

## Educator and Staff Issues

### **May an LEA continue to pay salary and hourly-wage staff who are paid with federal grant funds administrative leave while the LEA is closed due to COVID-19?**

- Per federal regulations, as long as the district has a funding neutral local compensation leave plan/policy that is applied consistently to local, state, and federal activities, the costs are allowable. Based on this plan, the LEA may continue to pay federally funded staff with federal grant funds consistent with how they are paying state or locally funded staff.

### **Are the time and effort documentation requirements for federally funded staff any different when the organization is closed and requiring teleworking from federally grant funded staff?**

- No, the staff should follow the same time and effort documentation procedures as normal.

### **How should districts handle contractual obligations for staff members requiring quarantine?**

- Districts should consult with their legal counsel regarding these issues. For staff members who are ill, rather than quarantined or self-isolated, existing local sick time policies and state and federal regulations related to sick time continue to apply. For staff members who are quarantined or self-isolating but not ill, if a district determines that those staff members are able and approved to work remotely and the staff members are willing to do so, the district need not count the staff members as absent.

### **Under the Governor's school closure order and local shelter-in-place orders, can school district leadership require staff to continue to come in? *New as of March 31, 2020***

- The Governor's order of March 19, 2020, does not bar school districts or charter schools from utilizing district staff to provide meals to eligible students and ensure instructional continuity through remote means.

### **Who is considered, for purposes of public education, a worker in an essential service under the Governor's Order of March 31, 2020? *New as of March 31, 2020***

- Per Governor Abbott's [order](#) of March 31, 2020, essential services are defined as those listed by the U.S. Department of Homeland Security's Cybersecurity & Infrastructure Security Agency (CISA) in its "[Guidance on the Essential Critical Infrastructure Workforce, Version 2.0](#)" as essential critical infrastructure workers, as well as services determined essential by the Texas Division of Emergency Management (TDEM). In its guidance, CISA identifies, the following workers in public education, as essential critical infrastructure workers:

- 1) educators supporting public and private K-12 schools, colleges, and universities for purposes of facilitating distance learning or performing other essential functions;
- 2) government, private, and non-governmental organizations' workers essential for food assistance programs (including school lunch programs) and government payments; and
- 3) Workers supporting communications systems and information technology- and work from home solutions- used by law enforcement, public safety, medical, energy, public works, critical manufacturing, food & agricultural production, financial services, education, and other critical industries and businesses.

Therefore, school district and charter school educators and staff **supporting** distance learning and student food service programs are considered employees performing essential services under Governor Abbott's March 31, 2020, order.

**May parents of school district and charter school students travel from their homes to pick up distance learning packets and/or meals from public school facilities, under the Governor's Order of March 31, 2020?**

- Per Governor Abbott's [order](#) of March 31, 2020, persons in Texas may leave their homes to "obtain essential services." As noted in the answer to the question above, school-based food assistance programs and distance learning are essential services, under Governor Abbott's order. Parents of school district and charter school students may, therefore, in compliance with Governor Abbott's order, leave their homes to drop off homework, to pick up distance learning packets, technology tools (laptops or other devices) to support distance learning, and/or meals from public school facilities.

**How long does Governor Abbott's order of March 31, 2020, keep schools closed to in-person classroom attendance?**

- Per Governor Abbott's [order](#) of March 31, 2020, schools may not reopen for in-person classroom attendance before May 4, 2020. This means that schools may recommence in-person classroom attendance on May 4, 2020 or at a later date. This does not compel a school to reopen for in-person instruction on that date, as schools may want to consider in-service days to support a return to instruction later in the week. Similarly, the school finance rules related to "Closed, Instructing" will remain in force for the duration of the school year for schools that choose to remain closed for public health reasons given feedback from local health officials, even in the event of a relaxation of statewide orders.

**Is it necessary to send letters with staff who travel to school for work if they get stopped by law enforcement when a city or county is on shelter in place? New as of March 31, 2020**

- A district or charter school should consult with the local authority that has issued a shelter-in-place order to determine whether or not a letter or similar document that explains the need and purpose of traveling to and from school facilities under the shelter-in-place order is required. However, a district or charter school may certainly choose to issue such a letter or similar document to its employees, as such a letter or similar document may facilitate travel to and from school facilities for their employees. A [template letter](#) has been posted on TEA's Coronavirus webpage.

**Will any compensation be given to substitute teachers as a result of the Coronavirus?**

- This is a local decision and will be specific to each substitute teacher and the teacher's employing district. For more detailed discussion of this topic, please review this resource prepared by TASB on [Personnel Issues During Epidemics and School Closures](#).

**How will teacher/staff salaries be impacted by COVID-19?**

- Funding to districts will not be negatively impacted by COVID-19. School systems will continue to receive funding if they closed because of COVID-19 related concerns as long as the school system commits to supporting students instructionally while at home. As a result, funding for contracted staff should remain unaffected as well.

**Will board resolutions be sufficient to allow teachers to work limited hours in person and other hours from home?**

- Yes. Superintendent directives, where the board of trustees has granted relevant authority to the superintendent, are also sufficient; however, as noted in the answer above, teachers should be providing remote instruction and this may not be necessary.

