- (A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or
- (B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.
- (3) In the case of a person who has a disability incurred in, or aggravated during, such service, and who (after reasonable efforts by the employer to accommodate the disability) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service –
- (A) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or
- (B) if not employed under subparagraph (A), in a position which is the nearest approximation to a position referred to in subparagraph (A) in terms of seniority, status, and pay consistent with circumstances of such person's case.

38 U.S.C. §§ 4313(a)(1)-(3)

- (a) A person who is reemployed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.
- (b) (1) Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be –

- (A) deemed to be on furlough or leave of absence while performing such service; and
 - (B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.
- (2) (A) Subject to subparagraph (B), a person who –
- (i) is absent from a position of employment by reason of service in the uniformed services, and
 - (ii) knowingly provides written notice of intent not to return to a position of employment after service in the uniformed service, is not entitled to rights and benefits under paragraph (1)(B).
- * * *
- (d) Any person whose employment with an employer is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of service any vacation, annual, or similar leave with pay accrued by the person before the commencement of such service. No employer may require any such person to use vacation, annual, or similar leave during such period of service.

38 U.S.C. §§ 4316(a), (b), & (d)

See also 38 U.S.C. § 4303(13),³⁴ 38 U.S.C. § 4312(e),³⁵ and 38 U.S.C. §§ 4317(a)(1)-(2).³⁶

³⁴

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 as authorized by section 12503 of title 10 or section 115 of title 32.

38 U.S.C. § 4303(13)

³⁵

(e) (1) ... a person referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the employer referred to in such subsection of the person’s intent to return to a position of employment with such employer as follows:

(footnote continued on next page ...)

(... footnote continued from previous page)

- (A) In the case of a person whose period of service in the uniformed services was less than 31 days, by reporting to the employer –
 - (i) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person’s residence; or
 - (ii) as soon as possible after the expiration of the eight-hour period referred to in clause (i), if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.
 - (B) In the case of a person who is absent from a position of employment for a period of any length for the purposes of an examination to determine the person’s fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (A).
 - (C) In the case of a person whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the employer not later than 14 days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the person, the next first full calendar day when submission of such application becomes possible.
 - (D) In the case of a person whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the employer not later than 90 days after the completion of the period of service.
- * * *

38 U.S.C. § 4312(e)

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- (a) (1) In any case in which a person (or the person’s dependents) has coverage under a health plan in connection with the person’s position of employment, including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, and such person is absent from such position of employment by reason of service in the uniformed services, or such person becomes eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title, the plan shall provide that the person may elect to continue such coverage as provided in this subsection. The maximum period of coverage of a person and the person’s dependents under such an election shall be the lesser of –
 - (A) the 24-month period beginning on the date on which the person’s absence begins; or
 - (B) the day after the date on which the person fails to apply for or return to a position of employment, as determined under section 4312(e).

(footnote continued on next page ...)

§ 12.011. Leave for State Military Service

- (a) Except as provided by Subsection (b), a person who is an officer or employee of ... a ... political subdivision of the state 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 federal 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.
- (b) A member of the legislature is entitled to pay for all days that the member is absent from a session of the legislature and engaged in training and duty as provided by Subsection (a).
- (c) A state employee 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 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.

Texas Government Code § 431.005

- (a) A public employee³⁷ who leaves ... a position with a local governmental entity to enter active military service³⁸ is entitled to be reemployed:

(... footnote continued from previous page)

- (2) A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium under the plan (determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986 associated with such coverage for the employer's other employees, except that in the case of a person who performs service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, for such coverage.

38 U.S.C. §§ 4317(a)(1)-(2)

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“Public employee” means an employee of the state a state institution or a local governmental entity. The term does not include a temporary employee, an elected official, or an individual serving under an appointment that requires confirmation by the senate.

Texas Government Code § 613.001(3)

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(footnote continued on next page ...)

- (1) by ... the local governmental entity;
- (2) in the same department, office, commission, or board of ... [the] 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
- (3) in:
 - (A) the same position held at the time of the induction, enlistment, or order; or
 - (B) a position of similar seniority, status, and pay.
- (b) To be entitled to reemployment under Subsection (a), the employee must be:
 - (1) discharged, separated, or released from active military service under honorable conditions not later than the fifth anniversary of the date of induction, enlistment, or call to active military service; and
 - (2) physically and mentally qualified to perform the duties of that position.

Texas Government Code § 613.002

A public employee who cannot perform the duties of a position to which the employee is otherwise entitled under Section 613.002 because of a disability the employee sustained during military service is entitled to be reemployed 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

- (1) like seniority, status, and pay as the former position; or
- (2) the nearest possible seniority, status, and pay to the former position.

Texas Government Code § 613.003

(... footnote continued from previous page)

“Military service” means service as a member of:

- (A) the Armed Forces of the United States;
- (B) the Texas National Guard;
- (C) the Texas State Guard; or
- (D) a reserve component of the Armed Forces of the United States.

Texas Government Code § 613.001(2)

See also Texas Government Code §§ 613.004,³⁹ and 613.005,⁴⁰ and Texas Education Code §§ 22.003(d)-(e).⁴¹

§ 12.012. Temporary Paid Leave for Military Service During Wartime

- (a) A leave of absence with pay will be granted to employees serving on active military duty in any branch of the United States or state military armed forces or Coast Guard, pursuant to procedures established by the Superintendent. The leave will be granted for a one year period, and is automatically renewable unless acted upon by the Board. Any employee who receives paid leave pursuant to this policy shall be required to notify Dallas County Schools of any salary or income received for military service. Dallas County Schools and the employee shall coordinate leave under this policy so that the combined annual wages of the employee do not exceed the employee’s regular DCS annual wages.
- (b) If an employee has been insured for at least six months prior to entering active military duty, Dallas County Schools will continue that level of coverage for a

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- (a) A veteran eligible for reemployment under this chapter must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service.
- (b) An application for reemployment must:
 - (1) be made to the head of ... the local governmental entity that employed the veteran before the veteran entered military service;
 - (2) be in writing; and
 - (3) have attached to it evidence of the veteran’s discharge, separation, or release from military service under honorable conditions.

Texas Government Code § 613.004

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An individual reemployed under this chapter may not be discharged from the position without cause before the first anniversary of the date of reemployment.

Texas Government Code § 613.005

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- (d) A school district employee with available personal leave under this section [22.003] is entitled to use the leave for compensation during a term of active military service. This subsection applies to any personal or sick leave available under former law or provided by local policy of a school district
- (e) A school district ... may adopt a policy providing for the paid leave of absence of employees taking leave for active military service as part of the consideration of employment by the district.

Texas Education Code §§ 22.003(d)-(e)

period up to one year during active military leave. There will be no annual deductible for anyone covered during active military leave.

Adopted 11/18/04

§ 12.013. Family and Medical Leave

(a) In general

(1) Entitlement to leave. Subject to [29 U.S.C. § 2613], an eligible employee⁴² shall be entitled to a total of 12 workweeks of leave during any 12-month period⁴³ for one or more of the following:

⁴²

(2) Eligible employee

(A) In general. The term “eligible employee” means an employee who has been employed –

- (i) for at least 12 months by the employer with respect to whom leave is requested under section 102; and
- (ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

(B) Exclusions. The term “eligible employee” does not include –

- (i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code (as added by title II of this Act); or
- (ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

29 U.S.C. §§ 2611(2)(A)-(B)

⁴³

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, a year required by State law, 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 (except that such measure may not extend back before August 5, 1993).

