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Robert A. Lozano, M.D., Ph.D.

Reynaldo Garcia, DDS

René Torres

Ramon Champion Hinojosa

TSC President

Lily F. Tercero, Ph.D.

TAKE NOTICE THAT A REGULAR MEETING OF THE
BOARD OF TRUSTEES
OF

TEXAS SOUTHMOST COLLEGE DISTRICT

will be held in the

Gorgas Board Room at The University of Texas and Texas Southmost College,

80 Fort Brown, Brownsville, Texas 78520

commencing at 5:30 p.m. on Thursday, April 18, 2013, to consider

and act on the following Agenda:

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
On: Apr 12, 2013 at 04:02P

Agenda

Posted Friday, April 12, 2013

Joe G Rivera
County Clerk
By
Massie Pena, Deputy
Cameron County

1. Call to Order
2. Announcements
3. Public Comment. No presentation will exceed three minutes.
4. Mission Statement
5. Consideration and Approval of Minutes of the Regular Meeting of March 21, 2013
6. Update on TSC's Branding Campaign
7. Consideration and Approval of Proposed Tuition and Fee Rates for FY 2013-2014
8. Board Review of Updated Legal Policies
9. Consideration and Approval of Section D, Personnel, Local Policies
10. Consideration and Approval of a Contract with Carrier Corporation to provide and install HVAC equipment at the Arnulfo Oliveira Library
11. Consideration and Approval of a Computer Equipment Purchase for TSC's One-Stop Student Services Center at the Arnulfo Oliveira Library from Dell Marketing, LP
12. Consideration and Approval of Campus Network Equipment Purchase from Insight Public Sector

13. Consideration and Approval of a Contract with Perceptive Software, LLC to Purchase a Document Imaging Solution
14. Report of the Second Quarter Financial Statements and Investment Report for Fiscal Year 2013
15. Report on TSC's One-Stop Student Services Center
16. Report on TSC's Organizational Structure and Timeline
17. Executive Session
 - a. Consultation with Attorney on Pending or Contemplated Litigation, Section 551.071, Texas Government Code
 - b. Consultation with Attorney on Pending Real Estate Issues, Section 551.072, Texas Government Code. The Real Property discussion may address the purchase, exchange, lease, or value of Real Estate
18. Action on Executive Session Matters
19. Adjournment and Announcement of Next Meeting Dates
 - a. Thursday, May 16, 2013

Texas Southmost College District

Minutes of the Regular Meeting of the Board of Trustees

March 21, 2013

The Board of Trustees of the Texas Southmost College District convened in open session on March 21, 2013, at 5:30 p.m., in the Gorgas Board Room at Texas Southmost College. Board members present were Francisco G. Rendon, Chair; Adela G. Garza, Vice Chair; René Torres; Dr. Reynaldo García; Dr. Robert Lozano and Ramon Hinojosa. Also present was Dr. Lily F. Tercero, President of Texas Southmost College. Board member absent was Trey Mendez, Secretary.

1. Call to Order

The meeting was called to order by Chairman Rendon at 5:34 p.m.

2. Announcements

Chairman Rendon called on Dr. Tercero to make the announcements. Dr. Tercero announced that the hiring of two new staff members.

Dr. Angelica M. Fuentes, Dean of the College of Preparatory Studies. Dr. Fuentes has over ten years of experience teaching developmental education programs for The University of Texas at Brownsville/Texas Southmost College (UTB/TSC). In addition to her teaching experience, Dr. Fuentes has also served as the Director of the Sabal Palms Writing Project—a Texas site of the National Writing Project, which included working on K-16 initiatives relating to college readiness and secondary to post-secondary curriculum alignment and facilitating numerous professional development programs for K-16 educators. Dr. Fuentes earned both her Bachelor's degree in English and her Master's degree in Curriculum & Instruction from UTB/TSC. She holds a Ph.D. in Curriculum & Instruction with an emphasis in Literacy from Texas A&M University-Corpus Christi.

Mr. Alejandro Salinas, Director of Admissions and Records. Mr. Salinas began his career in higher education at UTB/TSC, where he coordinated the freshman mentoring program and assisted students with their advising, registration, financial aid, testing, and tutoring. Prior to joining Texas Southmost College, Mr. Salinas served as the Director of Admissions for the University of Texas at Austin Valley Admissions Center. He received an Associate of Arts in 2002, a Bachelor of Business Administration in 2004, and a Master's in Business Administration in 2006, from UTB/TSC. He is currently enrolled in a doctoral program at Our Lady of the Lake University in San Antonio and is scheduled to receive his Ph.D. in Leadership in 2014. Mr. Salinas will officially start work with TSC on Monday, April 8th.

Dr. Tercero announced that on Tuesday, February 26th at 9:00 a.m., an official signing ceremony was held between BISD and TSC to commemorate an extensive collaborative effort between the BISD and TSC's Career and Technical Education Academy in Air Conditioning and Refrigeration Technology.

Dr. Tercero presented samples of the new advertising bill boards prepared by the College's marketing firm, as information for the Board.

3. Speakers to Agenda Items and Public Discussion

There were no speakers.

4. Mission Statement

Chairman Rendon read the existing mission for Texas Southmost College District as follows:

“Transforming our communities through innovative learning opportunities”

5. Approval of Minutes of Previous Meetings

Consideration and Approval of Minutes of the Regular Meeting on February 21, 2013

A motion was made by Mr. Torres to approve the Minutes of the Regular Meeting on February 21, 2013 as presented. The motion was seconded by Mr. Hinojosa and carried. Dr. Lozano abstained from the vote.

6. Proposal for General Liability, School Professional Legal Liability, Auto and Crime Insurance Protection Plan through the Interlocal Agreement with TASB Risk Management Fund

Consideration and Approval of Proposal for General Liability, School Professional Legal Liability, Auto and Crime Insurance Protection Plan through the Interlocal Agreement with TASB Risk Management Fund

Chairman Rendon called on Mr. Chet Lewis, Vice President of Finance and Administration to present the item. Mr. Lewis reported that TSC has requested a proposal for General Liability, School Professional Legal Liability, Auto and Crime Insurance Protection Plan from the Texas Association of School Boards (TASB) Risk Management Fund (Fund).

The Fund is a risk-sharing pool of local governments organized by TASB in accordance with the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code. The Interlocal Participation Agreement allows political subdivisions to pool risks ordinarily assumed on an individual basis including worker's compensation exposures, claims administration and loss prevention services. TASB currently provides TSC with the services included on its Property/Casualty and Worker's Compensation Insurance Protection Plans.

The proposal received from TASB includes Crime coverage for employee dishonesty, faithful performance, money and securities and computer fraud; General Liability coverage that includes personal injury liability; School Professional Legal Liability for wrongful acts, errors, or omissions; and Automobile coverage for both liability and physical damage. Covered persons include any board members, student teacher, volunteer and employee of TSC. TSC began participation in this insurance program last year with a pro-rata contribution from September 1, 2012 to April 1, 2013. The current proposal is a continuance of the same insurance policy for full year coverage from April 1, 2013 to April 1, 2014 with automatic renewals for successive one-year terms.

A motion was made by Mrs. Garza to accept the Proposal from TASB to provide General Liability, School Professional Legal Liability, Auto and Crime Insurance Protection Plan in the total amount of \$34,886 and to authorize the President to execute the contract as presented. The motion was seconded by Dr. Lozano and carried unanimously.
Exhibit "A"

7. Furniture Purchase for the One-Stop Student Services Center at the Arnulfo Oliveira Library through TXMAS Contracts with National Business Furniture, LLC and KI Furniture

Consideration and Approval of Furniture Purchase for the One Stop Student Services Center at the Arnulfo

Oliveira Library through TXMAS Contracts with National Business Furniture, LLC and KI Furniture

Chairman Rendon called on Mr. Lewis to present the item. Mr. Lewis stated that progress continues in the renovation of TSC's One-Stop Student Services Center at the Arnulfo Oliveira Library in preparation for providing independent student services by the Fall 2013 semester.

Furniture must now be acquired for this area. The procurement of furniture has been identified as one of the numerous cost control strategies implemented by the administrators of this project. The Office for Instruction and Student Services obtained two separated cost estimates from National Business Furniture, LLC and KI Furniture for the Student Services Center.

National Business Furniture, LLC has contracts with several manufacturers that have purchase agreements with TXMAS, a state wide procurement pool. By using this company, the Office of Instruction and Student Services has been able to select furniture pieces from several manufacturers with a variety of models, materials, styles, finishes and reasonable price ranges that better meet the College's budget.

The proposed plan will furnish the offices needed for the opening of TSC's One-Stop Student Services Center.

A motion was made by Mr. Torres to approve Furniture Contracts for TSC's One-Stop Student Services Center at the Arnulfo Oliveira Library through TXMAS Contract with National Business Furniture, LLC and KI Furniture in the amount of \$51, 236.76 and \$35, 592.30 respectively and Authorize the President to Execute the Contract as presented. The motion was seconded by Dr. García and carried unanimously.

Exhibit "B"

8. Report on the Establishment of TSC's One-Stop Student Services Center

Chairman Rendon called on Dr. Tercero. Dr. Tercero introduced Mr. Mike Shannon, Associate Vice President for Student Services to give the report. Mr. Shannon reported that the Oliveira Library is being remodeled for TSC's new One-Stop Student Services Center and gave a short presentation on the construction work underway. *Exhibit "C"*

9. Update on TSC's College Preparatory Studies Division

Chairman Rendon called on Dr. Tercero to give an update on TSC's College Preparatory Studies Division. Dr. Tercero introduced Dr. Angelica Fuentes, Dean of the College of Preparatory Studies. Dr. Fuentes explained the division's mission, highlighted research on developmental education students, discussed the developmental education acceleration model and the developmental education sequence, and highlighted the division's goals.

TSC students will have the opportunity to accelerate through the developmental education (DE) sequence within one semester through 8-week fast-track options. In addition, non-course competency-based options (NCBO) will be available to TSC students. With the availability of NCBOs, students who are identified as needing this type of instruction will have the opportunity to exit this DE sequence before the academic semester and enroll in credit-bearing courses. Additionally, TSC students who need to enroll in developmental education courses for the entire semester will have the opportunity to co-enroll in credit bearing courses. TSC will be implementing a second level of assessment for student placement. This second tier of assessment will allow TSC to develop individualized learning instruction based on a more reliable diagnostic picture of the student's strengths and weaknesses, in order to enhance support services to students and to improve student success. *Exhibit "D"*

10. Update on TSC's Hiring Process

Chairman Rendon called on Dr. Tercero to give an update on the hiring process. Dr. Tercero informed the Board that TSC has implemented an online system that will help with the hiring of faculty and staff that will be taking place over the next few months.

Dr. Tercero demonstrated the online system, which is available on TSC's Web Page. It is open to the public and individuals interested in employment opportunities at TSC may view job postings, job details, apply for open positions, book mark the job they are interested in, or email the job description to a friend.

This online system allows TSC to automate the application process; thereby, improving efficiency. Dr. Tercero also announced that many additional job descriptions are being finalized and posting of such positions will begin over the next few days and continue until TSC is fully staffed.

Dr. Tercero reminded the Board that the College will fill many faculty positions; however, the start date for the majority of faculty will coincide with start of the fall semester. The hiring of staff has already begun and will continue through the coming months. There are also individuals who have been reassigned to TSC through August 31, 2013, through the Partnership. This process has been beneficial to both entities, but most importantly, to the individual employees.

11. Update on Letter of Support and Resolution from the Brownsville Chamber of Commerce

Chairman Rendon called on Dr. Tercero to give the report. Dr. Tercero informed the Board that the Brownsville Chamber of Commerce has sent a letter of support for the reestablishment and full funding of TSC as a comprehensive, public community college. The membership also passed a resolution supporting TSC. Dr. Tercero expressed her sincere appreciation to the Brownsville Chamber of Commerce for their continuing support for TSC.

12. Report on the San Benito Economic Development Council Recognition Event

Chairman Rendon called on Dr. Tercero to give the report. Dr. Tercero reported that the San Benito Economic Development Corporation hosted a reception honoring TSC. She reported that it was a wonderful event and some of the TSC Board members were in attendance. Other attendees included the Mayor, Joe H. Hernandez, city commissioners, members of the San Benito EDC board, the San Benito EDC Executive Director, city administrators, community residents, and business owners. Dr. Tercero expressed her sincere appreciation for the opportunity to introduce TSC to the San Benito community.

13. Executive Session as provided by Government Code, Chapter 551.071, 551.072 and Chapter 551.074.

The Board convened in Executive Session at 6:31 p.m.

The Board reconvened in Regular Session at 8:02 p.m.

14. Consideration and possible action on matters discussed in Executive Session

Consultation with Attorney on Pending Contemplated Litigation, Section 551.072, Texas Government Code.

No action was taken.

Consultation with Attorney on Pending Real Estate Issues, Section 551.072, Texas Government Code. The Real Property Discussion will address the purchase, exchange, lease, or value of Real Estate.

No action was taken.

Consultation with Attorney on Pending Personnel Issues, Section 551.074, Texas Government Code. The Deliberation may include a discussion of the Evaluation and Employment Contract of the President, and the Board of Trustees' Appraisal Process.

A motion was made by Dr. Garcia to extend the contract for Dr. Lily F. Tercero for 36 months at a compensation of \$210,000 per year retroactive to October 1, 2012, the anniversary date of her contract. The motion was seconded by Dr. Lozano and carried unanimously.

15. Proposed Meeting Dates

Thursday, April 18, 2013

Adjournment

The meeting was adjourned by Chairman Rendon at 8:07 p.m.

