

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

A 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, a 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 Commissioner

Each school year, a 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 knew that the employee had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with Education Code 21.009(e), or knew or should have known, through a CHRI review, that the employee has been convicted of an offense described above.

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SBEC may impose a sanction on a superintendent who falsely or inaccurately certified to the commissioner that the district had complied with Education Code 22.085. [See Certification to Commissioner, above]

Termination for
Failure to Disclose

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

Education Code 22.085; 19 TAC 249.15(b)(12), (14) [See DBAA for Refusal to Hire Convicted Applicants]

**Certain Offenses
Against Students**

Mandatory
Termination

If a district receives notice that SBEC has revoked the certificate of a person based on conviction of or placement on deferred adjudication community supervision for an offense for which the person is required to register as a sex offender under Code of Criminal Procedure, Chapter 62, or a conviction of a felony under Penal Code Title 5 if the victim of the offense was under 18 years of age at the time the offense was committed, 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 or term contract, with the approval of the board or its designee:
 - 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 a district becomes aware that a person employed by the district under a probationary 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, with the approval of the board or its designee:

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

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3. Terminate the employment of the person as soon as practicable.

Education Code 21.058(c-1)

Notice to Employee A person's probationary or term contract is void if, with the approval of the board or its designee, 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 a 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 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 a district has knowledge that an employee's contract is void under Education Code 21.0031(a), the district may:

1. Terminate the employee;

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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

A 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:

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 tenth 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

A school 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

A superintendent shall report the educator's termination to SBEC if the conditions set forth at Education Code 21.006 exist. [See DHB]

**Report to
Superintendent**

A principal shall report the educator's termination to the superintendent if the conditions set forth at Education Code 21.006 exist. [See DP]

**Falsification of
Military Record**

A district may discharge an employee, regardless of whether the employee is employed under an employment contract, if the district determines, based on a reasonable factual basis, that the employee, in obtaining the employee's employment or any benefit relating to the employee's employment, falsified or otherwise misrepresented any information regarding the employee's military record

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in a manner that would constitute an offense under Penal Code 32.54.

An employment contract entered into by a district with an employee discharged by the employer under Labor Code Chapter 105 is void and unenforceable as against public policy. [See DF series]

Labor Code Ch. 105