29 C.F.R. § 825.200(b)

- (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
 - (B) Because of the placement of a son or daughter with the employee for adoption or foster care.
 - (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.⁴⁴
 - (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
- (2) Expiration of entitlement. The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

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A “serious health condition” that entitles an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:

- (1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefor or recovery therefrom) or any subsequent treatment in connection with such inpatient care; or
- (2) Continuing treatment by a health care provider for a period of incapacity (as described above) for:
 - (a) More than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition;
 - (b) Pregnancy or prenatal care;
 - (c) Treatment for such incapacity due to a chronic serious health condition (one that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity);
 - (d) A condition for which treatment may not be effective and for which the employee or family member is under the continuing supervision of a health care provider (i.e., Alzheimer’s, a severe stroke, or the terminal stages of a disease); or
 - (e) The purpose of receiving multiple treatments by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

29 C.F.R. § 825.114(a) (paraphrased)

- (b) Leave taken intermittently or on reduced leave schedule
- (1) In general. Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 103 (b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.
 - (2) Alternative position. If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1), that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that –
 - (A) has equivalent pay and benefits; and
 - (B) better accommodates recurring periods of leave than the regular employment position of the employee.
- (c) Unpaid leave permitted. Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave. Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938, the compliance of an employer with this title [29 U.S.C. §§ 2611 et. seq.] by providing unpaid leave shall not affect the exempt status of the employee under such section.
- (d) Relationship to paid leave
- (1) Unpaid leave. If an employer provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this title may be provided without compensation.
 - (2) Substitution of paid leave
 - (A) In general. An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), or (C) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection.

- (B) Serious health condition. An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C) or (D) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection, except that nothing in this title shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.
- (e) Foreseeable leave
- (1) Requirement of notice. In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.
- (2) Duties of employee. In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee –
- (A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and
- (B) shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.
- (f) Spouses employed by same employer. In any case in which a husband and wife entitled to leave under subsection (a) of this section are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken –
- (1) under subparagraph (A) or (B) of subsection (a)(1); or
- (2) to care for a sick parent under subparagraph (C) of such subsection.

- (a) Restoration to position
- (1) In general. Except as provided in subsection (b), any eligible employee who takes leave under section 102 for the intended purpose of the leave shall be entitled, on return from such leave --
 - (A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or
 - (B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.
 - (2) Loss of benefits. The taking of leave under section 102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.
 - (3) Limitations. Nothing in this section shall be construed to entitle any re-stored employee to –
 - (A) the accrual of any seniority or employment benefits during any period of leave; or
 - (B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.
 - (4) Certification. As a condition of restoration under paragraph (1) for an employee who has taken leave under section 102(a)(1)(D), the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of such employees.
 - (5) Construction. Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 102 to report periodically to the employer on the status and intention of the employee to return to work.
- (b) Exemption concerning certain highly compensated employees
- (1) Denial of restoration. An employer may deny restoration under subsection (a) to any eligible employee described in paragraph (2) if –
 - (A) such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;
 - (B) 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

- (C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.
- (2) Affected employees. An eligible employee described in paragraph (1) is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed.
- (c) Maintenance of health benefits
- (1) Coverage. Except as provided in paragraph (2), during any period that an eligible employee takes leave under section 102, the employer shall maintain coverage under any “group health plan” (as defined in section 5000 (b)(1) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.
- (2) Failure to return from leave. The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under section 102 if –
- (A) the employee fails to return from leave under section 102 after the period of leave to which the employee is entitled has expired; and
- (B) the employee fails to return to work for a reason other than—
- (i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subparagraph (C) or (D) of section 102(a)(1); or
- (ii) other circumstances beyond the control of the employee.
- (3) Certification
- (A) Issuance. An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by –
- (i) a certification issued by the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(C); or
- (ii) a certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(D).

29 U.S.C. §§ 2614(a)-(c)(3)(A)

- (a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered the employee would be required to pay the new premium rates....
- (b) If the FMLA leave is substituted paid leave the employee's share of premiums must be paid by the method normally used during any paid leave presumably as a payroll deduction.
- (c) If FMLA leave is unpaid the employer has a number of options for obtaining payment from the employee. The employer may require that payment be made to the employer or to the insurance carrier but no additional charge may be added to the employee's premium payment for administrative expenses....

28 C.F.R. § 825.210

- (a) Dallas County Schools' Human Resources Department will provide employees with a written explanation of the status of pay and benefits at the start of family and medical leave.
- (b) If some or all of the family and medical leave will be without pay, information on how and when to make premium payments will be provided at the beginning of the family and medical leave. If necessary, an employee will be allowed to discontinue medical coverage and be reinstated to the plan, if he or she returns to work on or before expiration of the family and medical leave.
- (c) An employee on paid family and medical leave will receive holiday pay for any holiday that falls during the leave.
- (d) The employee should notify Dallas County Schools of his or her intent to return to work two weeks prior to the anticipated date of return, as well as any medically necessary changes in the date of return.
- (e) If an employee has been medically released to return to work and fails to report to work or call in with a satisfactory explanation by the next business day, Dallas County Schools will treat this as a voluntary resignation.

See also 29 U.S.C. §§ 2613(a), (e)⁴⁵ and 28 C.F.R. § 825.309(a).⁴⁶

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(footnote continued on next page ...)

Adopted 11/18/04

§ 12.014. Work-Related Injuries

Every employee must notify his or her supervisor of all work-related injuries immediately, whether or not the employee must be off from work as a result of the injury. An employee who will be off from work must contact his or her supervisor weekly to update the supervisor as to the status of the injury. An employee who is medically released to return to work shall notify his or her supervisor before returning to work. An employee must be ready to return to work by the next business day after medical release.

Adopted 11/18/04

§ 12.015. Deductions for Employee Associations and Union Dues

Dallas County Schools will provide procedures for payroll deductions for employee associations and unions at the option of each employee.

Adopted 8/25/05

§ 12.016. Employee Seniority

- (a) Seniority for bidding purposes is determined by an employee’s length of continuous service with DCS in a particular position. Thus, a driver’s seniority is determined by the driver’s length of service as a driver for DCS, and a monitor’s seniority is determined by the monitor’s length of service as a monitor for DCS
- (b) Employees of a school district transportation program who become employed by

(... footnote continued from previous page)

- (a) An employer may require that a request for leave under subparagraph (C) or (D) of section 102 [29 U.S.C. § 2612(a)] be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.
- (e) The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

29 U.S.C. §§ 2613(a), (e)

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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.

28 C.F.R. § 825.309(a)

DCS when DCS takes over the program carry over their years of service to DCS.

- (c) Drivers and monitors who leave employment through resignation or termination and are re-employed will be given credit for prior years of service, for seniority purposes, after completing 18 months of uninterrupted service following re-employment.
 - (3) A break in employment of less than 6 months does not trigger service bridging.
 - (4) Bridging of prior years of service will be effective the first day of the month after the request is approved.
 - (5) When, because of bridging, two employees have the same number of years of service, the employee with the greater number of continuous years of service during the most recent period of employment will be considered the senior employee.
- (d) Time spent on workers' compensation leave, assault leave, or military leave will be counted towards years of service.
- (e) It is the employee's responsibility to request bridging of prior years of service or any corrections to his or her seniority level by submitting a written request to the Human Resources Department.

Adopted 6/22/06; amended 5/29/08, 8/27/09, 7/22/10

§ 12.017. Restrictions on Use of Personal Leave During Summer Months

- (a) Due to Dallas County Schools' need to manage its limited resources of bus drivers and monitors during the summer months, drivers and monitors who work in the summer and are absent are not allowed to use personal leave. An absence will be a non-paid day.
- (b) This policy assists Dallas County Schools in efficiently managing a small group of standby or substitute drivers and monitors when personnel resources are at a minimum outside of the regular school year.

Adopted 5/18/06

§ 12.018. Earned Income Tax Credit Information

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| <ul style="list-style-type: none"> a) Not later than March 1 of each year, each employer shall provide to the employer's employees information regarding general eligibility requirements for the federal earned income tax credit. |
|--|

- (b) An employer may not satisfy the requirements of Subsection (a) solely by posting information in the place of employment. The employer shall provide the required information to the employee:
- (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 United States first class mail.