Mr. Francisco G. Rendon
Chairman, Board of Trustees

Trey Mendez, J. D.
Secretary, Board of Trustees

NOTE: The tape of the Regular Board of Trustees meeting held on March 21, 2013, is on file at the District Office of the Texas Southmost College District. The master tape is on file at UTB/TSC Media Services. These minutes were taken and transcribed by Max E. Roca, Administrative Assistant. Videotaping of the Board of Trustees' meetings began on April 11, 1996. They are aired on Channel KBSD in cooperation with the Brownsville Independent School District.

Section D: PERSONNEL	
<u>DAA</u>	EMPLOYMENT OBJECTIVES - EQUAL EMPLOYMENT OPPORTUNITY
<u>DAAA</u>	EQUAL EMPLOYMENT OPPORTUNITY - GENETIC NONDISCRIMINATION
<u>DBA</u>	EMPLOYMENT REQUIREMENTS AND RESTRICTIONS - CREDENTIALS AND RECORDS
<u>DBB</u>	EMPLOYMENT REQUIREMENTS AND RESTRICTIONS - MEDICAL EXAMINATIONS AND COMMUNICABLE DISEASES
<u>DBD</u>	EMPLOYMENT REQUIREMENTS AND RESTRICTIONS - CONFLICT OF INTEREST
<u>DBE</u>	EMPLOYMENT REQUIREMENTS AND RESTRICTIONS - NEPOTISM
<u>DC</u>	HIRING PRACTICES
<u>DDA</u>	CONTRACT AND AT-WILL EMPLOYMENT - TERM CONTRACTS
<u>DDC</u>	CONTRACT AND AT-WILL EMPLOYMENT - AT-WILL EMPLOYMENT
<u>DE</u>	COMPENSATION AND BENEFITS
<u>DEA</u>	COMPENSATION AND BENEFITS - SALARIES AND WAGES
<u>DEB</u>	COMPENSATION AND BENEFITS - FRINGE BENEFITS
<u>DEC</u>	COMPENSATION AND BENEFITS - LEAVES AND ABSENCES
<u>DECA</u>	LEAVES AND ABSENCES - FAMILY AND MEDICAL LEAVE
<u>DECB</u>	LEAVES AND ABSENCES - MILITARY LEAVE
<u>DEE</u>	COMPENSATION AND BENEFITS - EXPENSE REIMBURSEMENT
<u>DF</u>	RETIREMENT PROGRAMS
<u>DG</u>	EMPLOYEE RIGHTS AND PRIVILEGES
<u>DGA</u>	EMPLOYEE RIGHTS AND PRIVILEGES - FREEDOM OF ASSOCIATION
<u>DGBA</u>	PERSONNEL-MANAGEMENT RELATIONS - EMPLOYEE GRIEVANCES
<u>DH</u>	EMPLOYEE STANDARDS OF CONDUCT
<u>DHB</u>	EMPLOYEE STANDARDS OF CONDUCT - SEARCHES AND ALCOHOL/DRUG TESTING
<u>DJ</u>	WORK LOAD
<u>DK</u>	PROFESSIONAL DEVELOPMENT
<u>DLA</u>	STATUS OF EMPLOYMENT - EVALUATION
<u>DLC</u>	STATUS OF EMPLOYMENT - PROMOTION AND DEMOTION
<u>DMAA</u>	TERM CONTRACTS - DISMISSAL
<u>DMAB</u>	TERM CONTRACTS - NONRENEWAL
<u>DMB</u>	TERMINATION OF EMPLOYMENT - TENURE
<u>DO</u>	EMPLOYEE WELFARE
<u>DOA</u>	EMPLOYEE WELFARE - FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

DAA

EMPLOYMENT OBJECTIVES
EQUAL EMPLOYMENT OPPORTUNITY

DAA
(LEGAL)

NONDISCRIMINATION— IN GENERAL The College District shall not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of any of the following protected characteristics:

1. Race, color, or national origin;
2. Sex;
3. Religion;
4. Age (applies to individuals who are 40 years of age or older);
5. Disability; or
6. Genetic information [see DAAA(LEGAL)].

42 U.S.C. 1981; 42 U.S.C. 2000e et seq. (Title VII); 20 U.S.C. 1681 et seq. (Title IX); 42 U.S.C. 12111 et seq. (Americans with Disabilities Act); 29 U.S.C. 621 et seq. (Age Discrimination in Employment Act); 29 U.S.C. 793, 794 (Rehabilitation Act); 42 U.S.C. 2000ff et seq. (Genetic Information Nondiscrimination Act); U.S. Const. Amend. I; Human Resources Code 121.003(f); Labor Code Chapter 21 (Texas Commission on Human Rights Act); Labor Code Chapter 21, Subchapter H (genetic information)

Title VII proscribes employment practices that are overtly discriminatory (disparate treatment), as well as those that are fair in form but discriminatory in practice (disparate impact). Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)

DISPARATE
TREATMENT

Disparate treatment (intentional discrimination) occurs when members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. *29 CFR 1607.11*

DISPARATE IMPACT

Disparate impact occurs when an employer uses a particular employment practice that causes a disparate (disproportionate) impact on the basis of race, color, religion, sex, or national origin and the employer fails to demonstrate that the challenged practice is job-related and consistent with business necessity. *42 U.S.C. 2000e-2(k)(1)(A); Labor Code 21.115, .122*

JOB QUALIFICATION

The College District may take employment actions based on religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification. *42 U.S.C. 2000e-2(e); 29 U.S.C. 623(f); Labor Code 21.119*

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(LEGAL)

EMPLOYMENT POSTINGS	The College District shall not print or publish any notice or advertisement relating to College District employment that indicates any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin, unless the characteristic is a bona fide occupational qualification. <i>42 U.S.C. 2000e-3(b); Labor Code 21.059</i>
HARASSMENT OF EMPLOYEES	The College District has an affirmative duty to maintain a working environment free of harassment on the basis of sex, race, color, religion, and national origin. <i>42 U.S.C. 2000e et seq.; 29 CFR 1604.11, 1606.8(a)</i>
RETALIATION	The College District may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. <i>29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 34 CFR 100.7(e) (Title VI); 34 CFR 110.34 (Age Act); 42 U.S.C. 12203 (ADA); <u>Jackson v. Birmingham Bd. of Educ.</u>, 544 U.S. 167 (2005) (Title IX); Labor Code 21.055 [See DOA]</i>
NOTICES	The College District shall post in conspicuous places upon its premises a notice setting forth the information the Equal Employment Opportunity Commission deems appropriate to effectuate the purposes of the anti-discrimination laws. <i>29 U.S.C. 627; 42 U.S.C. 2000e-10</i>
SECTION 504 NOTICE	<p>A college district that employs 15 or more persons shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability.</p> <p>The notice shall state:</p> <ol style="list-style-type: none">1. That the college district does not discriminate in employment in its programs and activities; and2. The identity of the college district's 504 coordinator. <p>Methods of notification may include:</p> <ol style="list-style-type: none">1. Posting of notices;2. Publication in newspapers and magazines;3. Placing notices in college district publications; and4. Distributing memoranda or other written communications. <p>If the college district publishes or uses recruitment materials containing general information that it makes available to applicants or</p>

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employees, it shall include in those materials a statement of its nondiscrimination policy.

34 CFR 104.8

AGE DISCRIMINATION The College District may take an employment action on the basis of age pursuant to a bona fide seniority system or a bona fide employee benefit plan. However, a bona fide employee benefit plan shall not excuse the failure to hire any individual and no such benefit plan shall require or permit the involuntary retirement of any individual because of age. *29 U.S.C. 623(f); Labor Code 21.102*

SEX DISCRIMINATION The College District may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. *Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)*

GENDER
STEREOTYPES

PREGNANCY

The prohibition against discrimination on the basis of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. The College District shall treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe benefit programs. *42 U.S.C. 2000e(k); Labor Code 21.106*

EQUAL PAY

The College District may not pay an employee at a rate less than the rate the College District pays employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort, or responsibility and which are performed under similar working conditions. This rule does not apply if the payment is pursuant to a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. *29 U.S.C. 206(d); 34 CFR 106.54*

RELIGIOUS
DISCRIMINATION

The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless the College District demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship to the College District's business. "Undue hardship" means more than a *de minimus* (minimal) cost. *42 U.S.C. 2000e(j); 29 CFR 1605.2; Labor Code 21.108*

The College District may not substantially burden an employee's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. & Rem. Code 110.003.*

DISABILITY
DISCRIMINATION

The College District may not discriminate against a qualified individual on the basis of disability in job application procedures, hiring, advancement, or discharge of employees, compensation, job

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DAA
(LEGAL)

training, and other terms, conditions, and privileges of employment. *42 U.S.C. 12112(a); 29 CFR 1630.4(b); Labor Code 21.051*

In addition, each college district that receives assistance under the Individuals with Disabilities Education Act (IDEA) must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted by the IDEA. *34 CFR 300.177(b)*

DISCRIMINATION
BASED ON LACK OF
DISABILITY

The Americans with Disabilities Act (ADA) and the Texas Commission on Human Rights Act do not provide a basis for a claim that an individual was subject to discrimination because of the individual's lack of disability. *42 U.S.C. 12201(g); 29 CFR 1630.4(b); Labor Code 21.005(c)*

DEFINITION OF
DISABILITY

"Disability" means:

1. A physical or mental impairment that substantially limits one or more of an individual's major life activities;
2. A record of having such an impairment; or
3. Being regarded as having such an impairment.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

REGARDED AS
HAVING AN
IMPAIRMENT

An individual meets the requirement of being "regarded as" having an impairment if the individual establishes that he or she has been subjected to an action prohibited by the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

TRANSITORY
AND MINOR

The "regarded as" prong of the definition does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of six months or less. The "transitory" exception does not apply to the "actual disability" or "record of disability" prongs of the definition.

MITIGATING
MEASURES

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices, prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

The ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses and contact

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lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

42 U.S.C. 12102(1), (3)–(4); 29 CFR 1630.2(g), .3(j)(1); Labor Code 21.002, .0021

OTHER
DEFINITIONS
'MAJOR LIFE
ACTIVITIES'

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

“Major life activity” also includes the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within the body system.

42 U.S.C. 12102(2); 29 CFR 1630.3(i); Labor Code 21.002

'PHYSICAL OR
MENTAL
IMPAIRMENT'

“Physical or mental impairment” means:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
2. Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 CFR 1630.3(h)

'QUALIFIED
INDIVIDUAL'

“Qualified individual” means an individual who:

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires; and
2. With or without reasonable accommodation, can perform the essential functions of such position. Consideration shall be given to the College District’s judgment as to what functions of a job are essential. A written job description prepared before advertising or interviewing applicants for the job is evidence of the job’s essential functions.

42 U.S.C. 12111(8); 29 CFR 1630.3(m)

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'REASONABLE
ACCOMMODATIONS'

The College District is required, absent undue hardship, to make a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the "actual disability" or "record of disability" prongs. The College District is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the "regarded as" prong. *29 U.S.C. 794; 42 U.S.C. 12112(b)(5); 29 CFR 1630.4(o)(4), .9; 34 CFR 104.11; Labor Code 21.128* [See DBB regarding medical examinations and inquiries under the Americans with Disabilities Act]

"Reasonable accommodation" includes:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. 12111(9); 29 CFR 1630.2(o); 34 CFR 104.12(b)

'UNDUE
HARDSHIP'

"Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the nature and cost of the accommodation needed, overall financial resources of the affected facility and the College District, and other factors set out in law. *42 U.S.C. 12111(10); 29 CFR 1630.2(p); 34 CFR 104.12(c)*

DISCRIMINATION
BASED ON
RELATIONSHIP

The College District shall not 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. *42 U.S.C. 12112(b)(4); 29 CFR 1630.8; 34 CFR 104.11*

ILLEGAL DRUGS AND
ALCOHOL

The term qualified individual with a disability does not include any employee or applicant who is currently engaging in the illegal use of drugs, when the College District acts on the basis of such use.

DRUG TESTING

The College District is not prohibited from conducting drug testing of employees and applicants for the illegal use of drugs or making employment decisions based on the results of such tests.

42 U.S.C. 12114(c)-(d); Labor Code 21.002(6)(A) [See DHB]

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ALCOHOL USE	The term qualified individual with a disability does not include an individual who is an alcoholic and whose current use of alcohol prevents the employee from performing the duties of his or her job or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others. <i>29 U.S.C. 705(20)(C); 42 U.S.C. 12114(a); 28 CFR 35.104; 29 CFR 1630.3(a); Labor Code 21.002(6)(A)</i>
QUALIFICATION STANDARDS	It is unlawful for the College District to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the College District, is shown to be job related for the position in question and is consistent with business necessity. <i>29 CFR 1630.10(a)</i>
DIRECT THREAT TO HEALTH OR SAFETY	As a qualification standard, the College District may require that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace. "Direct threat" means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. <i>42 U.S.C. 12111(3); 29 CFR 1630.2(r); Labor Code 21.002(6)(B)</i>
VISION STANDARDS AND TESTS	The College District shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the College District, is shown to be job-related for the position in question and consistent with business necessity. <i>42 U.S.C. 12113(c); 29 CFR 1630.10(b); Labor Code 21.115(b)</i>
COMMUNICABLE DISEASES	The College District may refuse to assign or continue to assign an individual to a job involving food handling if the individual has an infectious or communicable disease that is transmitted to others through handling of food. <i>42 U.S.C. 12113(e); 29 U.S.C. 705(20)(D); 29 CFR 1630.16(e); Labor Code 21.002(6)(B)</i>
SERVICE ANIMALS	<p>A college district that is subject to the jurisdiction of Title I of the Americans with Disabilities Act (employment discrimination) or to section 504 of the Rehabilitation Act (employment discrimination), shall comply with the reasonable accommodation requirements of those laws with respect to service animals. [See REASONABLE ACCOMMODATIONS, above]</p> <p>A college district that is not subject to either Title I or section 504 shall comply with Title II of the Americans with Disabilities Act (discrimination by public entity). An employer that is subject to Title II shall comply with 28 CFR part 35, including the requirements relating to service animals at 28 CFR 35.136 [see FAA]. <i>28 CFR 35.140</i></p>

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MILITARY SERVICE	The College District shall not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service. The College District shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). <i>38 U.S.C. 4311</i> [See DECB]
GRIEVANCE POLICIES SECTION 504	A college district that receives federal financial assistance and that employs 15 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 of the Rehabilitation Act. <i>34 CFR 104.7(b)</i>
AMERICANS WITH DISABILITIES ACT	A college district 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. <i>28 CFR 35.107, .140</i>
TITLE IX	A college district that receives federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX. <i>34 CFR 106.8(b)</i> ; <u><i>North Haven Bd. of Educ. v. Bell</i></u> , <i>456 U.S. 512 (1982)</i>
COMPLIANCE COORDINATOR	The College District shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, the Age Act, and the ADA. The College District shall notify all employees of the name, office address, and telephone number of the employee(s) so designated. <i>28 CFR 35.107, .140; 34 CFR 104.7(a), 106.8(b)</i>

DAAA

DEFINITIONS

For purposes of the Genetic Information Nondiscrimination Act (GINA), "genetic information" means information about:

1. An individual's genetic tests;
2. The genetic tests of that individual's family members;
3. The manifestation of disease or disorder in family members of the individual (family medical history);
4. An individual's request for or receipt of genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or
5. The genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

"Genetic information" does not include information about the sex or age of the individual, the sex or age of family members, or information about the race or ethnicity of the individual or family members that is not derived from a genetic test.

