

TERMINATION OF EMPLOYMENT

DF
(LEGAL)

Note: For a detailed treatment of termination and nonrenewal of educator contracts, see policies DFAA and DFAB (Probationary Contracts), and DFBA and DFBB (Term Contracts).

WITHHOLDING
INFORMATION

An attempt by any District employee to encourage or coerce a child to withhold information from the child's parent is grounds for discharge or suspension under Education Code 21.104 (probationary contracts) and 21.211 (term contracts). *Education Code 26.008(b)*

DISCHARGE OF
CONVICTED
EMPLOYEES

The District shall discharge an employee if the District obtains information through a criminal history record information (CHRI) review that:

1. The employee has been convicted of:
 - a. A felony under Penal Code Title 5;
 - b. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
 - c. An offense under the laws of another state or federal law that is equivalent to an offense under paragraphs a or b; and
2. At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.

EXCEPTION

However, the District is not required to discharge an employee if the person committed an offense under Title 5, Penal Code, and:

1. The date of the offense is more than 30 years before June 15, 2007; and
2. The employee satisfied all terms of the court order entered on conviction.

CERTIFICATION TO
SBEC

Each school year, the Superintendent shall certify to the Commissioner that the District has complied with the above provisions.

SANCTIONS

The State Board for Educator Certification (SBEC) may impose a sanction on an educator who does not discharge an employee if the educator knows or should have known, through a criminal history record information review, that the employee has been convicted of an offense described above.

OPTIONAL
TERMINATION

The District may discharge an employee if the District obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to SBEC or the District. An employee so discharged is

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considered to have been discharged for misconduct for purposes of Labor Code 207.044 (unemployment compensation).

Education Code 22.085 [See DBAA]

CERTAIN OFFENSES
AGAINST STUDENTS
MANDATORY
TERMINATION

If the District receives notice that SBEC has revoked the certificate of a person based on conviction for a felony under Penal Code Title 5 or an offense requiring registration as a sex offender, and the victim of the offense is under 18 years of age, the District shall:

1. Immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and
2. If the person is employed under a probationary, continuing, or term contract:
 - a. Suspend the person without pay;
 - b. Provide the person with written notice that the person's contract is void [see NOTICE TO EMPLOYEE, below]; and
 - c. Terminate the employment of the person as soon as practicable.

Education Code 21.058(a), (c)

DISCRETIONARY
TERMINATION

If the District becomes aware that a person employed by the District under a probationary, continuing, or term contract has been convicted of or received deferred adjudication for a felony offense, and the person is not subject to the mandatory termination provision above, the District may:

1. Suspend the person without pay;
2. Provide the person with written notice that the person's contract is void [see NOTICE TO EMPLOYEE, below]; and
3. Terminate the employment of the person as soon as practicable.

Education Code 21.058(c-1)

NOTICE TO
EMPLOYEE

A person's probationary, continuing, or term contract is void if the District provides written notice to the person, under the mandatory or discretionary termination provisions above, that the person's contract is void. *Education Code 21.058(c-2)*

NO APPEAL

Action taken by the District under the mandatory or discretionary terminations provisions above is not subject to appeal under Education Code Chapter 21 and the notice and hearing requirements

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of Chapter 21 do not apply to the action. *Education Code 21.058(e)*

INVALID OR EXPIRED
CERTIFICATION

An employee's probationary or term contract is void if the employee:

1. Does not hold a valid certificate or permit issued by SBEC;
2. Fails to fulfill the requirements necessary to renew or extend the employee's temporary, probationary, or emergency certificate or any other certificate or permit issued under Education Code Chapter 21, Subchapter B; or
3. Fails to comply with any requirement under Education Code Chapter 22, Subchapter C [criminal history review, see DBAA], if the failure results in suspension or revocation of the employee's certificate.

Education Code 21.0031(a)

A certificate or permit is not considered to have expired if:

1. The employee has completed the requirements for renewal of the certificate or permit;
2. The employee submitted the request for renewal before the expiration date; and
3. The date the certificate or permit would have expired is before the date SBEC takes action to approve the renewal of the certificate or permit.