Texas Labor Code § 104.002

Chapter 13. Employee Complaints/Grievance Procedures

§ 13.001. Grievance Procedures for At-Will Employees

- (a) An at-will employee may pursue a grievance by following the procedures outlined in this policy.⁴⁷ Nothing in this grievance policy alters the at-will nature of an employee's employment relationship with Dallas County Schools or creates any property interest in employment. Nothing in this grievance policy denies an individual access to public participation at regular Dallas County Schools Board meetings, in accordance with the Board's policies.
- (b) A grievance may be pursued through four levels:
- (1) *Level One Grievance:* A Level One Grievance is considered by the employee's immediate supervisor. The employee must submit a written request to the supervisor for a meeting. The request must be submitted within ten days of the date the employee first knew, or with reasonable diligence should have known, of the action or conduct giving rise to the complaint or grievance, except that a grievance alleging a violation of the DCS whistleblower policy (§ 15.001) or related state law must be submitted within the time specified in that policy. The supervisor will promptly schedule a face-to-face meeting, to take place within seven days after receipt of the written request, and promptly give the employee notice of the time and place of the meeting. Within seven days after the meeting, the supervisor will advise the employee in writing of his or her decision.
 - (2) *Level Two Grievance:* A Level Two Grievance is considered by the supervisor(s) within the departmental chain of command above the employee's immediate supervisor, up to and including the Director or Assistant Superintendent ("level two supervisors").
 - (A) If the employee is dissatisfied with the result of the Level One Grievance meeting, the employee may, within seven days after receiving the previous level decision, submit a written request to the lowest-ranking level two supervisor for a Level Two Grievance meeting. The level two supervisor will promptly schedule a face-to-face meeting, to take place within seven days after receipt of the written request, and

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The employment policy must provide each school district employee with the right to present grievances to the district board of trustees.

Texas Education Code § 11.1513(i)

For presentation to the Board of Trustees of grievances not involving termination or suspension for more than ten days, *see* Policy 4.008 regarding public participation at Board meetings.

promptly give the employee notice of the time and place of the meeting. Within seven days after the meeting, the level two supervisor will advise the employee in writing of his or her decision.

- (B) If the employee is dissatisfied with the result of a Level Two Grievance meeting, the employee may, within seven days after receiving the previous level decision, submit a written request to the next higher level two supervisor for a Level Two Grievance meeting. That level two supervisor will promptly schedule a face-to-face meeting, to take place within seven days after receipt of the written request, and promptly give the employee notice of the time and place of the meeting. Within seven days after the meeting, the level two supervisor will advise the employee in writing of his or her decision.
- (3) *Level Three Grievance:* A Level Three Grievance is considered by the Superintendent or his designee. If the employee is dissatisfied with the result of the last available Level Two Grievance meeting, the employee may, within seven days after receiving the previous level decision, submit a written request to the Superintendent for a Level Three Grievance hearing. The Superintendent or his designee will promptly schedule a hearing, to take place within seven days after receipt of the written request, and promptly give the employee notice of the time and place of the hearing. Within seven days after the hearing, the Superintendent or his designee will advise the employee in writing of his or her decision.
- (4) *Level Four Grievance:* A Level Four Grievance is considered by the Board of Trustees. In cases of termination of employment or suspension of employment for more than ten days, if the employee is dissatisfied with the result of the Level Three Grievance hearing, the employee may, within seven days after receiving the previous level decision, submit a written notice of appeal of the decision to the president of the Board of Trustees. No Level Four Grievance may be filed, however, if the sole ground of decision of the Level Three Grievance is that the employee did not timely file the Level One Grievance, Level Two Grievance, or Level Three Grievance. Within ten days after receipt of the written notice of appeal, the Board will hold a hearing to consider the appeal. It must give notice of its decision in writing to the employee and the Superintendent within seven days after the conclusion of the hearing.
- (c) If the initial grievance is against the immediate supervisor or a level two supervisor of the employee (other than the Superintendent or an Assistant Superintendent), the grievance process begins with a Level One Grievance to be submitted to and considered by the immediate supervisor of the person against whom the

grievance is filed.⁴⁸ The process then continues, if necessary, with a Level Two Grievance to be considered by the next higher level two supervisor.

- (d) If the initial grievance is against an Assistant Superintendent, the grievance process begins with a Level One Grievance to be submitted to and considered by another Assistant Superintendent. The process then continues, if necessary, with a Level Three Grievance.
- (e) If the initial grievance is against the Superintendent or the Chief Internal Auditor,
 - (1) if the grievance involves termination of employment or suspension of employment for more than ten days, the grievance process consists of a Level Four Grievance, to be submitted to the president of the Board of Trustees. The grievance must be submitted within ten days of the date the employee first knew, or with reasonable diligence should have known, of the action or conduct giving rise to the complaint or grievance, except that a grievance alleging a violation of the DCS whistle-blower policy (§ 15.001) or related state law must be submitted within the time specified in that policy. The grievance will be considered and determined in accordance with § 13.001(b)(iv).
 - (2) if the grievance does not involve termination of employment or suspension of employment for more than ten days, the grievance process consists of a Level One Grievance to be submitted to and considered by an Assistant Superintendent. If the grievance is overruled, the decision of the Assistant Superintendent constitutes the final disposition of the grievance. If the grievance is sustained in whole or in part, the Superintendent or the Chief Internal Auditor, as the case may be, may submit a notice of appeal for a Level Four Grievance in accordance with § 13.001(b)(iv).
- (f) Grievances heard by Assistant Superintendents under §§ 13.001(d) and 13.001(e) shall be rotated so as to equalize as far as possible the number of grievances heard by each Assistant Superintendent.
- (g) A request for a grievance meeting or hearing or a notice of appeal must be in writing on the appropriate form prescribed by the Superintendent. The Superintendent may prescribe other forms to be used for giving the notices required by this policy.

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A school district grievance policy must permit a school district employee to report a grievance against a supervisor that alleges the supervisor's violation of the law in the workplace or the supervisor's unlawful harassment of the employee to a supervisor other than the supervisor against whom the employee intends to report the grievance.

Tex. Educ. Code § 11.171(a)

- (h) The parties to a grievance are the employee who requests that a grievance be heard and the employee(s) (if any) about whose conduct the employee complains. Any party to a grievance may be represented at the meeting or hearing by the representative of his/her choice.
- (i) Grievance meetings and hearings may be subject to time limits set by the person(s) considering the grievance.
- (j) The employee may make an audio recording of any grievance meeting or hearing.⁴⁹
- (k) The person considering a grievance may elect to take no action, to grant the requested relief in whole or in part, or to deny the requested relief in whole or in part. If for any reason the person considering the grievance fails to reach a decision regarding the grievance within seven days after the conclusion of the hearing, the grievance is considered denied and the result of any previous level grievance hearing is automatically upheld.
- (l) All parties to a grievance will make a good faith effort to inform each other of all witnesses, evidence, and contentions to be offered in support of or opposition to the grievance, at least three days prior to each grievance meeting or hearing. The grievance meeting or hearing shall be limited to the issue(s) presented by the employee in the original written grievance.
- (m) All periods of time specified in this policy are measured in business days, defined as days when Dallas County Schools is open for regular business during normal business hours. All time periods shall be strictly followed unless modified by mutual consent. Deadlines for holding a grievance meeting or hearing may be extended by agreement to accommodate schedules.
- (n) Grievances arising out of an event or a series of related events shall be addressed in one grievance. Employees shall not bring separate or serial grievances arising from any event or series of events that have been or could have been addressed in a previous grievance. When two or more grievances are sufficiently similar in nature and remedy sought to permit their resolution through one proceeding, Dallas County Schools may consolidate the grievances.

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A school district grievance policy must permit an employee who reports a grievance to make an audio recording of any meeting or proceeding at which the substance of a grievance that complies with the policy is investigated or discussed. The implementation of this subsection may not result in a delay of any timeline provided by the grievance policy and does not require the district to provide equipment for the employee to make the recording.