29 CFR 1635.3(c)

"Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. Genetic tests include:

1. A test to determine whether someone has the BRCA1 or BRCA2 variant evidencing a predisposition to breast cancer, a test to determine whether someone has a genetic variant associated with hereditary nonpolyposis colon cancer, and a test for a genetic variant for Huntington's Disease;
2. Carrier screening for adults using genetic analysis to determine the risk of conditions such as cystic fibrosis, sickle cell anemia, spinal muscular atrophy, or fragile X syndrome in future offspring;
3. Amniocentesis and other evaluations used to determine the presence of genetic abnormalities in a fetus during pregnancy;
4. Newborn screening analysis that uses DNA, RNA, protein, or metabolite analysis to detect or indicate genotypes, mutations, or chromosomal changes, such as a test for PKU performed so that treatment can begin before a disease manifests;

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5. Pre-implantation genetic diagnosis performed on embryos created using in vitro fertilization;
6. Pharmacogenetic tests that detect genotypes, mutations, or chromosomal changes that indicate how an individual will react to a drug or a particular dosage of a drug;
7. DNA testing to detect genetic markers that are associated with information about ancestry; and
8. DNA testing that reveals family relationships, such as paternity.

Examples of tests or procedures that are not genetic tests are:

1. An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes;
2. A medical examination that tests for the presence of a virus that is not composed of human DNA, RNA, chromosomes, proteins, or metabolites;
3. A test for infectious and communicable diseases that may be transmitted through food handling; and
4. Complete blood counts, cholesterol tests, and liver-function tests.

A test for the presence of alcohol or illegal drugs is not a genetic test. However, a test to determine whether an individual has a genetic predisposition for alcoholism or drug use is a genetic test.

29 CFR 1635.3(f)

NOTICES

The College District shall post in conspicuous places on its premises, where notices to employees and applicants for employment are customarily posted, a notice setting forth excerpts from or summaries of the pertinent provisions of the GINA regulation and information pertinent to the filing of a complaint. *29 CFR 1635.10(c)*

PROHIBITED
PRACTICES
DISCRIMINATION

The College District shall not discriminate against an individual on the basis of genetic information in regard to hiring, discharge, compensation, or terms, conditions, or privileges of employment. Notwithstanding the foregoing, a cause of action for disparate impact is not available under GINA. *29 CFR 1635.4*

RETALIATION

The College District shall not discriminate against an individual because the individual has opposed any act or practice made unlawful by GINA or because the individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under GINA. *29 CFR 1635.7*

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ACQUISITION	Except as set forth below or otherwise provided in the GINA regulations, the College District shall not request, require, or purchase genetic information of an individual or family member of the individual. <i>29 CFR 1635.8(a)</i>
	“Request” includes:
	<ol style="list-style-type: none">1. Conducting an Internet search on an individual in a way that is likely to result in the College District obtaining genetic information;2. Actively listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information; and3. Making requests for information about an individual's current health status in a way that is likely to result in the College District's obtaining genetic information.
	<i>29 CFR 1635.8(a)</i>
DISCLOSURE	A college district that possesses genetic information, regardless of how the college district obtained the information, shall not disclose the information except as set forth in the GINA regulations. <i>29 CFR 1635.9(b)</i> [See CONFIDENTIALITY, below]
MANIFESTED CONDITION	A college district shall not be considered to be in violation of the GINA regulations based on the use, acquisition, or disclosure of medical information about a manifested disease, disorder, or pathological condition of an employee or member, even if the disease, disorder, or pathological condition has or may have a genetic basis or component. However, genetic information about a manifested disease, disorder, or pathological condition is subject to the requirements and prohibitions of GINA. <i>29 CFR 1635.12</i>
	“Manifestation” or “manifested” means, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health-care professional with appropriate training and expertise in the field of medicine involved. A disease, disorder, or pathological condition is not manifested if the diagnosis is based principally on genetic information. <i>29 CFR 1635.3(g)</i>
INADVERTENT ACQUISITION	The general prohibition against requesting, requiring, or purchasing genetic information does not apply where a college district inadvertently requests or requires genetic information of the individual or family member of the individual. This exception applies in situations where a manager or supervisor learns genetic information about an individual by:

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1. Overhearing a conversation between the individual and others;
2. Receiving the information during a casual conversation, including in response to an ordinary expression of concern that is the subject of the conversation. This exception does not apply where a manager or supervisor follows up with questions that are probing in nature, such as whether other family members have the condition or whether the individual has been tested for the condition, because the supervisor or official should know that these questions are likely to result in the acquisition of genetic information;
3. Receiving unsolicited information (e.g., where a manager or supervisor receives an unsolicited e-mail about the health of an employee's family member from a co-worker); or
4. Accessing a social media platform that the manager or supervisor was given permission to access by the creator of the profile at issue (e.g., a supervisor and employee are connected on a social networking site and the employee provides family medical history on his page).

29 CFR 1635.8(b)(1)(ii)

REQUESTS FOR
MEDICAL
INFORMATION

If the College District acquires genetic information in response to a lawful request for medical information, the acquisition of genetic information will not generally be considered inadvertent unless the College District directs the individual and/or health-care provider from whom it requested medical information not to provide genetic information. *29 CFR 1635.8(b)(1)(i)(A)*

Situations involving lawful requests for medical information include:

1. Requests for documentation to support a request for reasonable accommodation under federal, state, or local law;
2. Requests for medical information as required, authorized, or permitted by federal, state, or local law, such as where an employee requests leave under the Family and Medical Leave Act (FMLA) to attend to the employee's own serious health condition or where an employee complies with the FMLA's employee return to work certification requirements; or
3. Requests for documentation to support leave that is not governed by federal, state, or local laws requiring leave, as long as the documentation required to support the request otherwise complies with the requirements of the Americans with Disabilities Act (ADA) and other laws limiting the College District's access to medical information.

29 CFR 1635.8(b)(1)(i)(A)

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SAFE HARBOR

Any receipt of genetic information in response to a request for medical information shall be deemed inadvertent if the College District uses language such as the following:

“The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. ‘Genetic information,’ as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.”

The College District's failure to give such a notice or to use this or similar language will not prevent the College District from establishing that a particular receipt of genetic information was inadvertent if the request for medical information was not likely to result in the College District obtaining genetic information (for example, where an overly broad response is received in response to a tailored request for medical information).

29 CFR 1635.8(b)(1)(i)(B)

EMPLOYMENT
EXAMINATIONS

The prohibition on acquisition of genetic information applies to medical examinations related to employment. The College District shall tell health-care providers not to collect genetic information, including family medical history, as part of a medical examination intended to determine the ability to perform a job. *29 CFR 1635.8(d)*

REMEDIAL
MEASURES

The College District shall take additional reasonable measures within its control if it learns that genetic information is being requested or required. Such reasonable measures may depend on the facts and circumstances under which a request for genetic information was made, and may include no longer using the services of a health-care professional who continues to request or require genetic information during medical examinations after being informed not to do so. *29 CFR 1635.8(d)*

HEALTH OR GENETIC
SERVICES

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the College District offers health or genetic services, including services offered as part of a

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voluntary wellness program, if the conditions at 29 CFR 1635.8(b)(2) are met.

The College District may not offer a financial inducement for individuals to provide genetic information, but may offer financial inducements for completion of health risk assessments that include questions about family medical history or other genetic information. The College District shall make clear, in language reasonably likely to be understood by those completing the health risk assessment, that the inducement will be made available whether or not the participant answers questions regarding genetic information.

The College District may offer financial inducements to encourage individuals who have voluntarily provided genetic information (e.g., family medical history) that indicates that they are at increased risk of acquiring a health condition in the future to participate in disease management programs or other programs that promote healthy lifestyles, and/or to meet particular health goals as part of a health or genetic service. However, the College District must also offer these programs to individuals with current health conditions and/or to individuals whose lifestyle choices put them at increased risk of developing a condition.

29 CFR 1635.8(b)(2)

LEAVE REQUESTS

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the College District requests family medical history to comply with the certification provisions of the FMLA or state or local family and medical leave laws, or pursuant to a policy (even in the absence of requirements of federal, state, or local leave laws) that permits the use of leave to care for a sick family member and that requires all employees to provide information about the health condition of the family member to substantiate the need for leave. *29 CFR 1635.8(b)(3)*

PUBLICLY-AVAILABLE
INFORMATION

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the College District acquires genetic information from documents that are commercially and publicly available for review or purchase, including newspapers, magazines, periodicals, or books, or through electronic media, such as information communicated through television, movies, or the Internet, except that this exception does not apply to:

1. Medical databases, court records, or research databases available to scientists on a restricted basis;
2. Genetic information acquired through sources with limited access, such as social networking sites and other media sources which require access permission from a specific indi-

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vidual or where access is conditioned on membership in a particular group, unless the College District can show that access is routinely granted to all who request it;

3. Genetic information obtained through commercially and publicly available sources if the College District sought access to those sources with the intent of obtaining genetic information; or
4. Genetic information obtained through media sources, whether or not commercially and publicly available, if the College District is likely to acquire genetic information by accessing those sources, such as Web sites and online discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination.

29 CFR 1635.8(b)(4)

WORKPLACE
MONITORING

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where the College District acquires genetic information for use in the genetic monitoring of the biological effects of toxic substances in the workplace. Such monitoring must meet with the criteria at 29 CFR 1635.8(b)(5). *29 CFR 1635.8(b)(5)*

INQUIRIES MADE OF
FAMILY MEMBERS

The College District does not violate the GINA regulations when it requests, requires, or purchases information about a manifested disease, disorder, or pathological condition of an employee whose family member is also employed by the College District or who is receiving health or genetic services on a voluntary basis. For example, the College District does not violate the GINA regulations by asking someone whose sister also works for the College District to take a post-offer medical examination that does not include requests for genetic information. *29 CFR 1635.8(c)*

CONFIDENTIALITY

A college district that possesses genetic information in writing about an employee must maintain such information on forms and in medical files (including where the information exists in electronic forms and files) that are separate from personnel files. A college district must treat such information as a confidential medical record. A college district may maintain genetic information about an employee in the same file in which it maintains confidential medical information under the ADA.

Genetic information placed in personnel files before November 21, 2009, need not be removed. A college district will not be liable under the GINA regulations for the mere existence of the information in the file. However, the prohibitions on use and disclosure of genetic information apply to all genetic information that meets the

statutory definition, including genetic information requested, required, or purchased before November 21, 2009.

Genetic information that the College District receives orally need not be reduced to writing, but may not be disclosed, except as permitted by this part.

Genetic information that the College District acquires through sources that are commercially and publicly available, as provided by 29 CFR 1635.8(b)(4), is not considered confidential genetic information, but may not be used to discriminate against an individual.

29 CFR 1635.9(a)

DISCLOSURE
PERMITTED

A college district that possesses any genetic information, regardless of how the college district obtained the information (except for genetic information acquired through commercially and publicly available sources), may disclose the information:

1. To the employee (or family member if the family member is receiving genetic services) about whom the information pertains upon receipt of the employee's written request;
2. To an occupational or other health researcher if the research is conducted in compliance with the regulations and protections at 45 CFR part 46;
3. In response to an order of a court. The college district may disclose only the genetic information expressly authorized by the order. If the order was secured without the knowledge of the employee to whom the information refers, the college district shall inform the employee of the order and any genetic information that was disclosed pursuant to the order;
4. To government officials investigating compliance with Title II of GINA if the information is relevant to the investigation;
5. To the extent the information is disclosed in support of an employee's compliance with the certification provisions of the FMLA or certification requirements under state family and medical leave laws; or
6. To a federal, state, or local public health agency, only with regard to information about the manifestation of a disease or disorder that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness, provided that the individual whose family member is the subject of the disclosure is notified of such disclosure.

29 CFR 1635.9(b)

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RELATIONSHIP TO
HIPAA PRIVACY
REGULATIONS

The GINA regulations do not apply to the use or disclosure of genetic information that is protected health information subject to regulation under the Health Insurance Portability and Accountability Act of 1996. *29 CFR 1635.9(c)* [See CKD(LEGAL)]

DBA

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CREDENTIALS AND RECORDS

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ACCESS TO
EMPLOYEE RECORDS

With regard to public access to information in personnel records, custodians of such records shall adhere to the requirements of the Public Information Law. *Gov't Code 552* [See GAA]

Information in a personnel file is excepted from the requirements of the Public Information Law if the disclosure would constitute a clearly unwarranted invasion of personal privacy.