Education Code 21.0031(f)

DISTRICT'S
OPTIONS

If the District has knowledge that an employee's contract is void under Education Code 21.0031(a), the District may:

1. Terminate the employee;
2. Suspend the employee with or without pay; or
3. Retain the employee for the remainder of the school year on an at-will employment basis in a position that does not require a contract under Education Code 21.002, at the employee's existing rate of pay or at a reduced rate.

The employee is not entitled to the minimum salary prescribed by Education Code 21.402.

Education Code 21.0031(b)

EXCEPTION

The District may not terminate or suspend an employee under 21.0031(b) because of the employee's lack of a valid certificate or permit, or failure to renew or extend a certificate or permit, if:

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1. The employee requests an extension from SBEC to renew, extend, or otherwise validate the employee's certificate or permit; and
2. Not later than the 10th day after the date the contract is void, the employee takes necessary measures to renew, extend, or otherwise validate the employee's certificate or permit, as determined by SBEC.

Education Code 21.0031(b-1)

NO APPEAL OR
CHAPTER 21
HEARING

The District's decision under Education Code 21.0031(b) is not subject to appeal under Education Code Chapter 21, and the notice and hearing requirements of that chapter do not apply to the decision.

Education Code 21.0031

APPLICABILITY

These void contract provisions do not affect the rights and remedies of a party in an at-will employment relationship and do not apply to a certified teacher assigned to teach a subject for which the teacher is not certified. *Education Code 21.0031; Nunez v. Simms, 341 F.3d 385 (5th Cir. 2003)*

REPORT TO SBEC

In addition to the reporting requirement under Family Code 261.101 [see FFG], the Superintendent must file a written report with SBEC not later than the seventh day after the Superintendent first obtains or has knowledge of information indicating that a certificate holder's employment at the District was terminated based on a determination that the certificate holder:

1. Sexually or physically abused or otherwise committed an unlawful act with a student or minor;
2. Possessed, transferred, sold, or distributed a controlled substance, as defined by Health and Safety Code Chapter 481 or by 21 U.S.C. Section 801 et seq.;
3. Illegally transferred, appropriated, or expended funds or other property of the District;
4. Attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or permit for the purpose of promotion or additional compensation;
5. Committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event; or
6. Solicited or engaged in sexual conduct or a romantic relationship with a student or minor.

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[See DH regarding elements of report to SBEC of educator misconduct.]

DEFINITIONS

“Abuse” includes the following acts or omissions:

1. Mental or emotional injury to a student or minor that results in an observable and material impairment in the student’s or minor’s development, learning, or psychological functioning;
2. Causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in the student’s or minor’s development, learning, or psychological functioning;
3. Physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or
4. Sexual conduct harmful to a student’s or minor’s mental, emotional, or physical welfare.

“Solicitation of a romantic relationship” means deliberate or repeated acts that can be reasonably interpreted as soliciting a relationship characterized by an ardent emotional attachment or pattern of exclusivity. Acts that constitute the solicitation of a romantic relationship include:

1. Behavior, gestures, expressions, communications, or a pattern of communication with a student that is unrelated to the educator’s job duties and that may reasonably be interpreted as encouraging the student to form an ardent or exclusive emotional attachment to the educator, including statements of love, affection, or attraction. When evaluating whether communications constitute the solicitation of a romantic relationship, the following may be considered:
 - a. The nature of the communications;
 - b. The timing of the communications;
 - c. The extent of the communications;
 - d. Whether the communications were made openly or secretly;
 - e. The extent to which the educator attempted to conceal the communications;

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- f. If the educator claims to be counseling a student, TEA staff may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate law enforcement agencies; and
 - g. Any other communications tending to show that the educator solicited a romantic relationship with a student.
2. Making inappropriate comments about a student's body.
 3. Making sexually demeaning comments to a student.
 4. Making comments about a student's potential sexual performance.
 5. Requesting details of a student's sexual history.
 6. Requesting a date.
 7. Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party.
 8. Inappropriate hugging, kissing, or excessive touching.
 9. Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage.
 10. Any other acts tending to show that the educator solicited a romantic relationship with the student, including providing the student with drugs or alcohol.

Education Code 21.006; 19 TAC 249.14