Texas Education Code § 11.171(b)

Adopted 11/18/04; amended 2/15/07, 11/15/07, 5/29/08, 11/20/08, 3/26/09, 6/24/10

Chapter 14. Employee Standards of Conduct

§ 14.001. Alcohol, Drug, and Tobacco Use in the Workplace or on Duty

- (a) In an effort to ensure safe school bus transportation and the safety and health of its employees, Dallas County Schools prohibits the possession, distribution, selling, and use of alcohol or illegal drugs on DCS properties, including vehicles, or while an employee is on duty.
- (b) The prohibition against alcohol and drugs also applies at any time when an employee is deployed to assist with local, county, regional, or state emergency response efforts. Unless otherwise directed by the most senior DCS management staff in charge of field operations during emergency response efforts, employees will be considered “on duty” 24 hours a day until the conclusion of their deployment.
- (c) Employees shall not use tobacco products on DCS properties except in designated areas. At all times, the use of tobacco products is prohibited on school buses, in the presence of students, or at school-related activities.

Adopted 11/18/04; amended 7/16/09

§ 14.002. Alcohol and Drug Testing for Employees Required to Operate Commercial Motor Vehicles

Dallas County Schools shall conduct testing in accordance with federal regulations of employees required to operate commercial motor vehicles⁵⁰ as part of their job functions for use of alcohol or a controlled substance that violates law or federal regulation.

49 C.F.R. Part 382 (paraphrased)

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under §382.303, a random alcohol or controlled substances test required under §382.305, a reasonable suspicion alcohol or controlled substances test required under §382.307, or a follow-up alcohol or controlled substances test required under §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

- (a) An employee who is suspected of committing a prohibited act may be immediately suspended without pay pending an investigation and, if applicable, testing.⁵¹

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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 of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or
- (2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); 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).

49 C.F.R. § 382.107

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No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

49 C.F.R. § 382.201

(footnote continued on next page ...)

- (b) Should the investigation indicate that no violation occurred, the employee will be reinstated without penalty and will be paid lost wages.
- (c) An employee who has tested positive for alcohol or drugs or who has violated any of the “Prohibited Conduct” provisions of applicable federal regulations will be subject to immediate termination.⁵²
- (d) It is a violation of Dallas County Schools’ policy to refuse to submit to an alcohol or drug test, to attempt to falsify the result of an alcohol or drug test, or to test positive on an alcohol or drug test.
- (e) All employees must submit to a pre-employment/post-offer drug test, paid for by Dallas County Schools, before beginning employment.

See also 49 C.F.R. §§ 382.105⁵³ and 382.601.⁵⁴

(... footnote continued from previous page)

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

49 C.F.R. § 382.215

52

- (a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.
- (b) No employer shall permit any driver to perform safety-sensitive functions; including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.
- (c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in §382.107, and a commercial motor vehicle in interstate commerce as defined in part 390 of this subchapter.

49 C.F.R. § 382.501

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Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

49 C.F.R. § 382.105

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(footnote continued on next page ...)

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| <p>(a) Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.</p> <p>(1) 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 this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.</p> <p>(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.</p> <p>(b) The materials to be made available to drivers shall include detailed discussion of at least the following:</p> <p>(1) The identity of the person designated by the employer to answer driver questions about the materials;</p> <p>(2) The categories of drivers who are subject to the provisions of this part;</p> <p>(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;</p> <p>(4) Specific information concerning driver conduct that is prohibited by this part;</p> <p>(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under § 382.303(d);</p> <p>(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by § 382.303(d).</p> <p>(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;</p> <p>(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;</p> <p>(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;</p> <p>(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;</p> <p>(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.</p> |
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Adopted 11/18/04; amended 7/16/09

§ 14.003. Alcohol and Drug Testing for School Bus Monitors

Alcohol and drug testing of employees in "safety-sensitive" positions may be permissible when the intrusiveness of the search is minimal and the Board is able to demonstrate that the drug-testing program furthers its interest in ensuring the physical safety of students.

Aubrey v. School Board of Lafayette Parish, 148 F.3d 559 (5th Cir. 1998)

- (a) A school bus monitor is considered a "safety-sensitive" position because monitors may interact with children, physically handle special-needs students, and operate wheelchairs and wheelchair lifts on a regular basis. Dallas County Schools may conduct alcohol or controlled substances testing in accordance with this policy because its interest in ensuring safe school bus transportation and the safety and health of its employees is substantial and outweighs the privacy interests of employees who interact with students on a regular basis and may operate potentially dangerous equipment.
- (b) School bus monitors are subject to pre-employment, random, reasonable suspicion, return-to-duty, and follow-up alcohol or drug testing.
- (c) It is a violation of Dallas County Schools' policy to refuse to submit to an alcohol or drug test, to attempt to falsify the result of an alcohol or drug test, or to test positive on an alcohol or drug test. Dallas County Schools will not permit a monitor who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.
- (d) All employees must submit to a pre-employment/post-offer drug test, paid for by Dallas County Schools, before beginning employment.

(... footnote continued from previous page)

- (c) ... The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.
- (d) ... 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 described in this section. 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

- (e) Dallas County Schools will provide educational materials that explain Dallas County Schools' policies and procedures with respect to alcohol or controlled substances testing and will ensure that a copy of these materials is distributed to each monitor prior to the start of testing under this policy. The materials to be made available to monitors will include detailed discussion of at least the following:
- (1) The identity of the person designated by Dallas County Schools to answer questions about the materials.
 - (2) Sufficient information about the safety-sensitive functions performed by monitors.
 - (3) The circumstances under which an employee will be tested for alcohol and/or controlled substances under this policy.
 - (4) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.
 - (5) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences.
 - (6) The consequences for employees found to have violated this policy, including the requirement that the monitor be removed immediately from safety-sensitive functions and other potential discipline.
 - (7) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the employee's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program, and/or referral to management.
- (f) An employee who is suspected of committing a prohibited act under this policy may be immediately suspended without pay pending an investigation and, if applicable, testing.
- (1) Should the investigation indicate that no violation occurred, the employee will be reinstated without penalty and will be paid lost wages.
 - (2) In the event an investigation finds that an employee has committed a violation, the employee's employment will be subject to termination.
 - (3) Employees who have tested positive for alcohol or drugs or have violated any of the provisions of this policy will be subject to immediate termination.

Adopted 7/16/09

§ 14.004. Alcohol and Drug Testing for Other Employees

Dallas County Schools 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);
National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989)

- (a) The Superintendent may designate additional categories of employees who are required to submit to alcohol or drug testing. All testing will be conducted in compliance with all state and federal laws. Testing may include pre-employment, post-accident, post-incident, random, reasonable suspicion, return-to-duty, and follow-up testing.
- (b) It is a violation of Dallas County Schools' policy to refuse to submit to an alcohol or drug test, to attempt to falsify the result of an alcohol or drug test, or to test positive on an alcohol or drug test.
- (c) All employees must submit to a pre-employment/post-offer drug test, paid for by Dallas County Schools, before beginning employment.

Adopted 7/16/09

§ 14.005. Searching, Photographing, and Videotaping of Employees

Dallas County Schools may search an employee or an employee's property if:

- (1) There are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct; and
- (2) The search is reasonably related in scope to the circumstances that justified the interference in the first place.

O'Connor v. Ortega, 480 U.S. 709 (1987); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

Dallas County Schools may search an employee's workplace for non-investigatory, work-related purposes, or if there are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct.

O'Connor v. Ortega, 480 U.S. 709 (1987)

Dallas County Schools may photograph or videotape employees on DCS property. Such photographs and videotapes may be used without the prior consent of the employee for DCS business purposes in accordance with state and federal law.