An employee of a College District shall choose whether to allow public access to information in the College District's custody that relates to the employee's home address, home telephone number, emergency contact information, or social security number, or that reveals whether the person has family members.

Gov't Code 552.024, .102(a)

EMPLOYEE RIGHT
OF ACCESS

All information in the personnel file of a College District employee shall be made available to that employee or the employee's designated representative as public information is made available under the Public Information Law.

An employee or an employee's authorized representative has a special right of access, beyond the right of the general public, to information held by the College District that relates to the employee and that is protected from public disclosure by laws intended to protect the employee's privacy interests. The College District may not deny to the employee or his or her representative access to information relating to the employee on the grounds that the information is considered confidential by privacy principles under the Public Information Law. The College District may assert as grounds for denial of access other provisions of the Public Information Law or other law that are not intended to protect the employee's privacy interests.

Gov't Code 552.023

If the College District determines that information in the employee's records is exempt from disclosure under an exception of Government Code Chapter 552, 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, it shall submit a written request for a decision to the attorney general before disclosing the information. If a decision is not requested, the College District shall release the information to the requestor not later than the tenth business day after the request for information is received. *Gov't Code 552.023, .102(a), .307*

CONFIDENTIALITY
GUIDELINES

The College District shall develop and implement guidelines regarding confidentiality of AIDS- and HIV-related medical information for College District employees. The policies shall be con-

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sistent with guidelines published by the Texas Department of State
Health Services and with state and federal law and regulations.
[See DBB] *Health and Safety Code 85.115*

DBB

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
MEDICAL EXAMINATIONS AND COMMUNICABLE DISEASES

DBB
(LEGAL)

AIDS TESTING

The College District may not require an employee to undergo medical procedures or tests for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless the procedure is necessary:

1. As a bona fide occupational qualification, and there exists no less discriminatory means of satisfying the occupational qualification. "Bona fide occupational qualification" means a qualification that is reasonably related to the satisfactory performance of job duties and for which there is reasonable cause to believe that a person who tests positive would be unable to perform satisfactorily the job duties safely.
2. In relation to an employee ordered to undergo testing by the state or local health authorities or the courts, under the Health and Safety Code, Section 81.050.
3. To manage accidental exposure to blood or other bodily fluids but only if the test is conducted in accordance with written guidelines, developed by a health care facility, that provide criteria for testing and respect the rights of the person with the infection and the person who may be exposed to that infection. The guidelines shall not require that the person exposed be tested and must ensure confidentiality of results.
4. In cases where a medical procedure is to be performed on a patient that could expose health care personnel to AIDS or HIV infection, according to Texas Department of State Health Services (TDSHS) guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, if there is sufficient time to receive the test result before the procedure is conducted.

Health and Safety Code 81.102

The College District shall make available the College District's policy on HIV infection and AIDS to faculty and staff members by including the policy in the personnel handbook if practicable or by any other method. *Education Code 51.919(b)*

CONFIDENTIALITY OF
AIDS TESTING

AIDS test results shall be defined as any statement or assertion that an identified individual is positive, negative, at risk, has or does not have a certain level of antibody or any other statement that an identified individual has or has not been tested. AIDS test results may not be released except to:

1. The TDSHS.
2. Local health authorities if reporting is required under Health and Safety Code, Chapter 81.

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3. The Centers for Disease Control and Prevention of the United States Public Health Service if reporting is required by federal law or regulation.
4. The physician or other authorized person who ordered the test.
5. A physician, nurse, or other health care professional who has legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare.
6. The person tested or a person legally authorized to consent to the test on the person's behalf.
7. The spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.
8. A person authorized to receive the test results under Code of Criminal Procedure, Article 21.31 (regarding testing of persons indicted for or who waive indictment for certain crimes), concerning a person who is tested as required or authorized under that article.
9. A person exposed to HIV infection as provided by Health and Safety Code, Section 81.050.
10. A county or district court to comply with Chapter 81 of the Health and Safety Code or rules relating to the control and treatment of communicable diseases and health conditions.
11. The persons or entities or classes of persons or entities authorized by written release signed by the person tested.

Employees of health care facilities may view test results while performing their duties if their job requires them to deal with permanent medical records and they are viewed under reasonable health practices.

Health and Safety Code 81.103

HIV EDUCATION

The College District shall provide to each employee an educational pamphlet about methods of transmission and methods of prevention of HIV infection and about state laws relating to the transmission and to conduct that may result in the transmission of HIV infection. The pamphlet shall be provided to a newly hired state employee on the first day of employment. The educational pamphlet shall be based on the model developed by TDSHS and shall include the College District's workplace guidelines. *Health and Safety Code 85.111*

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
MEDICAL EXAMINATIONS AND COMMUNICABLE DISEASES

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HIV / AIDS
WORKPLACE
GUIDELINES

The College District shall adopt and implement workplace guidelines concerning persons with AIDS and HIV infection. The workplace guidelines shall at a minimum incorporate the model workplace guidelines developed by TDSHS. *Health and Safety Code 85.112*

BLOODBORNE
PATHOGEN CONTROL

A college district that employs employees who provide services in a public or private facility providing health care-related services, including home health-care organizations, or who otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps shall comply with the minimum standards set by the TDSHS. This includes a college district that operates a public school health clinic.

The College District shall review the minimum exposure control plan provided by TDSHS for particular requirements applicable to its specific situation. The College District may modify the plan appropriately to its practice settings. The College District shall include provisions relevant to its particular facility or organization in order to develop an effective, comprehensive exposure control plan. The College District shall annually review its exposure control plan, update the plan when necessary, and document its actions when accomplished.

'SHARPS' DEFINED

"Sharps" means an object used or encountered in a health-care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur.

MINIMUM
STANDARDS

The minimum standards in TDSHS Bloodborne Pathogens Exposure Control Plan require the College District to:

1. Develop, review annually, update as necessary, and document its actions regarding a comprehensive exposure control plan appropriate to the College District and its particular facilities;
2. Provide, at College District expense, personal protective equipment and Hepatitis B vaccinations to affected employees, and if an employee declines to be vaccinated, maintain a record of the employee's written refusal;
3. Provide to affected employees pre-service and annual refresher training as described in the TDSHS Exposure Control Plan;

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4. Record all exposure incidents (e.g., “sticks” by needles or other “sharps”) in a sharps injury log and report the sharps injury to TDSHS on a standardized form.
5. Provide a post-exposure evaluation and follow up with an employee who has a sharps injury.

Health and Safety Code 81.301–.307; 25 TAC 96

DEFINITIONS

The definitions related to individuals with disabilities and exceptions to those definitions included in policy DAA shall be used in applying and interpreting this policy and any local policy adopted in conjunction with this policy.

COST OF HEPATITIS
TESTING AFTER
ACCIDENTAL
EXPOSURE

If certified emergency medical services personnel, a firefighter, a peace officer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital is accidentally exposed to blood or other body fluids of a patient, the hospital to which the patient is transported shall take reasonable steps to test the patient for hepatitis B or hepatitis C. A college district that employs the person, or for which the person works as a volunteer in connection with rendering the assistance, is responsible for paying the costs of the test.

Health and Safety Code 81.905(a)-(b)

GENETIC
INFORMATION

Any receipt of genetic information in response to a request for medical information shall be deemed inadvertent if the College District uses language such as that at 29 CFR 1635.8(b)(1)(i)(B). 29 CFR 1635.8(b)(1)(i)(A) [See DAAA]

PRE-EMPLOYMENT
EXAMINATION AND
INQUIRIES

The College District 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 a disability, except as provided below. However, the College District is permitted to make pre-employment inquiries into the ability of an applicant to perform job-related functions, such as asking an applicant to describe or demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. 42 U.S.C. 12112(d)(2); 29 CFR 1630.14(a)

The College District may require a medical examination (and/or inquiry) after an offer of employment has been made to a job applicant and prior to the beginning of employment duties and may condition the offer on the results of such examination (and/or inquiry), provided all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
MEDICAL EXAMINATIONS AND COMMUNICABLE DISEASES

DBB
(LEGAL)

The results of a pre-employment medical examination shall be used only to determine the applicant's ability to perform job-related functions. Information obtained regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and shall be treated as confidential medical records. However, supervisors and managers may be informed regarding necessary restrictions on the employee's work or duties and necessary accommodation; first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

42 U.S.C. 12112(d)(3); 29 CFR 1630.14(b)

EXAMINATION AND
INQUIRIES OF
EMPLOYEE

The College District may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity and may make inquiries into the ability of an employee to perform job-related functions.

The results of an employee's medical examination shall be used only to determine the applicant's ability to perform job-related functions. Information obtained regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and shall be treated as confidential medical records. However, supervisors and managers may be informed regarding necessary restrictions on the employee's work or duties and necessary accommodation; first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

42 U.S.C. 12112(d)(3)-(4); 29 CFR 1630.14(c)

DBD

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

DBD
(LEGAL)

RESTRICTIONS UPON
'PUBLIC SERVANTS'—
PENAL CODE

"Public servant" for purposes of the following Penal Code provisions, includes a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of the government, even if the person has not yet qualified for office or assumed his or her duties. *Penal Code 1.07(a)(41)(A), (E)* [See also BBFA and DH]

BRIBERY

1. A public servant shall not intentionally or knowingly offer, confer, agree to confer on another, solicit, accept, or agree to accept a benefit:
 - a. As consideration for the public servant's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant.
 - b. As consideration for a violation of a duty imposed on the public servant by law.
 - c. That is a political contribution as defined by Title 15 of the Election Code or an expenditure made and reported as a lobbying expense in accordance with Government Code, Chapter 305, 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.

"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.

Penal Code 36.01(3), .02

ILLEGAL GIFTS

2. A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions shall not solicit, accept, or agree to accept any benefit from a person the public servant knows is interested in or likely to become interested in any such transactions of a College District. *Penal Code 36.08(d)*

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt charitable organization formed for educational, religious, or scientific purposes. *Penal Code 36.08(i)*

EXCEPTIONS

"Illegal Gifts to Public Servants" does not apply to:

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

DBD
(LEGAL)

- a. 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 or she gives legitimate consideration in a capacity other than as a public servant;
- b. 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;
- c. 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:
 - (1) The benefit and the source of any benefit in excess of \$50 is reported in the statement; and
 - (2) 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;
- d. A political contribution as defined by Title 15, Election Code;
- e. An item with a value of less than \$50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;
- f. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;
- g. Transportation and lodging expenses or meals in connection with a conference or similar event at which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent those services are more than merely perfunctory; or
- h. 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.

Penal Code 36.10(a)-(b)

HONORARIA AND
EXPENSES

3. A public servant commits a Class A misdemeanor offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public serv-

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

DBD
(LEGAL)

ant would not have been requested to provide but for the public servant's official position or duties. However, a public servant is not prohibited from accepting transportation and lodging expenses or meals 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 those services are more than merely perfunctory. *Penal Code 36.07*

ABUSE OF PUBLIC
EMPLOYMENT

4. A public servant shall not, with intent to obtain a benefit or with intent to harm or defraud another, intentionally or knowingly violate a law relating to the public servant's office or employment, or misuse College District property, services, personnel, or any other thing of value, that has come into his or her custody or possession by virtue of his or her office or employment. *Penal Code 39.02(a)*

"Law relating to the public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant or governs the conduct of the public servant. *Penal Code 39.01(1)*

"Misuse" means to deal with property contrary to:

- a. An agreement under which the public servant holds the property;
- b. A contract of employment or oath of office of a public servant;
- c. A law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
- d. A limited purpose for which the property is delivered or received.

Penal Code 39.01(2)

CONFLICT
DISCLOSURE
STATEMENT

The College District may extend the requirements of Local Government Code 176.003 and 176.004 [see BBFA] to any employee of the College District who has the authority to approve contracts on behalf of the College District, including a person designated as the representative of the College District for purposes of Local Government Code Chapter 271. The College District shall identify each employee made subject to Sections 176.003 and 176.004 and shall provide a list of the identified employees on request to any person. The College District may reprimand, suspend, or ter-

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

DBD
(LEGAL)

minate the employment of an employee who knowingly fails to comply with such requirements.

An employee commits a Class C misdemeanor if the employee knowingly violates the requirements. It is an exception to the application of the above penalty, however, that the employee filed the disclosure statement not later than the seventh business day after the person received notice from the College District of the violation.

Local Gov't Code 176.005

DEFINITION OF
"CONTRACT"

"Contract" means a written agreement for the sale or purchase of real property, goods, or services. *Local Gov't Code 176.001(1-d)*

HOLDING CIVIL
OFFICE

No person shall hold or exercise at the same time more than one civil office of emolument, except for offices listed in the constitutional provision, unless otherwise specifically provided. *Tex. Const. Art. XVI, Sec. 40(a); State v. Pirtle, 887 S.W.2d 921 (Tex. Ct. Crim. App. 1994); Atty. Gen. Op. DM-212 (1993).*

Individuals who receive all or part of their compensation either directly or indirectly from funds of the state of Texas and who are not state officers shall not be barred from serving as members of the governing bodies of college districts (other than those in which they are employed), school districts, cities, towns, or other local governmental districts. Such individuals may not receive a salary for serving as members of such governing bodies, except that a faculty member or retired faculty member of a public institution of higher education may receive compensation for serving as a member of a governing body of a water district. *Tex. Const. Art. XVI, Sec. 40(b); Atty. Gen. Op. JM-118 (1983), JM-203 (1984)*

Note: The following provisions at EDUCATIONAL LENDING apply to college districts that participate in a loan program under Title 20 of the United States Code.