**Is TEA considering waiving teacher certification renewal?**

Not at this time. In specific cases where an educator has a catastrophic illness or injury or is caring for an immediate family member with a catastrophic illness or injury, that educator is eligible for a hardship exemption to allow additional time for certificate renewal. While TEA is highly sensitive to the concerns around COVID-19, the current situation does not necessitate waiving teacher certification renewal requirements for all educators. Educators are able to renew their certification as early as six months prior to expiration, and certificate renewal is a paperless process completed through the Educator Certification Online System (ECOS). Because ECOS has 24/7 access, educators can complete the renewal process and submit their online payment at any time from their preferred location. Additional information on the [certificate renewal process](#), including a frequently asked questions document and guidance on obtaining continuing professional education hours, is available on the website.

**Is there new guidance for educators in the context of the COVID-19 pandemic regarding assessing and reporting suspected child abuse or neglect? New as of March 31, 2020**

- TEA's guidance regarding assessing and reporting suspected child abuse and neglect remains unchanged. Educators are mandatory reporters and are required to report suspicions of abuse and neglect. Information on educator mandatory reporting is located on TEA's website: <https://tea.texas.gov/texas-schools/safe-and-healthy-schools/child-abuse-prevention/child-abuse-prevention-an-overview>. Although the agency's guidance is unchanged, educators, as well as administrators, must remain diligent in identifying and reporting suspicions of child abuse and neglect, that may surface during the COVID-19 Pandemic.

April is  
National  
Child Abuse  
Prevention  
Month

### **Educator Appraisal Waivers**

Waivers will be reviewed and approved, pursuant to the Commissioner's general waiver authority under Texas Education Code (TEC), §7.056, for school districts and charter schools that are unable to meet the requirements of TEC, §21.351 and §21.352, §21.354 or TEC, §21.3541, and the applicable rules in Title 19, Texas Administrative Code, Chapter 150, for teacher appraisal, principal appraisal, and campus administrator appraisal due to circumstances arising from the COVID-19 pandemic.

It is up to the discretion of the district as to which aspects of the appraisal process they can complete and which, if any, aspects cannot be completed, and thus would be covered under a waiver, due to operational disruptions from the COVID-19 pandemic.

District appraisal policies that are local in nature, not required by Texas Education Code or Texas Administrative Code, and that are unable to be met due to COVID-19 related circumstances, could be revisited by a district's board of trustees. A district should consult with its legal counsel or seek support from TASB when considering such policy revisions.

### **Educator Appraisal Questions**

**If a district is granted a waiver due to an inability to meet an appraisal requirement in rule or law, can the district still rate an educator based on the aspects of the appraisal process that were completed?**

- Yes. Even with a waiver, the school district may still evaluate a teacher and determine an appraisal and appraisal rating for a teacher based on completed aspects of the appraisal process. The lack of completed steps in the appraisal process would not deprive the teacher of the teacher's right to respond to and otherwise appeal an appraisal or appraisal rating under 19 TAC §150.1004. The use of a waiver does not prohibit a teacher from filing a challenge in accordance with a district's local policy.

**With a waiver, does a district have to grant a teacher’s timely request for a second observation or second appraisal?**

- Due to the circumstances related to COVID-19, a district would not be able to grant a request for a second observation, and its inability to do so would be covered under a waiver. A request for a second appraisal that is based purely on existing data, however, would be possible and thus should be granted.

**If the only aspects of an educator’s appraisal process that have not yet been conducted are post-observation conferences or end-of-year conferences, could those conferences be conducted by phone or video conference.**

- Yes. Regardless of the circumstances related to COVID-19, TAC, Chapter 150, does not limit post-conferences or end-of-year conferences to an in-person setting. Given the ability to receive a waiver, however, districts unable to conduct end-of-year conferences could skip those conferences entirely.

**What should districts document relative to educator appraisal and the inability to meet current appraisal requirements?**

- All districts should document efforts to comply with educator appraisal requirements and, for those requirements that they are unable to meet, give an explanation as to the circumstances that prevented compliance.

**If you are a District of Innovation, do you need to get board approval for the Education Appraisal Waiver for Chapter 21 contracts? Revised of April 1, 2020**

- If a district of innovation has specifically exempted itself from TEC Sections 21.352, 21.354, and 21.3541, in their locally adopted innovation plan, then the waiver is not needed. The designation as a district of innovation alone, without these specific sections included in the district plan, does not exempt a district from the statutory requirements. In such an instance a board-approved waiver would be required.

**Educator Non-Renewal Questions**

**Can a district use information gathered during the 2019-2020 school year appraisal process to justify non-renewal of an educator even if the appraisal process, under the waiver, was not completed in accordance with appraisal rule or law?**

- Yes. Under a waiver, a school district could still evaluate and determine an appraisal and appraisal rating for a teacher based on completed aspects of the appraisal process and use such an appraisal or appraisal rating in making a decision to renew or not renew a teacher's contract. That said, the lack of completed steps in the appraisal process would not deprive the teacher of the option to respond to, appeal, or otherwise challenge the appraisal, appraisal rating, or the nonrenewal decision. The use of a waiver does not prohibit a teacher

from filing a challenge in accordance with a district's local policy. The right to appeal or otherwise challenge a district's decision to not renew a teacher's contract would occur upon the teacher's receipt of notice from a district of the district's decision to not renew the teacher's contract.