Adopted 11/18/04; amended 9/20/07, 3/26/09, 7/16/09

§ 14.006. Reports to SBEC of Educator Misconduct

- (a) In this section, “abuse” has the meaning assigned by Section 261.001, Family Code, and includes any sexual conduct involving an educator and a student or minor.
- (b) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent ... of a school district ... shall notify the State Board for Educator Certification if the superintendent ... has reasonable cause to believe that:
- (1) an educator employed by or seeking employment by the district ... has a criminal record;
 - (2) an educator’s employment at the district ... was terminated based on a determination that the educator:
 - (A) abused or otherwise committed an unlawful act with a student or minor;
 - (B) possessed, transferred, sold, or distributed a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq., and its subsequent amendments;
 - (C) illegally transferred, appropriated, or expended funds or other property of the district ...;
 - (D) attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or
 - (E) committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event;
 - (3) the educator resigned and reasonable evidence supports a recommendation by the superintendent ... to terminate the educator based on a determination that the educator engaged in misconduct described by Subdivision (2); or
 - (4) the educator engaged in conduct that violated the assessment instrument security procedures established under Section 39.0301.
- (c) The superintendent ... must notify the State Board for Educator Certification by filing a report with the board not later than the seventh day after the date the superintendent ... first learns about an alleged incident of misconduct described by Subsection (b). The report must be:
- (1) in writing; and

- (2) in a form prescribed by the board.
- (d) The superintendent ... shall notify the board of trustees or governing body of the school district ... and the educator of the filing of the report required by Subsection (c).
- (e) A superintendent ... who in good faith and while acting in an official capacity files a report with the State Board for Educator Certification under this section is immune from civil or criminal liability that might otherwise be incurred or imposed.
- (f) The State Board for Educator Certification shall determine whether to impose sanctions against a superintendent ... who fails to file a report in violation of Subsection (c).
- (g) The State Board for Educator Certification shall propose rules as necessary to implement this section.
- (h) The name of a student or minor who is the victim of abuse or unlawful conduct by an educator must be included in a report filed under this section, but the name of the student or minor is not public information under Chapter 552, Government Code.

Texas Education Code § 21.006; 19 Texas Administrative Code § 249.14 (paraphrased)

§ 14.007. Harassment of Employees

- (a) Dallas County Schools will not tolerate harassment of its employees, whether committed by a fellow employee, a member of management, or a visitor to our workplace, such as a vendor or customer. All employees are responsible for ensuring that the workplace is free from harassment, especially when such conduct is based upon gender, race, age, religion, national origin, disability or other protected categories. All employees, including administrators and supervisors, will be subject to disciplinary action, up to and including discharge from employment, for any act of harassment committed.
- (b) Examples of prohibited harassment include, but are not limited to:
 - (1) Use of slurs, epithets, and words that degrade an individual, even when used in a joking fashion;
 - (2) Gossip about co-workers' personal lives;
 - (3) Display of cartoons, photographs, drawings, pinups, posters, calendars, or images that are offensive or degrading to others;
 - (4) Conduct that has the purpose or effect of substantially interfering with an individual's work performance or which creates an intimidating, hostile, or offensive work environment; or

- (5) Sexual harassment as defined in Policy 14.007.
- (c) Harassment against an employee or knowledge of harassment of a co-employee, should be immediately reported to the appropriate supervisor. In the event an employee does not feel comfortable discussing the matter with the employee's immediate supervisor, the employee should contact the Human Resources Department or any member of management.
- (d) All reports of harassment will be promptly investigated in as confidential a manner as possible. Based upon the findings of the investigation, Dallas County Schools will take prompt and appropriate action to remedy any violations.
- (e) No employee who brings a good faith report of harassment, discrimination or other violation of law to the attention of Dallas County Schools will suffer retaliation or other adverse employment action as a consequence. Additionally, no employee shall be dissuaded from making or supporting a charge of harassment. Any employee, including administrators and supervisors, who is found to have retaliated against an employee who reported a violation in good faith will be subject to discipline up to and including discharge from employment.

Adopted 11/18/04

§ 14.008. Sexual Harassment

- (a) Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.
- * * *
- (d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment 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.

- (e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, 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 Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.
- (f) Prevention is the best tool for the elimination of sexual harassment. 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.
- (g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

29 C.F.R. § 1604.11

A person commits an offense if, with a child younger than 17 years and not the person's spouse, whether the child is of the same or opposite sex, the person:

- (1) engages in sexual contact with the child or causes the child to engage in sexual contact; or
- (2) with intent to arouse or gratify the sexual desire of any person:
 - (A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or
 - (B) causes the child to expose the child's anus or any part of the child's genitals.

Texas Penal Code § 21.11(a)

- (a) *Employee Prohibited Conduct:* Employees shall not engage in conduct constituting sexual harassment. Dallas County Schools will investigate all allegations of sexual harassment and will take prompt and appropriate disciplinary action against employees found to engage in conduct constituting sexual harassment.⁵⁵

⁵⁵See *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

- (b) *Harassing Conduct:* Harassing conduct includes, but is not limited to:
- (1) Epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts that relate to gender;
 - (2) Written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of gender and that is placed on walls, bulletin boards, or elsewhere on DCS premises, or is circulated in the work-place;
 - (3) Unwelcome advances, demands, or requests for sexual acts or favors, and other verbal or physical conduct of a sexual nature, such as flirting, gestures, touching, and graphic comments about another person's dress or body; or
 - (4) Conditioning hire, continued employment, or terms and conditions of employment upon submission to sexual advances or requests for sexual favors.
- (c) *Employee Responsibility/Complaint Procedure:* An employee who believes that the employee has been or is being subjected to any form of sexual harassment shall bring the matter to the attention of the employee's immediate supervisor, in accordance with the procedures in the DCS employee grievance procedure. However, no procedure or step in that procedure shall have the effect of requiring the employee alleging harassment to present the matter to a person who is the subject of the complaint. Nor shall a sexual harassment complaint be dismissed because it is not filed within the time limits set out in the DCS employee grievance procedure.
- (d) *Responsibility Concerning Other Sexual Harassment Incidents.*
- (1) Employee/Student – Sexual conduct or behavior, either verbal or physical, by a DCS employee is strictly prohibited and may result in the employee's termination, regardless of whether or not the conduct was or appeared to be welcomed or tolerated by a student. The student should immediately inform his or her principal of the situation. Parents are urged to inform the principal of any alleged inappropriate verbal or physical conduct by a DCS employee.
 - (2) Student/Employee – Sexual conduct or behavior, either verbal or physical, by a student toward a DCS employee is strictly prohibited and may result in the student being removed from the bus, whether or not the conduct was or appeared to be welcomed by the DCS Schools employee. The DCS employee should immediately inform Dallas County Schools administration of the incident that in turn will contact the school principal and/or necessary personnel.
 - (3) Student/Student – Alleged unwelcome sexual behavior toward a student by a fellow student (bus rider) should be reported to the driver of the bus and the

principal. If the principal is unavailable, the student should report the matter to an assistant principal, counselor, or teacher or to the DCS main office. In the event that a DCS administrator is notified, he or she shall report the incident to the principal and/or parents of the students involved.

- (e) *Employee Responsibilities:* A DCS employee observing any sexual harassment on a DCS vehicle is responsible for immediate intervention and shall *report* the sexual harassment incident.⁵⁶

Adopted 11/18/04

§ 14.009. Incidents of Harassment on the School Bus

- (a) If harassment occurs on the route to school, the bus driver shall report the incident to the campus principal by submitting a written discipline report and reporting the incident to the DCS supervisor. The supervisor shall contact the campus principal by a written discipline report sent by hand delivery or facsimile.
- (b) If the incident occurs on the route home from school, the driver shall report the incident to the DCS supervisor upon arrival at the transportation facility. The supervisor shall contact the campus principal or a DCS administrator by a written discipline report sent by hand or facsimile. The DCS supervisor shall also retain all written documentation and report the incident to the next immediate supervisor in the chain of command.

Adopted 11/18/04

§ 14.010. Technology And Acceptable Use

- (a) Dallas County Schools expects that all employees with computers will learn to use electronic mail and telecommunications tools and apply them daily in appropriate ways to the performance of tasks associated with their positions and assignments.
- (b) Communication over networks is for DCS purposes and is not to be considered private or confidential.
- (c) Messages may sometimes be diverted accidentally to a destination other than the one intended. Dallas County Schools reserves the right to access stored records

⁵⁶

<p>A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.</p>

Texas Family Code § 261.101(a)

as well as monitor computer and Internet usage.