EDUCATIONAL
LENDING

The College District shall develop a code of conduct, with which the College District's officers, employees, and agents shall comply:

1. Prohibiting a conflict of interest with the responsibilities of an officer, employee, or agent of the College District with respect to such loans; and
2. At a minimum, including the provisions described in 20 U.S.C. 1094(e) regarding:
 - a. A ban on revenue-sharing arrangements;
 - b. A ban on gifts from lenders, guarantors, or servicers of education loans;

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

DBD
(LEGAL)

- c. A prohibition on certain contracting arrangements;
- d. A prohibition on certain interaction with borrowers;
- e. A prohibition on offers of funds for private loans;
- f. A ban on lender assistance with call center or financial aid office staffing; and
- g. A prohibition on advisory board compensation.

The College District shall publish the code of conduct prominently on the College District's Web site. The College District shall also administer and enforce the code of conduct by, at a minimum, requiring that all of the College District's officers, employees, and agents are informed annually of the provisions of the code of conduct.

20 U.S.C. 1094(a)(25), (e)

INTELLECTUAL
PROPERTY

An employee who conceives, creates, discovers, invents, or develops intellectual property may own or be awarded any amount of equity interest or participation in, or, if approved by the Board, serve as a member of the board of directors or other governing board or as an officer or an employee of, a business entity that has an agreement with the state or a political subdivision of the state relating to the research, development, licensing, or exploitation of that intellectual property without creating a conflict of interest.

Such an employee shall report to the appropriate person or persons at the College District the name of the business entity in which the person has an interest or for which the person serves as a director, officer, or employee. The Board shall include in the appropriate annual report required by Education Code 51.005 the information provided to it under this requirement during the preceding fiscal year.

Education Code 51.912

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

DBD
(EXHIBIT)

See the following pages for forms to be used by employees for disclosing potential conflicts of interest:

- Exhibit A: Affidavit Disclosing Substantial Interest in a Business Entity or in Real Property, as defined in Local Government Code 171.002 — 2 pages
- Exhibit B: Affidavit Disclosing Interest in Property, under Government Code Chapter 553, Subchapter A — 2 pages

ADDITIONAL DISCLOSURE: The College President and any other employees identified by Board policy as being required to file the conflicts disclosure statement, in accordance with Local Government Code 176.003–.004, may access that form on the Texas Ethics Commission Web site at <http://www.ethics.state.tx.us/forms/CIS.pdf>.

DBD (Exhibit)

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

DBD
(EXHIBIT)

EXHIBIT A

AFFIDAVIT DISCLOSING SUBSTANTIAL INTEREST
IN A BUSINESS ENTITY OR IN REAL PROPERTY

STATE OF TEXAS

COUNTY OF _____

I, _____ (*name*), as an employee of the _____ Col-
lege District, make this affidavit and hereby on oath state the following: I have a substantial
interest in:

- a business entity, as those terms are defined in Local Government Code Sections
171.001–171.002, that would experience a special economic effect distinguishable from
its effect on the public by an action of the Board or the College District. [See BBFA]

or

- real property for which it is reasonably foreseeable that an action of the Board or Col-
lege District will have a special economic effect on the value of the property distinguish-
able from its effect on the public.

The business entity or real property is (*name/address of business or description of property*):

_____.

I _____ have a substantial interest in this business entity or real
property as follows: (*check all that apply*)

- Ownership of ten percent or more of the voting stock or shares of the business entity.
- Ownership of ten percent or more of the fair market value of the business entity.
- Ownership of \$15,000 or more of the fair market value of the business entity.
- Funds received from the business entity exceed ten percent of my gross income for the
previous year.
- Real property is involved and I have an equitable or legal ownership with a fair market
value of at least \$2,500.

The statements contained herein are based on my personal knowledge and are true and cor-
rect.

Signed this _____ day of _____ (*month*), _____ (*year*).

Signature of employee

Title

ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before me on this _____ day of _____ (*month*), _____
(*year*).

Notary Public in and for the state of Texas

NOTE: This affidavit should be filed with the College President, Board President, or a designee before the Board takes action concerning the business entity or real property.

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

DBD
(EXHIBIT)

EXHIBIT B

AFFIDAVIT DISCLOSING INTEREST IN PROPERTY

STATE OF TEXAS
COUNTY OF _____

I, _____ (*name*), as College President of the _____
College District, make this affidavit and hereby on oath state the following:

I have a legal or equitable interest in property to be acquired with public funds, either by purchase or condemnation.

The property is described as follows:

_____.

The nature, type, and amount of interest, including but not limited to percentage of ownership, I have in the property is:

_____.

The interest was acquired on _____ (*date*).

I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code.

Signed this _____ day of _____ (*month*), _____ (*year*).

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF _____

BEFORE ME, _____ (*here insert the name and character of the officer administering the oath*) on this day personally appeared _____ (*affiant*) known to me (or proved to me on the oath of _____ or through _____) (*description of identity card or other document*) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____ (*month*), _____ (*year*).

Notary Public in and for the state of Texas

NOTE: This affidavit should be filed with the county clerk(s) within ten days before the date on which the property is to be acquired, as provided by Government Code 553.002.

DBE

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
NEPOTISM

DBE
(LEGAL)

DEFINITION	In this policy, the term “appoint” includes appointing, confirming the appointment of, and voting to appoint or confirm the appointment of, a person.
NEPOTISM PROHIBITED	<p>Except as provided by this policy, a public official may not appoint a person to a position that is to be directly or indirectly compensated from public funds or fees of office if:</p> <ol style="list-style-type: none">1. The person is related to the public official by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree [see below]; or2. The public official holds the appointment or confirmation authority as a member of a local Board and the person is related to another member of the Board by blood or marriage within a prohibited degree. <p><i>Gov’t Code 573.002,.041; Atty. Gen. Op. JC-184 (2000)</i></p>
INDEPENDENT CONTRACTOR	<p>The nepotism law governs the hiring of an individual, whether the employee is hired as an individual or an independent contractor. <i>Atty. Gen. Op. DM-76 (1992)</i></p>
COMPENSATION OF PROHIBITED EMPLOYEE	<p>A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible person if the official knows the person is ineligible. <i>Gov’t Code 573.083</i></p>
CONSANGUINITY	<p>Two persons are related to each other by consanguinity (blood) if one is a descendant of the other or if they share a common ancestor. An adopted child is considered to be a child of the adoptive parents for this purpose. <i>Gov’t Code 573.022</i></p> <p>An individual’s relatives within the third degree by consanguinity are the individual’s:</p> <ol style="list-style-type: none">1. Parent or child (first degree);2. Brother, sister, grandparent, or grandchild (second degree); and3. Great-grandparent, great-grandchild, aunt or uncle (who is a sibling of a parent of the person), nephew or niece (who is a child of a brother or sister of the person) (third degree). <p><i>Gov’t Code 573.023(c)</i></p> <p>[See DBE(EXHIBIT)]</p>
HALF-BLOOD RELATIVES	<p>There is no distinction under the nepotism statute between half-blood and full-blood relations. Thus, half-blood relationships fall</p>

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
NEPOTISM

DBE
(LEGAL)

within the same degree as those of the full blood. *Atty. Gen. Op. LO-90-30 (1990)*

AFFINITY

Two persons are related to each other by affinity (marriage) if they are married to each other or if the spouse of one of the persons is related by consanguinity to the other person.

The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of the marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

Gov't Code 573.024

A husband and wife are related to each other in the first degree by affinity. For other relationships, the degree of affinity is the same as the degree of the underlying relationship by consanguinity. For example, if two persons are related to each other in the second degree by consanguinity, the spouse of one of the persons is related to the other person in the second degree by affinity.

A person's relatives within the second degree by affinity are:

1. The person's spouse;
2. Anyone related by consanguinity to the person's spouse within the first or second degree; and
3. The spouse of anyone related to the person by consanguinity within the first or second degree.

Gov't Code 573.025

EFFECT OF BOARD
MEMBER
RESIGNATION

All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified, i.e., sworn in. Until the vacancy created by a Board member's resignation is filled by a successor, the Board member continues to serve and have the duties and powers of office, and a relative within a prohibited degree of relationship is barred from employment. *Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Op. JM-636 (1987)*

EXCEPTIONS
CONTINUOUS
EMPLOYMENT
(‘GRANDFATHER
CLAUSE’)

The nepotism prohibitions do not apply to the appointment of a person to a position if the person is employed in the position immediately before the election or appointment of the public official to whom the person is related in a prohibited degree and that prior employment is continuous for at least:

1. Thirty days, if the public official is appointed; or
2. Six months, if the public official is elected.

Gov't Code 573.062(a)

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
NEPOTISM

DBE
(LEGAL)

ABSTENTION	<p>If an employee continues in a position under this exception, the public official to whom the employee is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, employment, reemployment, change in status, compensation, or dismissal of the employee, if the action applies only to the employee and is not taken regarding a bona fide class or category of employees. <i>Gov't Code 573.062(b)</i> [See DBE (EXHIBIT)]</p> <p>A "change in status" includes a reassignment within an organization, whether or not a change in salary level accompanies the reassignment. <i>Atty. Gen. Op. JC-193 (2000)</i></p> <p>For an action to be "taken with respect to a bona fide category of employees," the officeholder's action must be based on objective criteria, which do not allow for the preference or discretion of the officeholder. <i>Atty. Gen. Op. DM-46 (1991)</i></p>
TRADING	<p>A public official may not appoint a person to a position in which the person's services are under the public official's direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:</p> <ol style="list-style-type: none"><li data-bbox="552 1008 1435 1092">1. The person is related to another public official within the prohibited degree; and<li data-bbox="552 1102 1435 1239">2. The appointment would be carried out in whole or in partial consideration for the other public official's appointing a person who is related to the first public official within a prohibited degree. <p><i>Gov't Code 573.044</i></p>
FEDERAL FUNDS	<p>The rules against nepotism apply to employees paid with public funds, regardless of the source of those funds. Thus, the rules apply in the case of a teacher paid with funds from a federal grant. <i>Atty. Gen. L.A. No. 80 (1974)</i></p>
PENALTIES	<p>An individual who violates the nepotism prohibitions shall be removed from his or her position. <i>Tex. Gov't Code 573.081,.082</i></p> <p>An individual who violates Government Code 573.041 (Prohibition on Public Officials), 573.062(b) [see CONTINUOUS EMPLOYMENT and ABSTENTION] or 573.083 [see COMPENSATION OF PROHIBITED EMPLOYEE] commits an offense involving official misconduct. <i>Gov't Code 573.084</i></p>

DBE (Exhibit)

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
NEPOTISM

DBE
(EXHIBIT)

These illustrations depict the relationships that violate the nepotism law.

CONSANGUINITY Public official is prospective employee's:
(Blood) Kinship

First Degree	Parent	Child		
Second Degree	Grandparent	Grandchild	Sister/Brother	
Third Degree	Great-Grandparent	Great-Grandchild	Aunt/Uncle	Niece/Nephew

AFFINITY
(Marriage) Kinship

Public official's spouse is the prospective employee.

OR

Public official's spouse is prospective employee's:

OR

Prospective employee's spouse is the public official's:

First Degree	Parent	Child	
Second Degree	Grandparent	Grandchild	Sister/Brother

NOTE: The spouses of two persons related by blood are not by that fact related. The affinity chart supposes only one affinity relationship between the public official and prospective employee through either of their spouses.

DC

HIRING PRACTICES

DC
(LEGAL)

FORMER BOARD
MEMBER
EMPLOYMENT

The College District may not employ or contract with an individual who was a member of the Board of the College District before the first anniversary of the date the individual ceased to be a member of the Board. *Education Code 130.089*

EMPLOYEE
INFORMATION

The College District shall ensure that an employee properly completes section 1—"Employee Information and Verification"—on Form I-9 at the time of hire.

I-9 FORMS

The College District must verify employment eligibility, pursuant to the Immigration Reform and Control Act, and complete Form I-9 by the following dates:

1. Within three business days of initial hiring. If the College District hires an individual for employment for a duration of less than three business days, the College District must verify employment at the time of hire.

The College District shall not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.

When the College District rehires an individual, the College District may, in lieu of completing a new I-9, inspect a previously completed I-9 executed within three years of the date of rehire, to determine whether the individual is still eligible to work.

2. For an individual whose employment authorization expires, not later than the date of expiration.

8 CFR 274a.2(b)(1)(ii)- (iii), (vii)-(viii)

NEW HIRE
REPORTING

The College District shall furnish to the Directory of New Hires (Texas Attorney General's Office) a report that contains the name, address, and social security number of each newly hired employee. The report shall also contain the College District's name, address, and employer identification number.

The College District may also provide, at its option, the employee's date of hire, date of birth, expected salary or wages, and the College District's payroll address for mailing of notice to withhold child support.

The College District shall report new hire information on a Form W-4 or an equivalent form, by first class mail, telephone, electronically, magnetic media, or as determined by the College District and in a format acceptable to the attorney general.

DEADLINE

New hire reports are due:

HIRING PRACTICES

DC
(LEGAL)

1. Not later than 20 calendar days after the date the College District hires the employee; or
2. In the case of a College District transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

New hire reports shall be considered timely if postmarked by the due date or, if filed electronically, if received by the agency by the due date.

PENALTIES

A college district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105.

42 U.S.C. 653a (b)–(d); Family Code 234.101–.105; 1 TAC 55.303

SOCIAL SECURITY
NUMBERS

The College District shall not deny to any individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number.

EXCEPTIONS

The above provision does not apply to:

1. Any disclosure that is required by federal statute. The United States Internal Revenue Code provides that the social security number issued to an individual for purposes of federal income tax laws shall be used as the identifying number for taxpayers;
2. Any disclosure to a college district maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual; or
3. Any use for the purposes of establishing the identity of individuals affected by any tax, general public assistance, driver's license, or motor vehicle registration law within the College District's jurisdiction.