**Given the voluntary and mandatory closures of school grounds, how does a district calculate non-renewal notices when school grounds are closed to students?**

- Calculations will be different for each district and, in consultation with its own legal counsel, a district will need to account for variations of its local school calendar, closed school days, amendments to its school calendar, and school day waivers. As a result of recent events and consequent Commissioner funding decisions, when school grounds are closed, a district has the option of a school-day waiver when a district's status is "Closed, Instructing." This waiver maintains instructional based school funding while the district provides educational services through a non-site based instructional delivery system. Consequently, this waiver allows a district to fulfill the instructional days of its school calendar.

**Educator Ethics Question**

**How should districts handle ethics violations as teachers are communicating with students via text, phone, email, and Zoom other online platforms without parent permission? New as of March 31, 2020**

**Preventing Misconduct** - As stated in the TEA instructional continuity planning resources, "at-home" learning may involve the use of digital and online materials. This type of learning environment also allows teachers to utilize electronic communication to deliver instruction to students. Because at-home learning creates more opportunities for electronic communication, it is important that school districts have communication policies which ensure instructional continuity and provide appropriate educator-student boundaries. To prevent and deter inappropriate communication or other educator misconduct, schools can:

- Utilize the transparency features offered in online learning platforms that allow administrators and parents to view educator-student communications,
- Closely monitor the nature and frequency of communications between educators and students,
- Remind staff of relevant policy on communications and potential consequences for violation,
- Adhere to their local district electronic communication policy required by TEC, §38.027.

**Reporting Misconduct** - Should a school find evidence that an employee engaged in misconduct pertaining to inappropriate communications, solicitation of a romantic relationship, or solicitation of sexual contact with a student, the superintendent must report this information to TEA within seven business days following the termination or resignation of the employee. (19 TAC §249.14(d)(2)(F), TEC §21.006, 19 TAC §153.1203, and TEC §22.093.)

TEA recently created an online Misconduct Reporting Portal (Portal) to make reporting to TEA easier and more efficient for superintendents. Public and private schools can now submit reports of misconduct electronically through the new Portal, which is available through TEAL. The link below is a guide for accessing and submitting reports of misconduct through the Portal. The second link is the TEA Help Desk. Please note that TEAL and the Misconduct Reporting Portal can only be accessed with the Google Chrome internet browser.

**Guide (Process Document):**

<https://tea.texas.gov/sites/default/files/Do%20Not%20Hire%20Registry%20and%20Misconduct%20Reporting%20Portal%20Process%20for%20Schools%20%28V1.2%29.pdf>

**TEA Help Desk (for Fingerprinting, Do Not Hire Registry, and Reporting Portal):**

<https://helpdesk.tea.texas.gov/hc/en-us/categories/115001620168-Fingerprinting-Do-Not-Hire-Registry>

**Definitions of Misconduct:** Schools may refer to the following sections of the Texas Administrative Code to determine whether behavior is considered misconduct and therefore must be reported to TEA/SBEC:

- Definition of Solicitation of a Romantic Relationship - 19 TAC §249.3(51)(A) – Certified Educators and definition of Solicitation of Sexual Conduct - 19 TAC §153.1201 – Uncertified employees. Definitions are essentially identical.
- Educators’ Code of Ethics Standard 3.9 related to Inappropriate Communication between Certified Educators and Students. 19 TAC §247.2(3)(I).

**Rule Text**

For certified and uncertified educators, 19 TAC §249.3(51)(A) and 19 §TAC 153.1201 contain identical definitions of when communications between an educator and a student will be considered solicitation and therefore require superintendent reporting:

(A) Factors that may be considered in determining the romantic intent of such communications or behavior, include, without limitation:

- (i) the nature of the communications;
- (ii) the timing of the communications;
- (iii) the extent of the communications;
- (iv) whether the communications were made openly or secretly;
- (v) the extent that the educator attempts to conceal the communications;



(vi) if the educator claims to be counseling a student, the State Board for Educator Certification 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 authorities; and

(vii) any other evidence tending to show the context of the communications between educator and student...

For certified educators, the Educators' Code of Ethics Standard 3.9 (19 TAC §247.2(3)(I)) is incorporated into school district policy and addresses inappropriate communication:

Standard 3.9. The educator shall refrain from inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

(i) the nature, purpose, timing, and amount of the communication;

(ii) the subject matter of the communication;

(iii) whether the communication was made openly, or the educator attempted to conceal the communication;

(iv) whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;

(v) whether the communication was sexually explicit; and

(vi) whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.

School district policy: Under TEC §38.027, schools are required to have a policy that includes "provisions designed to prevent improper electronic communications between a school employee and a student." If a communication is in violation of the district's communication policy, it would be a violation of Educators' Code of Ethics Standard 1.7 (19 TAC 247.2(1)(G)), and make a certified educator subject to discipline by the SBEC.