- (d) Employees are required to communicate in a professional manner consistent with state and federal laws governing the behavior of school employees and with federal law governing copyrights. Electronic mail and telecommunications are not to be utilized to share confidential information about students or other employees.
- (e) Dallas County Schools encourages employees to make use of telecommunications to explore educational topics, conduct research, and contact others in the educational field.
- (f) Access to Networked Information Resources
 - (1) Employees should employ electronic mail on a daily basis at work as a primary tool for communication. Dallas County Schools may rely upon this medium to communicate information, and all employees will be responsible for checking and reading messages daily.
 - (2) The network is provided for employees and students to conduct research and communicate with others.
- (g) Electronic mail and telecommunications are not to be utilized by employees to share confidential information about students or other employees. Electronic communications are not secure.
- (h) Dallas County Schools may review files and communications for any legitimate work related reason. Users should not expect that files stored on DCS servers or any other storage device (*i.e.*, diskettes, CD ROM, hard drives, optical, door back-up) will be private.
- (i) The following behaviors are not permitted on DCS networks:
 - (1) Sharing confidential information regarding students or employees to unauthorized personnel;
 - (2) Sending or displaying offensive and/or sexually related messages or pictures;
 - (3) Assisting or endorsing a campaign or election of any person to any office or for the promotion or opposition to any ballot proposition;
 - (4) Using obscene language;
 - (5) Harassing, insulting, defaming or attacking others;
 - (6) Engaging in practices that threaten the network (e.g., downloading files that may contain a virus);

- (7) Violating copyright laws;
 - (8) Using others' passwords;
 - (9) Trespassing in others' folders, documents or files;
 - (10) Intentionally wasting DCS resources;
 - (11) Using the network for personal commercial purposes;
 - (12) Violating regulations prescribed by the network provider; or
 - (13) Promoting, supporting or celebrating religion or religious institutions.
- (j) The Technology Director will report inappropriate behaviors to the employee's supervisor.

Adopted 11/18/04

§ 14.011. Weapons

A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm,⁵⁷ illegal knife,⁵⁸ club,⁵⁹ or prohibited weapon listed in Section 46.05(a).⁶⁰

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“Firearm” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include a firearm that may have, as an integral part, an folding knife blade or other characteristics of weapons made illegal by this chapter and that is:

- (A) an antique or curio firearm manufactured before 1899; or
- (B) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use rim fire or center fire ammunition.

Texas Penal Code § 46.01(3)

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“Illegal knife” means a:

- (A) knife with a blade over five and one-half inches;
- (B) hand instrument designed to cut or stab another by being thrown;
- (C) dagger, including but not limited to a dirk, stiletto, and poniard;
- (D) bowie knife;
- (E) sword; or

(footnote continued on next page ...)

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution.

Texas Penal Code § 46.03(a)(1)

(... footnote continued from previous page)

(F) spear.

Texas Penal Code § 46.01(6)

59

“Club” means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

- (A) blackjack;
- (B) nightstick;
- (C) mace;
- (D) tomahawk.

Texas Penal Code § 46.01(1)

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Prohibited Weapons include:

- (1) an explosive weapon;
- (2) a machine gun;
- (3) a short-barrel firearm;
- (4) a firearm silencer;
- (5) a switchblade knife;
- (6) knuckles;
- (7) armor-piercing ammunition;
- (8) a chemical dispensing device; or
- (9) a zip gun.

Texas Penal Code § 46.05(a)

A person commits an offense if the person knowingly manufactures, sells, purchases, transports, or possesses a hoax bomb⁶¹ with intent to use the hoax bomb to:

- (1) make another believe that the hoax bomb is an explosive or incendiary device; or
- (2) cause alarm or reaction of any type by an official of a public safety agency or volunteer agency organized to deal with emergencies.

Texas Penal Code § 46.08(a)

- (a) Dallas County Schools has determined that the carrying or possession of weapons by its employees while in the course and scope of their duties is inconsistent with the orderly conduct of DCS operations and the safety of employees and students. Accordingly, as a condition of their employment, DCS employees are prohibited from carrying or possessing weapons while in the course and scope of their duties for Dallas County Schools.
- (b) As a condition of their employment, DCS employees who are not in the course and scope of their duties for Dallas County Schools are prohibited from carrying or possessing weapons on DCS property or in DCS vehicles. This policy does not apply to employees who are active peace officers. This policy also does not apply to possession of a weapon exclusively inside a private vehicle driven or parked on DCS property.
- (c) This policy applies without regard to whether an employee is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Texas Government Code. Except as provided in subsection (b), this policy applies without regard to whether an employee is a peace officer.
- (d) Violation of this policy renders an employee subject to disciplinary action.

Adopted 12/14/06

§ 14.012. 911 Emergency Cell Phones

- (a) 911 emergency cell phones are issued to all bus drivers and must be carried on buses at all times.

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“Hoax bomb” means a device that:

- (A) reasonably appears to be an explosive or incendiary device; or
- (B) by its design causes alarm or reaction of any type by any official of a public safety agency or a volunteer agency organized to deal with emergencies.

Texas Penal Code § 46.01(13)

- (b) 911 emergency cell phones may only be used to directly contact police, fire, or medical emergency services.
- (c) 911 emergency cell phones should be used when immediate emergency response is needed as in the following examples:
 - (1) bus accident with injuries, or where vehicles are blocking traffic and cannot be moved;
 - (2) bus hijacking;
 - (3) serious crime, such as assault, battery on drivers, monitors or passengers, or passenger inciting other riders;
 - (4) medical emergency, such as:
 - (A) loss of consciousness;
 - (B) severe bleeding;
 - (C) broken bones;
 - (D) if a driver, monitor, or passenger suddenly seems very sick and is having a hard time speaking or breathing; or
 - (E) if a driver, monitor, or passenger turns blue, collapses, or passes out.
 - (5) In the case of seizures, follow the guidelines for the individual student; don't call 911 unless instructed to do so by the guidelines or by the dispatcher.
- (d) The dispatcher should be notified whenever 911 is called.
- (e) Examples of situations when a 911 call is not appropriate:
 - (1) bus accident without injuries, where vehicles can be moved to safe location out of traffic;
 - (2) minor illness or injury such as a nosebleed or vomiting;
 - (3) minor scuffle on the bus;
 - (4) student behavior problem unless safety of students is at risk;
 - (5) to report another vehicle, such as a road rage incident; or
 - (6) to report a parent getting on the bus unless s/he is threatening bodily harm to driver, monitor, or students.

Adopted 10/18/07

§ 14.013. “Empty Bus” Program

- (a) At the end of each route, upon return to the service center, the driver must walk from the front to the back of the bus, inspecting in, around, and under all seats to locate any student who might still be on the bus.
- (b) If the driver determines that there are no students on the bus, the driver must hang a DCS-supplied “EMPTY BUS” sign in the back door window of the bus.
- (c) If the driver determines that there are one or more students on the bus, the driver must notify a supervisor.
- (d) If another DCS employee remains on the bus, the driver may leave the student(s) on the bus in the care of that employee while the driver notifies the supervisor.
- (e) If no other DCS employee is available to remain on the bus with the student(s), the driver must contact the dispatcher by radio or telephone without leaving the bus, or the student(s) must accompany the driver while the driver notifies the supervisor. Under no circumstances may a student be left on the bus unattended by a DCS employee.
- (f) After all buses have returned from their routes, a supervisor must check the rear door glass of each bus to determine if all drivers have attached their signs. If a bus is found without a sign, the supervisor must immediately check the bus for students and report the situation to the area director for possible disciplinary action against the driver.
- (g) During the next pre-trip inspection, the driver must remove the sign from the rear door glass. The driver must keep the sign at the front of the bus until completion of the route.

Adopted 5/29/08

§ 14.014. Field Trips

Immediately before each field trip involving transportation by school bus, a school district is encouraged to review school bus emergency evacuation procedures with the school bus passengers, including a demonstration of the school bus emergency exits and the safe manner to exit.