STATEMENT OF
USES

A college district that requests disclosure of a social security number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it.

5 U.S.C. 552a Note; PL 93-579, 7(b), 88 Stat. 1896 (1974)

CRIMINAL HISTORY
RECORDS OF
CERTAIN APPLICANTS

The College District is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person who is an applicant for a security-sensitive position at the College District. The College District may deny employment to an applicant for

a security-sensitive position who fails to provide a complete set of fingerprints upon request.

“Security-sensitive position” means an employment position held by an employee who:

1. Handles currency;
2. Has access to a computer terminal;
3. Has access to the personal information or identifying information of another person;
4. Has access to the financial information of the College District or another person;
5. Has access to a master key; or
6. Works in a location designated as a security-sensitive area.

A security-sensitive position shall be so identified in the job description and advertisement for the position.

The criminal history record information may be used only for the purpose of evaluating applicants for employment in security-sensitive positions.

The criminal history record information may not be released or disclosed to any person except on court order or with the consent of the person who is the subject of the criminal history record information.

All criminal history record information shall be destroyed by the chief of police of the College District as soon as practicable after the individual becomes employed in a security-sensitive position and after the expiration of any probationary term of employment or, if the individual is not hired for a security-sensitive position, after the information is used for its authorized purpose.

Gov't Code 411.094; Education Code 51.215

A college district that is authorized, as described above, to obtain from DPS criminal history record information maintained by DPS that relates to another person is authorized to:

1. Obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to that person; or
2. Obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov't Code 411.087(a)

HIRING PRACTICES

DC
(LEGAL)

RETIREEES

The College District may employ a person who has retired under the Teacher Retirement System (Subtitle C, Title 8, Government Code) or the optional retirement program (Chapter 830, Government Code) if:

1. The Board determines that the employment is in the best interest of the College District; and
2. The person has been retired for at least 30 days before the effective date of the employment, except that a person retired under the optional retirement program may be rehired after retirement without a break in service.

The Board may pay a person employed an amount considered by the Board to be appropriate, notwithstanding any other provision of law.

Education Code 51.964

EMPLOYMENT
PREFERENCE FOR
FORMER FOSTER
CHILDREN

An individual who was under the permanent managing conservatorship of the Department of Family and Protective Services on the day preceding the individual's 18th birthday and who is 25 years of age or younger is entitled to preference in employment with the College District over other applicants for the same position who do not have a greater qualification.

EXCEPTIONS

This preference does not apply to the position of private secretary or deputy of an official or department, or to an individual holding a strictly confidential relation to the employing officer.

CONFLICT WITH
FEDERAL LAW OR
GRANT

To the extent that this preference conflicts with federal law or a limitation provided by a federal grant to the College District, this preference shall be construed to operate in harmony with federal law or limitation of the federal grant.

GRIEVANCE
PROCESS

An individual entitled to an employment preference under Government Code Chapter 672 who is aggrieved by a decision of the College District relating to hiring the individual, or relating to retaining the individual if the College District reduces its workforce, may appeal the decision by filing a written complaint with the governing body of the College District. The Board of the College District shall respond to such a complaint not later than the 15th business day after the date the Board receives the complaint. The Board may render a different hiring decision than the decision that is the subject of the complaint if the governing body determines that the employment preference under Government Code Chapter 672 was not applied.

Gov't Code 672

HIRING PRACTICES

DC
(LEGAL)

CAMPUS PROGRAMS
FOR MINORS

The College District may not employ an individual in a position involving contact with campers at a campus program for minors unless:

1. The individual submits to the College District, or the campus program for minors has on file, documentation that verifies the individual within the preceding two years successfully completed the training and examination program on sexual abuse and child molestation; or
2. The individual successfully completes the campus program for minors' training and the examination program on sexual abuse and child molestation, which must be approved by the department, during the individual's first five days of employment by the campus program for minors, and the campus program issues and files documentation verifying successful completion.

The requirement does not apply to an individual who is a student enrolled at the College District, or at which the campus program is conducted, and whose contact with campers is limited to a single class of short duration.

A college district that operates a campus program for minors must:

1. Submit to the Texas Department of State Health Services (TDSHS), on the form and within the time prescribed by TDSHS, verification that each employee of the campus program for minors has complied with the training and examination requirements and the fee assessed by TDSHS; and
2. Retain in the operator's records a copy of the required documentation for each employee until the second anniversary of the examination date.

"Campus program for minors" means a program that:

1. Is operated by or on the campus of an institution of higher education or a private or independent institution of higher education;
2. Offers recreational, athletic, religious, or educational activities for at least 20 campers who are not enrolled at the institution; and attend or temporarily reside at the camp for all or part of at least four days; and
3. Is not a day camp or youth camp as defined by Health and Safety Code 141.002 or a facility or program required to be licensed by the Department of Family and Protective Services.

Education Code 51.976

HIRING PRACTICES

DC
(LEGAL)

CONSUMER CREDIT
REPORTS
DEFINITIONS

“Adverse action” includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

“Consumer report” includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person’s eligibility for employment.

“Consumer reporting agency” is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

“Employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

15 U.S.C. 1681a

OBTAINING
REPORTS

The College District may not procure a consumer report for employment purposes unless:

1. The College District has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and
2. The applicant or employee has authorized in writing the procurement of the report.

ADVERSE ACTION

Before taking any adverse action based on the report, the College District shall provide the applicant or employee a copy of the report and a written description of the person’s rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

15 U.S.C. 1681b(b)(2)-(3)

Note: The following provisions apply to a college district that uses consumer reports.

ADDRESS
DISCREPANCIES

“Notice of address discrepancy” means a notice sent to a user by a consumer reporting agency that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.

A college district must develop and implement reasonable policies and procedures designed to enable the college district, when it receives a notice of address discrepancy, to form a reasonable belief

that a consumer report relates to the consumer about whom it has requested the report.

If a college district regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, the college district must also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which the college district has reasonably confirmed is accurate, to the consumer reporting agency.

16 CFR 641.1

DISPOSAL OF
RECORDS

A college district must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

“Dispose” includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

16 CFR 682.3

DDA

CONTRACT AND AT-WILL EMPLOYMENT
TERM CONTRACTS

DDA
(LEGAL)

PROPERTY INTEREST A contract of employment with the College District creates a property interest in the position only for the period of time stated in the contract. Such a contract creates no property interest of any kind beyond the period of time stated in the contract. Perry v. Sindermann, 408 U.S. 593 (1972); Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972)

ADMINISTRATOR
CONTRACTS The Board may enter into an employment contract with an administrator that is to be paid in whole or in part from appropriated funds only if, before the date the contract is executed, the Board determines that the contract is in the best interest of the College District.

A contract entered into by the Board may not:

1. Provide for employment for more than three years;
2. Allow for severance or other payments on the termination of the contract to exceed an amount equal to the discounted net present cash value of the contract on termination at a market interest rate agreed upon in the contract;
3. Allow for development leave that is inconsistent with Education Code 51.105; or
4. Award tenure in any way that varies from the College District's general policy on the award of tenure.

The College District may not pay a salary to a person who is re-assigned from an administrative position to a faculty or other position at the College District that exceeds the salary of other persons with similar qualifications performing similar duties.

Education Code 51.948

“Administrator” means a person who has significant administrative duties relating to the operation of the College District, including the operation of a department, college, program, or other subdivision of the institution. *Education Code 51.948(g)(1)*

FACULTY CONTRACTS Except as provided below, the College District that determines it is in its best interest to reappoint a faculty member for the next academic year shall offer the faculty member a written contract for that academic year not later than 30 days before the first day of the academic year.

For the purposes of Education Code 51.943, the College District is not required to provide an annual contract to tenure or tenure-track faculty, but must provide tenure and tenure-track faculty with any written notification required in the College District's tenure policy of a change in a term of employment according to the policies of the College District, but no later than the 30th day prior to the change.

If the College District is unable to comply, the College District shall:

1. Provide the faculty member with written notification that the College District is unable to comply;
2. Include in the written notification reasons for its inability to comply; and
3. Specify in the written notification a time by which it will offer a written contract to the faculty member for the applicable academic year.

If the College District does not offer the faculty member a written contract before the 61st day after the first day of the academic year and the College District retains the faculty member for that academic year without a written contract, the College District must retain the faculty member for that academic year under terms and conditions, including terms governing the faculty member's compensation, that are at least as favorable to the faculty member's employment for the preceding academic year, unless the College District and the faculty member subsequently enter into a different written contract.

Education Code 51.943 does not prohibit the College District from entering into a contract with a faculty member for a period longer than an academic year.

Nothing in Education Code 51.943 shall be deemed to provide a faculty member who does not hold tenure additional rights, privileges, or remedies or to provide an expectation of continued employment beyond the period of a faculty member's current contract.

"Contract" means an agreement between the College District or its authorized agent and a faculty member that establishes the terms of the faculty member's employment, including the faculty member's responsibilities and salary, for an academic year.

"Faculty member" means a person who is employed full time by the College District as a member of the faculty whose primary duties include teaching or research. The term does not include:

1. A person employed in the classified personnel system of the College District or a person employed in a similar type of position if the College District does not have a classified personnel system;
2. A person who holds faculty rank but who spends a majority of the person's time for the College District engaged in managerial or supervisory activities, including a chancellor, vice chan-

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CONTRACT AND AT-WILL EMPLOYMENT
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cellor, president, vice president, provost, associate or assistant provost, dean, or associate or assistant dean.

Education Code 51.943

DDC

CONTRACT AND AT-WILL EMPLOYMENT
AT-WILL EMPLOYMENT

DDC
(LEGAL)

The employment-at-will doctrine is the law of Texas, under which an employer has no duty to an employee regarding continuation of employment. Jones v. Legal Copy Inc., 846 S.W.2d 922 (Tex. App.—Houston [1st Dist.] 1993)

The employment-at-will doctrine places no duties on an employer regarding an employee's continued employment and thus bars contract and tort claims based on the decision to discharge an employee. Sabine Pilot Serv., Inc. v. Hauck, 687 S.W.2d 733 (Tex. 1985)

In Texas, at-will employment is presumed unless shown otherwise. Gonzales v. Galveston Indep. Sch. Dist., 865 F. Supp. 1241 (S.D. Tex. 1994)

Employment for an indefinite term may be terminated at will and without cause, except as otherwise provided by law. Garcia v. Reeves County, Texas, 32 F.3d 200 (5th Cir. 1994); Irby v. Sullivan, 737 F.2d 1418 (5th Cir. 1984); Winters v. Houston Chronicle Pub. Co., 795 S.W.2d 723 (Tex. 1990)

EXCEPTION

An at-will employee cannot be discharged if the sole reason for the discharge was that the employee refused to perform an illegal act. Sabine Pilot Serv., Inc. v. Hauck, 687 S.W.2d 733 (Tex. 1985) [See DG, DGA, DGB for other exceptions]

DISMISSAL
PROCEDURE

An at-will employment relationship, standing alone without benefit of recognized exception, triggers no due process requirement or right. Mott v. Montgomery County, Tex., 882 S.W.2d 635 (Tex. App.—Beaumont, 1994)

Termination of employment is a condition of work that is a proper subject for the grievance process. Fibreboard Paper Products Corp. v. Nat'l Labor Relations Bd., 379 U.S. 203 (1964); Sayre v. Mullins, 681 S.W.2d 25 (Tex. 1984) [See DGBA]

DE

COMPENSATION AND BENEFITS

DE
(LEGAL)

The governing board of each institution of higher education, including each college district, shall establish faculty compensation policies that, to the greatest extent possible, provide the faculty with an average salary and benefits at least equal to the average of that provided by similar institutions nationwide having a similar role and mission.

The Coordinating Board shall include information relating to national average salary and benefits and shall correlate that information to Texas schools having similar roles and missions, in the master plan for higher education and in the appropriate reports to the legislature.

Education Code 51.908

DEA

COMPENSATION AND BENEFITS
SALARIES AND WAGES

DEA
(LEGAL)

FAIR LABOR
STANDARDS ACT

Unless an exemption applies, each employer, including each college district, shall pay each of its employees not less than minimum wage for all hours worked. *29 U.S.C. 206(a)*

MINIMUM WAGE
AND OVERTIME

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 worked in excess of 40 in any workweek, in accordance with 29 C.F.R. Part 778. *29 U.S.C. 207(a)(1); 29 C.F.R. 778*

BREAKS FOR
NONEXEMPT
EMPLOYEES

Rest periods of up to 20 minutes must be counted as hours worked. Coffee breaks or time for snacks are rest periods, not meal periods. *29 C.F.R. 785.18, .19(a)*

Bona fide meal periods of 30 minutes or more are not counted as hours worked if the employee is completely relieved from duty. The employee is not relieved from duty if the employee is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his or her desk is working while eating. It is not necessary that an employee be permitted to leave the premises if the employee is otherwise completely freed from duties during the meal period. *29 C.F.R. 785.19*

BREAKS FOR
NURSING
MOTHERS

An employer shall provide a nonexempt employee a reasonable break to express breast milk, each time the employee needs to express breast milk for her nursing child, for one year after the child's birth. An employer shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

An employer is not required to compensate the employee receiving reasonable break time for any work time spent for such purpose.

An employer that employs fewer than 50 employees is not subject to these requirements if the requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

29 U.S.C. 207(r)

COMPENSATORY
TIME
ACCRUAL

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

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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.

29 U.S.C. 207(o)(1)-(2), (3)(A); 29 C.F.R. 553.23(c)(1); Christensen v. Harris County, 529 U.S. 576 (2000)

PAYMENT FOR
ACCRUED TIME

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). *29 U.S.C. 207(o)(3)(B), (4)*

USE

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 an employer from compelling the use of accrued compensatory time.

