

Chapter 105. Foundation School Program

Subchapter CC. Commissioner's Rules Concerning Severance Payments

§105.1021. Severance Payment Reporting and Reductions in Foundation School Program Funding.

- (a) Definitions. In this section, the following terms have the following meanings.
- (1) Severance payment--Any amount paid by the board of trustees of an independent school district or open-enrollment charter school to or in behalf of a superintendent on early termination of the superintendent's contract that exceeds the amount earned by the superintendent under the contract as of the date of termination, including any amount that exceeds the amount of earned standard salary and benefits that is paid as a condition of early termination of the contract. Payments to a former superintendent who remains employed by a school district or an open-enrollment charter school in another capacity or contracts with a school district or an open-enrollment charter school to provide the district or charter school services may be severance payments in whole or in part if the payments are compensation for the early termination of a prior employment agreement. Severance payments include any payment for actual or threatened litigation involving or related to the employment contract.
 - (2) Superintendent--The educational leader and chief executive officer of an independent school district or open-enrollment charter school. "Departing superintendent" means an individual no longer acting as superintendent and includes a former superintendent who is employed or contracted to work in any other capacity by the same school district or open-enrollment charter school that previously employed him or her as superintendent.
 - (3) Foundation School Program (FSP) funding reduction amount--The portion of the amount of a severance payment to a superintendent that is deducted from an independent school district's or open-enrollment charter school's FSP funding. The FSP funding reduction amount is calculated according to the provisions in subsection (c) of this section.
- (b) Severance payment reporting and identification of districts or open-enrollment charter schools subject to funding reductions.
- (1) An independent school district or open-enrollment charter school that makes a payment of any kind to a departing superintendent must file with the Texas Education Agency (TEA) a Superintendent Payment Disclosure Form, which is available on the TEA website. However, no form is required to be filed for a payment already earned and payable under the terms of a terminated employment contract, such as a payment for accrued vacation.
 - (2) The form must be filed by the 60th day after the district or open-enrollment charter school executes the agreement to make the payment or the 60th day after any payment under such an agreement, whichever is sooner. The interim superintendent, new superintendent, or school board president is responsible for timely filing of the Superintendent Payment Disclosure Form. Filing of the disclosure form is required regardless of whether a school district or an open-enrollment charter school considers a payment to be a severance payment as that term is defined in subsection (a) of this section. As stated in the disclosure form, a school district or an open-enrollment charter school must enclose with the submitted form a copy of the superintendent employment contract and a copy of the termination or severance agreement.
 - (3) The commissioner of education determines whether a payment to a departing superintendent is a severance payment for purposes of this section, and whether an independent school district or open-enrollment charter school is subject to reductions in FSP funding under this section, based on information the district or charter school reports on the Superintendent Payment Disclosure Form and any additional documentation the commissioner requires to make these determinations. The commissioner may also make these determinations based on agency documents that are made available to the district or charter school. The commissioner's determinations under this paragraph are the final agency administrative decisions and may not be appealed under Texas Education Code (TEC), §7.057(a).

- (4) A school district or an open-enrollment charter school must provide the commissioner with any information or documentation that the commissioner requests to make the determinations described in paragraph (3) of this subsection. Information and documentation that the commissioner may request includes but is not limited to the following:
- (A) the canceled check for any payment made to the departing superintendent beyond the amount earned under the contract at the time employment was terminated;
 - (B) the Internal Revenue Service Form W-2, Wage and Tax Statement, reporting any payment of supplemental wages (compensation paid in addition to the employee's regular wages) and any special wage payment (amount paid to an employee or former employee for services performed in a prior year) made to the departing superintendent;
 - (C) worksheets documenting calculation of earned payroll amounts through the departing superintendent's last day of employment;
 - (D) general ledger detail documenting transactions involving payments to the departing superintendent;
 - (E) minutes of the meeting of the board of trustees documenting approval of a final agreement to make a payment or payments to the departing superintendent;
 - (F) the departing superintendent's employment contract for the period (year) of employment immediately preceding the most recent period (year), if applicable;
 - (G) the compensation plan or salary schedule for the departing superintendent for the most recent contractual period (year) of employment and for the period (year) immediately preceding, if applicable;
 - (H) salary distribution records for the departing superintendent's most recent contractual period (year) of employment and for the period (year) immediately preceding, if applicable;
 - (I) any agreement for employment of the departing superintendent after that individual's employment as superintendent; and
 - (J) the board policy covering employee benefits, including monthly allowances, deferred compensation, and payments for leave (sick, personal, vacation, compensatory, or any other type of leave) that is earned but unused upon termination, that was in effect at the time the departing superintendent's employment was terminated.
- (c) Reduction in FSP funding.
- (1) The commissioner will reduce a school district's or an open-enrollment charter school's FSP funding by the amount that a severance payment to a superintendent exceeds the amount that is equal to one year's salary and benefits under the superintendent's terminated contract. The commissioner will reduce the district's or charter school's FSP funding for the school year following the school year in which the first payment requiring an FSP funding reduction under this section is made to the former superintendent. The commissioner also will reduce the district's or charter school's FSP funding in the school year following each school year that any additional payment requiring an FSP reduction under this section is made to the former superintendent. If a school district's or an open-enrollment charter school's liability to the state under this section exceeds the total of the district's or charter school's estimated payments of FSP funding for the remainder of the school year, the district or charter school is subject to reductions in its FSP funding for subsequent school years until the liability has been fully liquidated. The reduction in FSP funding may be applied to any source of FSP estimated earned revenue. A proportionate amount of the reduction in FSP funding will be deducted from each FSP state aid payment for the school year or years.
 - (2) A reduction in FSP funding under this section does not affect a school district's or open-enrollment charter school's obligation to comply with all provisions of the TEC, Chapter 48, including its obligation under that chapter to provide educational services to special populations.

- (d) Review and consequences of failure to comply with this section. The information a district or open-enrollment charter school reports on its Superintendent Payment Disclosure Form is subject to review by the TEA division responsible for school financial reviews. Compliance with the reporting requirements of this section is considered part of the district's or open-enrollment charter school's compliance with required financial accounting practices under the TEC, §39.057(a)(4). Failure to comply with this section's reporting requirements may result in sanctions as authorized by the TEC, §39.057(d) and (e).

Statutory Authority: The provisions of this §105.1021 issued under the Texas Education Code, §11.201(c) and §12.104(b-4).

Source: The provisions of this §105.1021 adopted to be effective August 14, 2014, 39 TexReg 6045; amended to be effective January 11, 2021, 46 TexReg 302; amended to be effective June 14, 2022, 47 TexReg 3457.