Texas Education Code § 34.0021(c-1)

- (a) Drivers for field trips must be present at the service center at the scheduled time.
- (b) Drivers must stay with the bus at the location of the field trip unless otherwise instructed. Drivers must have the sponsor’s permission to leave the field-trip site for any reason, except for reasonable restroom, food, and water breaks. Drivers must notify the dispatcher whenever leaving a field-trip site.

- (c) Lateness or other unprofessional behavior on field trips will not be tolerated, and may result in the driver's being removed or suspended from the field-trip assignment list.

Adopted 8/28/08

§ 14.015. Reporting Employee Arrests & Traffic Offenses

- (a) Upon arrest for any crime, an employee is required to provide the Superintendent notice of the arrest within 24 hours. The employee is required to provide the Superintendent notice of the disposition of the criminal case within 24 hours of the disposition.
- (b) An employee who is required to operate commercial motor vehicles as part of the employee's job functions who receives a citation for any moving traffic violation must report the citation to the employee's immediate supervisor within 24 hours of receipt. An investigation may follow and appropriate disciplinary action may be taken.

Adopted 11/18/04

§ 14.016. Fraud and Financial Impropriety

- (a) DCS prohibits fraud and financial impropriety, as defined below, in the actions of its Board members, employees, vendors, contractors, consultants, volunteers, and others seeking or maintaining a business relationship with DCS.
- (b) Fraud and financial impropriety includes but is not limited to:
 - (1) Forgery or unauthorized alteration of any document or account belonging to DCS.
 - (2) Forgery or unauthorized alteration of a check, bank draft, or any other financial document.
 - (3) Misappropriation of funds, securities, supplies, or other DCS assets, including employee time.
 - (4) Impropriety in the handling of money or reporting of DCS financial transactions.
 - (5) Profiteering as a result of insider knowledge of DCS information or activities.
 - (6) Unauthorized disclosure of confidential or proprietary information to outside parties.
 - (7) Unauthorized disclosure of investment activities engaged in or contem-

plated by DCS.

- (8) Accepting or seeking anything of material value from contractors, vendors, or other persons providing services or materials to DCS, except as otherwise permitted by law or DCS policy.
- (9) Inappropriately destroying, removing, or using DCS property, including but not limited to: records, furniture, fixtures or equipment, except as authorized by DCS policy.
- (10) Failure to maintain and submit financial records as required by law, or unauthorized alteration of such records.
- (11) Failure to disclose conflicts of interest as required by law or DCS policy.
- (12) Any other dishonest act regarding the finances of DCS.
- (13) Pecuniary gain, conflict of interest, or acceptance of a benefit, in violation of state or local law.

Adopted 5/10/10

§ 14.017. Cellular Phone Usage or Texting While Driving

(a) In this section:

- (1) “Hands-free device” means speakerphone capability or a telephone attachment or other piece of equipment, regardless of whether permanently installed in the motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands.
- (2) “Wireless communication device” means a device that uses a commercial mobile service, as defined by 47 U.S.C. Section 332.

* * *

- (c) An operator may not use a wireless communication device while operating a passenger bus with a minor passenger on the bus unless the passenger bus is stopped.
- (d) It is an affirmative defense to prosecution of an offense under this section that:
 - (1) the wireless communication device was used to make an emergency call to:
 - (A) an emergency response service, including a rescue, emergency medical, or hazardous material response service;
 - (B) a hospital;

- (C) a fire department;
- (D) a health clinic;
- (E) a medical doctor's office;
- (F) an individual to administer first aid treatment; or
- (G) a police department; ...

* * *

Texas Transportation Code § 545.425(a), (c), & (d)

Question 1: Do the Federal Motor Carrier Safety Regulations prohibit “texting” while driving a commercial motor vehicle in interstate commerce?

Guidance: Yes. Although the current safety regulations do not include an explicit prohibition against texting while driving by truck and bus drivers, the general restriction against the use of additional equipment and accessories that decrease the safety of operation of commercial motor vehicles applies to the use of electronic devices for texting. Handheld or other wireless electronic devices that are brought into a CMV are considered “additional equipment and accessories” within the context of § 390.17. “Texting” is the review of, or preparation and transmission of, typed messages through any such device or the engagement in any form of electronic data retrieval or electronic data communication through any such device. Texting on electronic devices while driving decreases the safety of operation of the commercial vehicles on which the devices are used because the activity involves a combination of visual, cognitive and manual distraction from the driving task. Therefore, the use of electronic devices for texting by CMV operators while driving on public roads in interstate commerce decreases safety and is prohibited by 49 CFR 390.17.

75 Federal Register 4306-07 (Jan. 22, 2010)

Chapter 15. Employee Rights & Responsibilities

§ 15.001. Whistle-Blower Protection

(a) A state or local governmental entity⁶² may not suspend or terminate the employment of, or take other adverse personnel action⁶³ against, a public employee⁶⁴ who in good faith⁶⁵ reports a violation of law⁶⁶ by the employing governmental entity or another public employee to an appropriate law enforcement authority.

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“Local governmental entity” means a political subdivision of the state, including a:

* * *

(C) public school district

* * *

Texas Government Code § 554.001(2)

63

“Personnel action” means an action that affects a public employee’s compensation, promotion, demotion, transfer, work assignment, or performance evaluation.

Texas Government Code § 554.001(3)

64

“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.

Texas Government Code § 554.001(4)

65

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.

See Wichita County v. Hart, 917 S.W.2d 779 (Tex. 1996)

A “good faith” belief that a law enforcement authority is an appropriate one means (1) the employee believed the governmental entity was authorized to regulate under or enforce the law alleged to be violated in the report, or 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.

See Texas Department of Transportation v. Needham, 82 S.W.3d 314 (Tex. 2002)

66

“Law” means:

(A) a state or federal statute;

(footnote continued on next page ...)

- (b) In this section, a report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of 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.

Texas Government Code § 554.002

- (a) 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 this chapter.
- (b) 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 this chapter:
 - (1) occurred; or
 - (2) was discovered by the employee through reasonable diligence.
- (c) Time used by the employee in acting under the grievance or appeal procedures is excluded, except as provided by Subsection (d), from the period established by Section 554.005.
- (d) If a final decision is not rendered before the 61st day after the date procedures are initiated under Subsection (a), the employee may elect to:
 - (1) exhaust the applicable procedures under Subsection (a), in which event the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under this chapter; or
 - (2) terminate procedures under Subsection (a), in which event the employee must sue within the time remaining under Section 554.005 to obtain relief under this chapter.

Texas Government Code § 554.006

- (a) The Board or its agents shall not suspend or terminate the employment of, or take

(... footnote continued from previous page)

- (B) an ordinance of a local governmental entity; or
- (C) a rule adopted under a statute or ordinance.

Texas Government Code § 554.001(1)

other adverse personnel action against, an employee who in good faith reports a violation of DCS Board policy to an appropriate DCS authority.

- (b) A “report” is made to an “appropriate DCS authority” if the authority:
- (1) is the employee’s supervisor;
 - (2) is the person designated under Policy 13.001 for a Level One Grievance with respect to the policy violation;
 - (3) is the Chief Internal Auditor or a member of the Chief Internal Auditor’s staff;
 - (4) is the DCS Human Resources Department;
 - (5) is a “hotline” or other communications medium established by DCS for the reporting of fraud, abuse, or other improper conduct; or
 - (6) is a member of the Board of Trustees.
- (c) DCS officials and employees may not dissuade an employee from reporting a violation of law or Board policy.

See also Texas Government Code § 554.009(a).⁶⁷

Adopted 11/18/04; amended 8/28/08

§ 15.002. Freedom of Association

An employee’s participation in community, political, or employee organization activities is be entirely voluntary. Such participation shall not:

- (a) Interfere with the employee’s performance of assigned duties and responsibilities;
- (b) Result in any political or social pressure being placed on students, parents, or staff; or
- (c) Be associated with the employee’s position or title with Dallas County Schools.