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

EXEMPT
EMPLOYEES

The minimum wage and overtime provisions do not apply to any employee employed in a bona fide executive, administrative, or professional capacity. *29 U.S.C. 213(a)(1)*

ADMINISTRATIVE
EMPLOYEE

The term "employee employed in a bona fide administrative capacity" shall mean any employee:

1. Compensated on a salary or fee basis at a rate of not less than \$455 per week, exclusive of board, lodging, or other facilities;
2. Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and

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3. Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

29 C.F.R. 541.200(a)

ACADEMIC
ADMINIS-
TRATOR

The term "employee employed in a bona fide administrative capacity" also includes an employee:

1. Who is compensated for services on a salary or fee basis at a rate of not less than \$455 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the educational establishment by which employed; and
2. Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

"Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

Employees engaged in academic administrative functions include:

1. Department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, and the like;
2. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and
3. Other employees with similar responsibilities.

Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers, or dietitians do not perform academic administrative functions, although such employees may qualify for another exemption.

29 C.F.R. 541.204

PROFESSIONAL
EMPLOYEE

An "employee employed in a bona fide professional capacity" shall mean any employee:

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1. Compensated on a salary or fee basis at a rate of not less than \$455 per week, exclusive of board, lodging, or other facilities; and
2. Whose primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

29 C.F.R. 541.300(a)

FACULTY

The term “employee employed in a bona fide professional capacity” also means any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term “educational establishment” means an institution of higher education or other educational institution. The salary basis requirements do not apply to teaching professionals.

Exempt teachers include: regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools’ responsibility in contributing to the educational development of the student.

The possession of an elementary or secondary teacher’s certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. However, a teacher’s certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

29 C.F.R. 541.204(b), .303

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OTHER
PROFES-
SIONALS

The professional employee exemption also applies to learned professionals, as described by 29 C.F.R. 541.301; creative professionals, as described by 29 C.F.R. 541.302; and employees engaged in the practice of law or medicine, as described by 29 C.F.R. 541.304.

COMPUTER
EMPLOYEES

Computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field are eligible for exemption as professionals. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.

The exemption applies to any computer employee compensated on a salary or fee basis at a rate of not less than \$455 per week, exclusive of board, lodging or other facilities and to any computer employee compensated on an hourly basis at a rate not less than \$27.63 an hour. In addition, the exemption applies only to computer employees whose primary duty consists of:

1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
2. The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
3. The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties that qualify the employees for exemption under 29 C.F.R. Part 541, Subpart B or Subpart C. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific, or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion, or other change of status of the other programmers are

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given particular weight, generally meets the duties requirements for the executive exemption.

29 C.F.R. 541.400, .402

SALARY BASIS To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis as described in 29 C.F.R. 541.600, unless the employee is a teacher or the employee holds a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof. Subject to the exceptions listed in 29 C.F.R. 541.602, 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 exempt employees on a salary basis. *29 C.F.R. 541.600, .602(a), .603*

HIGHLY COMPENSATED EMPLOYEES An employee with total annual compensation, as described by 29 C.F.R. 541.601, of at least \$100,000 is deemed exempt if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in 29 C.F.R. Part 541, Subparts B, C, or D. *29 C.F.R. 541.601*

PARTIAL-DAY DEDUCTIONS An employee of a public agency who otherwise meets the salary basis requirements shall not be disqualified from exemption on the basis that the employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and that requires the employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because:

1. Permission for its use has not been sought or has been sought and denied;
2. Accrued leave has been exhausted; or
3. The employee chooses to use leave without pay.

Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the work

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week in which the furlough occurs and for which the employee's pay is accordingly reduced.

29 C.F.R. 541.710

SAFE HARBOR
POLICY

If an employer has a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the college district will not lose the deduction unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

The best evidence of a clearly communicated policy is a written policy that was distributed to employees before the improper pay deductions by, for example, providing a copy of the policy to employees upon hire, publishing the policy in an employee handbook, or publishing the policy on the employer's intranet.

29 C.F.R. 541.603(d)

WAGE AND HOUR
RECORDS

Every employer shall maintain and preserve payroll or other records for nonexempt employees containing the information required by the regulations under the Fair Labor Standards Act. *29 C.F.R. 516.2(a)*

EMPLOYEE WITH
MULTIPLE
APPOINTMENTS

A full-time employee of an institution of higher education, including a college district, who has appointments to more than one position at the same institution may receive pay for working more than 40 hours in a week if the institution determines that pay in lieu of compensatory time is in the best interests of the institution. *Education Code 51.963*

PAY INCREASES
GENERALLY

A college district shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. *Tex. Const. Art. III, Sec. 53*

MERIT SALARY
INCREASES

An institution of higher education, including a college district, may grant merit salary increases, including one-time merit payments, to employees described by this section. A merit salary increase made under Education Code 51.962 is compensation for purposes of Government Code Chapter 659, and salary and wages and member compensation for purposes of Government Code Title 8. An institution of higher education may pay a merit salary increase from any funds. Before awarding a merit salary increase, an institution of higher education must adopt criteria for the granting of merit salary increases. To be eligible for a merit salary increase, an employee must have been employed by the institution of higher education for the six months immediately preceding the effective date

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of the increase and at least six months must have elapsed since the employee's last merit salary increase.

For employees employed by the institution of higher education for more than six months, the requirement that six months elapse between merit salary increases does not apply to a one-time merit payment if the chief administrative officer of the institution of higher education determines in writing that the one-time merit payment is made in relation to the employee's performance during a natural disaster or other extraordinary circumstance.

Education Code 51.962

SALARY ADVANCES
AND LOANS

A political subdivision, including a college district, shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. *Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)*

NOTICE REGARDING
EARNED INCOME TAX
CREDIT

Not later than March 1 of each year, each employer, including every college district, shall provide to the employer's employees information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

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 U. S. first class mail.

An employer may not satisfy this requirement solely by posting information in the workplace.

In addition, an employer may provide employees with IRS publications and forms, or information prepared by the comptroller, relating to the earned income tax credit.

Labor Code 104.001–.003

PAYDAY LAW
EXEMPTION

The Texas Payday Law does not apply to the state or a political subdivision. *Labor Code 61.003*

DEB

COMPENSATION AND BENEFITS
FRINGE BENEFITS

DEB
(LEGAL)

DUTY WEAPON,
BADGE, AND UNIFORM

On the death of a peace officer employed by a political subdivision of the state or institution of higher education, including a college district, the employing governmental entity shall provide, at no cost, the deceased person's duty weapon, if any, and badge to the individual's designated beneficiary, or estate if the individual did not designate a beneficiary. A governmental entity that employs the peace officer shall provide the individual a form on which the individual may designate the individual's beneficiaries for purposes of this section. If a peace officer or other employee described by Government Code 615.103 dies and is to be buried in the individual's uniform, the employing governmental entity shall provide the uniform at no cost. *Gov't Code 615.003, .102-.103*

SURVIVOR BENEFITS
NOTICE TO
EMPLOYEES
RETIREMENT
SYSTEM

As soon as practicable after the death of an individual listed under Government Code 615.003, including an individual elected, appointed, or employed as a peace officer by a college district or other political subdivision of the state, that is claimed to meet the requirements of Government Code 615.021(1), the individual's employing entity shall furnish to the board of trustees of the Employees Retirement System of Texas (ERS) proof of the death in the form and with additional evidence and information required by the board. *Gov't Code 615.003, .041*

STATE PAYMENT OF
ASSISTANCE

A survivor of an individual listed under Government Code 615.003, including an individual elected, appointed, or employed as a peace officer by a college district or other political subdivision of the state, is eligible for the payment of assistance from the state, as described by Government Code 615.022, if the listed individual died as a result of a personal injury sustained in the line of duty in the individual's position; and the survivor is the surviving spouse of the listed individual; a surviving child of the listed individual, if there is no surviving spouse; or a surviving parent of the listed individual, if there is no surviving spouse or child. *Gov't Code 615.003, .021(a), .022*

CONTINUATION OF
HEALTH
INSURANCE

A survivor of an individual listed under Government Code 615.071, including an individual elected, appointed, or employed as a peace officer by a college district or other political subdivision of the state, is entitled to purchase or continue to purchase health insurance coverage under Government Code Chapter 615, Subchapter D if the listed individual died as a result of a personal injury sustained in the line of duty in the individual's position; and the survivor is the surviving spouse of the listed individual, as described by Government Code 615.073; or a dependent of the listed individual, as described by Government Code 615.073. *Gov't Code 615.003, .071-.074*

COMPENSATION AND BENEFITS
FRINGE BENEFITS

DEB
(LEGAL)

NOTICE

An employing entity shall provide written notice to an eligible survivor of the survivor's rights under Government Code Chapter 615, Subchapter D not later than the tenth day after the date of the decedent's death. Not later than the 150th day after the decedent's death, the employing entity shall send a subsequent written notice by certified mail to any eligible survivor who has not already elected to purchase or continue to purchase coverage on or before that date.

If an eligible survivor is a minor child, the employing entity shall also, at the same time, provide the notice to the child's parent or guardian, unless, after reasonable effort, the parent or guardian cannot be located.

Gov't Code 615.075

DEC

Note: This policy addresses leaves in general. For provisions regarding the Family and Medical Leave Act (FMLA), including family and medical leave for an employee seeking leave because of a relative's military service, see DECA. For provisions addressing leave for an employee's military service, see DECB.

The governing board of each college or university supported in whole or in part by state funds shall issue regulations concerning the authorized and unauthorized absence from duty of faculty members, as defined by Education Code 51.101(3) [see DEVELOPMENT LEAVES OF ABSENCE, below], including teaching assistants and research assistants.

Each governing board shall file a copy of these regulations concerning employee absences with the Coordinating Board. Each governing board shall file any amendment to its regulations with the Coordinating Board not later than 30 days after the effective date of the amendment.

Education Code 51.108

PREGNANCY

Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. *29 C.F.R. 1604.10(b)*

RELIGIOUS
OBSERVANCES

An employer, including a college district, shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of the employer's business. An employer has met its obligation when it demonstrates that it has offered a reasonable accommodation to the employee. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship. *42 U.S.C. 2000e(j), 2000e-2(a); 29 C.F.R. 1605.2; Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986)*

RELIGIOUS HOLY
DAYS

An institution of higher education, including a college district, may not discriminate against or penalize in any way a faculty member who is absent from work for the observance of a religious holy day and gives proper notice of that absence if the customary and generally applicable educational practices of the institution permit general personal absence by faculty members. If personal absence is customarily penalized, the penalty for absence due to observance

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of a religious holy day under this section shall be forfeiture of one day's pay equivalent for each day of absence.

"Proper notice" means that the faculty member shall provide a listing of religious holy days to be observed during the semester to the chairman of the department and shall provide notice of such days in advance to all students whose class would be canceled due to the faculty member's absence. This notice shall be in writing and shall be personally delivered to the chairman of the department, receipt therefore being acknowledged and dated by the chairman, or shall be sent by certified mail return receipt requested, addressed to the chairman.

A "religious holy day" shall be defined as a holy day observed by a religion whose places of worship are exempt from property taxation under Tax Code 11.20.

Education Code 51.925

COMPLIANCE WITH A
SUBPOENA

An employer, including a college district, may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. *Labor Code 52.051(a)*

DEVELOPMENT
LEAVES OF ABSENCE

For the purposes of this policy on development leaves, "faculty member" shall mean a person who is employed by an institution of higher education, including a college district, on a full-time basis as a member of the faculty or staff and whose duties include teaching, research, administration, including professional librarians, or the performance of professional services. However, the term does not include a person employed in a position that is in the institution's classified personnel system or a person employed in a similar type of position if the institution does not have a classified personnel system. *Education Code 51.101*

GRANTING LEAVES
OF ABSENCE

On the application of a faculty member, the governing board of an institution of higher education may grant a faculty development leave of absence for study, research, writing, field observations, or other suitable purpose, if:

1. The faculty member is eligible by reason of service.
2. The purpose for which a faculty development leave is sought is one for which a faculty development leave may be granted.
3. Granting the leave will not place on faculty development leave a greater number of faculty members than that authorized.

The governing board by regulation shall establish a procedure whereby the applications for faculty development leaves of ab-

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sence are received by a committee elected by the general faculty for evaluation and whereby the faculty committee shall then make recommendations to the chief executive officer of the institution of higher education, who shall then make recommendations to the governing board as to which applications should be granted.

Education Code 51.103

SERVICE REQUIRED A faculty member shall be eligible to be considered for a faculty development leave when he or she has served as a member of the faculty in the same institution of higher education for at least two consecutive academic years. This service may be as an instructor or as an assistant, associate, or full professor, or an equivalent rank, and must be full-time academic duty but need not include teaching. *Education Code 51.104*

**DURATION AND
COMPENSATION
ADDITIONAL
EMPLOYMENT** The governing board may grant to a faculty member development leave either for one academic year at one-half of the faculty member's regular salary or for one-half academic year at full regular salary. Payment of salary to the faculty member on a development leave may be made from the funds appropriated by the legislature specifically for that purpose or from such other funds as might be available to the institution.

A faculty member on a development leave may accept a grant for study, research, or travel from any institution of higher education or from a charitable, religious, or educational corporation or foundation, from any business enterprise, or from any federal, state, or local governmental agency. An accounting of all grants shall be made to the governing board of the institution by the faculty member.

A faculty member on development leave may not accept employment from any other person, corporation, or government, unless the governing board determines that the employment would be in the public interest to do so and expressly approves the employment.

Education Code 51.105

**NUMBER ON LEAVE
AT ONE TIME** No more than six percent of the faculty members of any institution of higher education may be on faculty development leave at any one time. *Education Code 51.106*

A faculty member on faculty development leave shall continue to be a member of the Teacher Retirement System of Texas or of the Optional Retirement Program, or of both, just as any other faculty member on full-time duty.