Adopted 11/18/04

⁶⁷

A state or local governmental entity shall inform its employees of their rights under this chapter by posting a sign in a prominent location in the workplace.

Texas Government Code § 554.009(a)

§ 15.003. Labor Organizations

- (a) An official of the state or of a political subdivision of the state may not enter into a collective bargaining contract with a labor organization⁶⁸ regarding wages, hours, or conditions of employment of public employees.
- (b) A contract entered into in violation of Subsection (a) is void.
- (c) 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 public employees.

Texas Government Code § 617.002

An individual may not be denied public employment because of the individual’s membership or nonmembership in a labor organization.

Texas Government Code § 617.004

- (a) DCS employees may 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.
- (b) Dallas County Schools permits the posting of notices on DCS bulletin boards by Texas labor organizations.
- (c) Dallas County Schools permits access for employees and labor organizations to discuss work related matters and membership related matters in non-working areas during non-working hours.

Adopted 11/18/04; amended 6/29/05

§ 15.004. Organized Work Stoppages

- (a) Public employees may not strike or engage in an organized work stoppage against the state or a political subdivision of the state

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In this chapter, “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.

Texas Government Code § 617.001

- (b) A public employee who violates Subsection (a) forfeits all civil service rights, reemployment rights, and any other rights, benefits, and privileges the employee enjoys as a result of public employment or former public employment.
- (c) 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.

Texas Government Code § 617.003

§ 15.005. Reports of Child Abuse

- (a) A person having cause to believe that a child’s physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.
- (b) 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 Section 21.11, Penal Code, and the professional has cause to believe that the child has been abused as defined by Section 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 Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, “professional” means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

Texas Family Code § 261.101(a), (b)

A person commits an offense if the person has cause to believe that a child’s physical or mental health or welfare has been or may be adversely affected by abuse or neglect and knowingly fails to report as provided in this chapter.

Texas Family Code § 261.109(a)

Failure to report child abuse or neglect violates the Educator’s Code of Ethics and may result in sanctions against an educator’s certificate as addressed in 19 Texas Administrative Code § 249.

19 Texas Administrative Code § 61.1051 (paraphrased)

A DCS employee who has cause to believe that a child’s physical or mental health or welfare has been or may be adversely affected by abuse or neglect shall report the sus-

pected abuse or neglect to the proper authorities as required by law. The employee shall also report the suspected abuse or neglect to an “appropriate DCS authority” as defined in Policy 15.001(b).

See also Texas Family Code §§ 261.103,⁶⁹ 261.104,⁷⁰ and 261.106.⁷¹

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- (a) Except as provided by Subsections (b) and (c) and Section 261.405, a report shall be made to:
- (1) any local or state law enforcement agency;
 - (2) the department;
 - (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.
- (b) A report may be made to the Texas Youth Commission instead of the entities listed under Subsection (a) if the report is based on information provided by a child while under the supervision of the commission concerning the child’s alleged abuse of another child.
- (c) Notwithstanding Subsection (a), a report, other than a report under Subsection (a)(3) or Section 261.405, must be made to the department if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

Texas Family Code § 261.103

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The person making a report shall identify, if known:

- (1) the name and address of the child;
- (2) the name and address of the person responsible for the care, custody, or welfare of the child; and
- (3) any other pertinent information concerning the alleged or suspected abuse or neglect.

Texas Family Code § 261.104

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- (a) A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from civil or criminal liability that might otherwise be incurred or imposed.
- (b) Immunity from civil and criminal liability extends to an authorized volunteer of the department or a law enforcement officer who participates at the request of the department in an investigation of alleged or suspected abuse or neglect or in an action arising from an investigation if the person was acting in good faith and in the scope of the person’s responsibilities.

(footnote continued on next page ...)

Adopted 6/24/10

§ 15.006. Fraud Investigations

- (a) Duty to Report Fraud and Financial Impropriety
- (1) All DCS employees have the responsibility to protect DCS assets and are expected to be alert to the potential for fraud, misappropriation, financial impropriety, or theft of anything of value.
 - (2) Any employee who knows or has reason to know of or suspect an occurrence of fraud, misappropriation, or financial impropriety shall immediately notify the Chief Internal Auditor, report the incident using the Fraud, Waste & Abuse Hotline at 214-944-4529, or report the incident to an “appropriate DCS authority” as outlined in DCS Policy § 15.001(c).
 - (3) All employees involved in an investigation shall be advised to keep information about the investigation confidential. Unless instructed to do so by the Chief Internal Auditor or DCS legal counsel, an employee shall not discuss the matter with anyone other than the person to whom the report was made.
 - (4) Employees who report suspected fraud or financial impropriety in good faith shall not be retaliated against for making such a report, and all reports shall be treated confidential to the extent possible. Limited disclosure may be necessary to complete a full investigation or to comply with law.
- (b) Investigation Procedures
- (1) In coordination with the Superintendent and DCS legal counsel and other internal or external departments or agencies, as appropriate, the Chief Internal Auditor or a designee shall promptly investigate all reports of potential fraud or financial impropriety or refer such matters for investigation as appropriate.
 - (2) In the case of a report of fraud or financial impropriety against a Board member, the Chief Internal Auditor shall consult with the Superintendent, DCS legal counsel, and the Board President or the most senior Board mem-

(... footnote continued from previous page)

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| <p>(c) A person who reports the person’s own abuse or neglect of a child or who acts in bad faith or with malicious purpose in reporting alleged child abuse or neglect is not immune from civil or criminal liability.</p> |
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Texas Family Code § 261.106

ber not affected by the report, regarding the appropriate review procedure.

- (3) In the case of a report of fraud or financial impropriety against the Superintendent, the Chief Internal Auditor shall consult with the Board President and DCS legal counsel, regarding the appropriate review procedure.
 - (4) In the case of a report of fraud or financial impropriety against an employee, vendor, contractor, consultant, volunteer, and/or any other party involved in DCS's financial transactions, the Chief Internal Auditor shall consult with the Superintendent and DCS legal counsel regarding the appropriate review procedure.
 - (5) If a Board member, employee, vendor, contractor, consultant, volunteer, or other party involved in DCS's financial transactions is found to have committed fraud or financial impropriety, DCS shall take appropriate action, which may include referring the matter to an appropriate law enforcement or regulatory agency for investigation; taking or recommending appropriate disciplinary action, including possible termination; or cancellation of DCS's relationship with that party.
 - (6) In cases involving monetary loss to DCS, DCS may seek to recover lost or misappropriated funds as appropriate.
- (c) Employees' Duties During an Open Investigation
- (1) During an investigation, employees should:
 - (A) Direct all inquiries from suspected individuals, attorneys, or representatives to the Internal Audit Department or DCS legal counsel;
 - (B) Not contact the suspected individual in an effort to determine facts or demand restitution;
 - (C) Not discuss the case, facts, suspicions, or allegations with anyone outside the organization or those within the organization who do not have a legitimate need to know, unless specifically asked to do so by the Internal Audit Department or DCS legal counsel;
 - (D) Cooperate with the investigative process through answering questions, furnishing written statements, volunteering information important to the investigation, etc.
 - (2) Throughout the course of an official DCS administrative investigation or inquiry, every DCS employee has an affirmative duty to provide to his or her supervisor(s) or any other DCS investigating official all relevant and factual information about matters inquired. Employees failing to volunteer such information shall receive a directive from an administrator to provide a statement. The employee's failure to comply with the directive constitutes

insubordination, a violation that will be grounds for disciplinary action up to and including termination.

- (3) When directed by a member of the Internal Audit Department or a DCS administrator, an employee shall submit a notarized affidavit. Intentional falsification, misstatement, or the concealment of a material fact in connection with an administrative investigation shall be deemed as "providing untruthful statements" and be grounds for disciplinary action up to and including termination. Additionally, providing untruthful statements under oath may subject the employee to a criminal charge of perjury.

Adopted 5/20/10