The institution of higher education shall cause to be deducted from the compensation paid to a member of the faculty on faculty development leave the deposit and membership dues required to be paid by him to the Teacher Retirement System of Texas or to the Optional Retirement Program, or both, the contribution for Old Age and Survivors Insurance, and any other amounts required or authorized to be deducted from the compensation paid any faculty member. [See CDDA]

A member of the faculty on faculty development leave is a faculty member for purposes of participating in the programs and of receiving the benefits made available by or through the institution of higher education or the state to faculty members.

Education Code 51.107

ADMINISTRATOR
DEVELOPMENT
LEAVE

An employment contract entered into by the governing board of an institution of higher education with an administrator that is to be paid in whole or in part from appropriated funds may not allow for development leave that is inconsistent with Education Code 51.105.

An institution of higher education must require an administrator who receives development leave to:

1. Return to work at the institution for an amount of time equal to the amount of time the administrator received for development leave; or
2. Repay the institution for all the costs of the development leave, including the amount of the administrator's salary, if any, paid during the leave.

Notwithstanding Education Code 51.948(b)(3), the governing board of an institution may grant development leave at the faculty member's full, regular salary for one year to a faculty member who has held an administrative position at the institution for more than four years.

"Administrator" means a person who has significant administrative duties relating to the operation of the institution, including the operation of a department, college, program, or other subdivision of the institution.

"Contract" includes a letter of agreement or letter of understanding.

Education Code 51.948(a)-(b), (d), (f)-(g)

ABSENCE CONTROL

Uniform enforcement of a reasonable absence-control rule is not retaliatory discharge. For example, an employer that terminates an employee for violating a reasonable absence-control provision

cannot be liable for retaliatory discharge as long as the rule is uniformly enforced. *Continental Coffee Products Co. v. Cazarez*, 937 S.W.2d 444 (Tex. 1996) (workers' compensation discrimination case); *Texas Division-Tranter, Inc. v. Carrozza*, 876 S.W.2d 312 (Tex. 1994) (workers' compensation discrimination case); *Swearingen v. Owens-Corning Fiberglas Corp.*, 968 F.2d 559 (5th Cir. 1992) (workers' compensation discrimination case); *Howell v. Standard Motor Prods., Inc.*, No. 4:99-CV-987-E, 2001 WL 912387, (N.D. Tex. Aug. 10, 2001) (Family and Medical Leave Act case); *Specialty Retailers v. DeMoranville*, 933 S.W.2d 490 (Tex. 1996) (age discrimination case); *Gonzalez v. El Paso Natural Gas Co.*, EP-81-CA-323, 1986 WL 4796, No. (W.D. Texas Mar. 5, 1986) (sex discrimination case)

[Some employees may have protected status even after the expiration of all other leave. See CKE and DAA]

DECA

Note: This policy summarizes the Family and Medical Leave Act (FMLA) and implementing regulations, including family and medical leave for an employee seeking leave because of a relative's military service. For provisions on leaves in general, see DEC. For provisions addressing leave for an employee's military service, see DECB.

This introductory page outlines the contents of this policy on the FMLA. See the following sections for statutory provisions on:

SECTION I	General Provisions	pages 2 – 7
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	3. Qualifying reasons for leave	
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SECTION I: GENERAL PROVISIONS

COVERED EMPLOYER Public agencies, including college districts, are “covered employers”, without regard to the number of employees employed. Employers covered by the FMLA include any person who acting, directly or indirectly, in the interest of a covered employer to any of the employees of the public agency employer. *29 U.S.C. 2611(4); 29 C.F.R. 825.102, .104(a)*

“ELIGIBLE EMPLOYEE” An “eligible employee” is an employee of a covered employer who:

1. Has been employed by the employer for at least 12 months. The 12 months need not be consecutive, subject to 29 C.F.R. 825.110(b);
2. Has been employed for at least 1,250 hours of service with such employer during the 12 months immediately preceding the commencement of leave; and
3. Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.

29 U.S.C. 2611(2); 29 C.F.R. 825.102, .110

[An employer that has no eligible employees must comply with the requirements at GENERAL NOTICE, below.]

QUALIFYING
REASONS FOR LEAVE

Employers covered by the FMLA are required to grant leave to eligible employees:

1. For the birth of a son or daughter, and to care for the newborn child;
2. For placement with the employee of a son or daughter for adoption or foster care. [For the rules regarding leave for, “adoption” and “foster care,” see 29 C.F.R. 825.121];
3. To care for the employee's spouse, son, daughter, or parent with a serious health condition;
4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job;
5. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status); and
6. To care for a covered servicemember with a serious injury or illness incurred in the line of duty if the employee is the

spouse, son, daughter, parent, or next of kin of the covered servicemember.

29 U.S.C. 2612(a); 29 C.F.R. 825.112

For provisions regarding treatment for substance abuse, see 29 C.F.R. 825.119.

QUALIFYING
EXIGENCY

An eligible employee may take FMLA leave while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty) for one or more of the following qualifying exigencies, as detailed in 29 C.F.R. 825.126:

1. Short-notice deployment.
2. Military events and related activities.
3. Childcare and school activities.
4. Financial and legal arrangements.
5. Counseling.
6. Rest and recuperation.
7. Post-deployment activities.
8. Parental care.
9. Additional activities, provided that the employer and employee agree that the leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

29 C.F.R. 825.126

PREGNANCY OR
BIRTH

Both the mother and father are entitled to FMLA leave for the birth of their child and to be with the healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. In addition, the mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. The mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health-care provider during the absence, and even if the absence does not last for more than three consecutive calendar days. The husband is entitled to FMLA leave if needed to care for his pregnant spouse who is incapacitated during her prenatal care or following the birth of a child if the spouse has a serious health condition. [For the definition of "needed to care for," see 29 C.F.R. 825.124]. *29 C.F.R. 825.120*

DEFINITIONS	
“ADOPTION”	“Adoption” means legally and permanently assuming the responsibility of raising a child as one’s own. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA leave. 29 C.F.R. 825.112(f)
“COVERED ACTIVE DUTY OR CALL TO COVERED ACTIVE DUTY STATUS”	“Covered active duty or call to covered active duty status” means: <ol style="list-style-type: none">1. In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and2. In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation, as described by 29 C.F.R. 825.102. 29 C.F.R. 825.102, .122(a), .126(a)
“COVERED SERVICEMEMBER”	“Covered servicemember” means: <ol style="list-style-type: none">1. A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a serious injury or illness; or2. A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
“COVERED VETERAN”	“Covered veteran” means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. 29 C.F.R. 825.102, .122(a), .127(b)
“FOSTER CARE”	“Foster care” means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the state as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves an agreement between the state and the foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, state action is involved in the removal of the child from parental custody. 29 C.F.R. 825.122(g)

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"MILITARY CAREGIVER LEAVE"	"Military caregiver leave" means leave taken to care for a covered servicemember with a serious injury or illness under the FMLA. 29 C.F.R. 825.102
"NEXT OF KIN OF A COVERED SERVICEMEMBER"	"Next of kin of a covered servicemember" means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. 29 C.F.R. 825.102, .122(e), .127(d)(3)
"PARENT"	"Parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents "in law." 29 C.F.R. 825.102, .122(c)
"PARENT OF A COVERED SERVICEMEMBER"	"Parent of a covered servicemember" means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law." 29 C.F.R. 825.102, .122(j), 127(d)(2)
"SERIOUS HEALTH CONDITION"	"Serious health condition" means an illness, injury, impairment or physical or mental condition that involves inpatient care as defined in 29 C.F.R. 825.114 or continuing treatment by a health-care provider as defined in 29 C.F.R. 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of 29 C.F.R. 825.113 are met. 29 C.F.R. 825.102

“SERIOUS INJURY
OR ILLNESS”

“Serious injury or illness” means:

1. In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
2. In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:
 - a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating;
 - b. A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave;
 - c. A physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
 - d. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the U.S. Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

29 C.F.R. 825.102, .127(c)

“SON OR
DAUGHTER”

“Son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, as defined at 29 C.F.R. 825.122(d)(3), who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability,” as defined at 29 C.F.R.

825.122(d)(1)–(2), at the time that FMLA leave is to commence.
29 C.F.R. 825.102, .122(d)

“SON OR
DAUGHTER OF A
COVERED
SERVICEMEMBER”

“Son or daughter of a covered servicemember” means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. *29 C.F.R. 825.102, .122(h), .127(d)(1).*

“SON OR
DAUGHTER ON
COVERED ACTIVE
DUTY OR CALL TO
COVERED ACTIVE
DUTY STATUS”

“Son or daughter on covered active duty or call to covered active duty status” means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to active duty status, and who is of any age. *29 C.F.R. 825.102, .122(h), .126(a)(5)*

“SPOUSE”

“Spouse” means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized. *29 C.F.R. 825.102, .122(b)*

SECTION II: LEAVE ENTITLEMENT AND USE

AMOUNT OF LEAVE

Except in the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during a 12-month period for any one or more of the qualifying reasons.

A husband and wife who are employed by the same employer, including a college district, may be limited to a combined total of 12 weeks of FMLA leave during any 12-month period if leave is taken for the birth of a son or daughter or to care for the child after birth, the placement of a child for adoption or foster care or to care for the child after placement, or to care for a parent with a serious health condition.

29 U.S.C. 2612(a), (f); 29 C.F.R. 825.120(a)(3), .200–.201

DETERMINING THE
12-MONTH PERIOD

Except with respect to military caregiver leave, 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, 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.

29 C.F.R. 825.200(b)

MILITARY
CAREGIVER LEAVE

An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. The single 12-month period is measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins, regardless of the method used by the employer to determine the employee's 12 workweeks of leave entitlement for other FMLA leaves. During the single 12-month period, an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. *29 U.S.C. 2612(a)(3)-(4); 29 C.F.R. 825.127(c), .200(f)-(g)*

The leave entitlement is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single 12-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period. *29 C.F.R. 825.127(e)(2)*

A husband and wife who are eligible for FMLA leave and employed by the same employer may be limited to a combined total of 26 weeks of FMLA leave during the single 12-month period if leave is taken for the birth of a son or daughter or to care for the child after birth, for the placement of a child for adoption or foster care or to care for the child after placement, to care for a parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness. *29 C.F.R. 825.127(f)*

HOLIDAYS,
SUMMER
VACATION, AND
OTHER BREAKS

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the em-

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employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing for several weeks for the Christmas/New Year holiday or an employer closing the plant for retooling or repairs), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement. *29 C.F.R. 825.200(h)*

INTERMITTENT OR
REDUCED LEAVE
SCHEDULE

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. "Intermittent leave" is FMLA leave taken in separate blocks of time due to a single qualifying reason. A "reduced leave schedule" is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday or a change in an employee's schedule for a period of time, normally full-time to part-time.

For leave taken because of the employee's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or military caregiver leave, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. Leave due to a qualifying exigency may also be taken on an intermittent or reduced schedule basis.

When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees.

29 U.S.C. 2612(b); 29 C.F.R. 825.202

TRANSFER TO
ALTERNATIVE
POSITION

If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment or if the employer agrees to permit such leave for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than does the employee's regular position. *29 U.S.C. 2612(b)(2); 29 C.F.R. 825.204*

CALCULATING
LEAVE USE

When an employee takes leave on an intermittent or reduced leave schedule basis, the employer must account for intermittent or reduced schedule leave in accordance with 29 C.F.R. 825.205, using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave, provided it is not greater than one hour and provided further that an employ-

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ee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken. An employer may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using the shortest increment of leave used to account for any other type of leave. In all cases, employees may not be charged FMLA leave for periods during which they are working. *29 C.F.R. 825.205*

SUBSTITUTION OF
PAID LEAVE

Generally, FMLA leave is unpaid leave. However, an employee may choose to substitute accrued paid leave for unpaid FMLA leave. If an employee does not choose to substitute accrued paid leave, the employer may require the employee to do so. The term "substitute" means that the paid leave provided by the employer, and accrued pursuant to established policies of the employer, will run concurrently with the unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy. When an employee chooses, or an employer requires, substitution of accrued paid leave, the employer must inform the employee that the employee must satisfy any procedural requirements of the paid leave policy only in connection with the receipt of such payment. [See *825.300(c)*] If an employee does not comply with the additional requirements in an employer's paid leave policy, the employee is not entitled to substitute accrued paid leave but the employee remains entitled to take unpaid FMLA leave. *29 U.S.C. 2612(d); 29 C.F.R. 825.207(a)*

COMPENSATORY TIME

If an employee requests and is permitted to use accrued compensatory time to receive pay during FMLA leave, or if an employer requires such use, the compensatory time taken may be counted against the employee's FMLA leave entitlement. *29 C.F.R. 825.207(f)*

FMLA AND DISABILITY
LEAVE PLANS

Leave taken pursuant to a disability leave plan would be considered FMLA leave for a serious health condition and counted in the leave entitlement permitted under the FMLA if it meets the criteria set forth in *29 C.F.R. 825.112–825.115*. In such cases, the employer may designate the leave as FMLA leave and count the leave against the employee's FMLA leave entitlement. Because leave pursuant to a disability benefit plan is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee nor the employer may require the substitution of paid leave. However, employers and employees may agree, where state law permits, to have paid leave supplement the disability plan benefits, such as in the case where a plan only provides replacement income for two-thirds of an employee's salary. *29 C.F.R. 825.207(d)*

LEAVES AND ABSENCES
FAMILY AND MEDICAL LEAVE

DECA
(LEGAL)

FMLA AND WORKERS'
COMPENSATION

A serious health condition may result from injury to the employee "on or off" the job. If the employer designates the leave as FMLA leave, the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, neither the employee nor the employer may require the substitution of paid leave. However, an employer and an employee may agree, where state law permits, to have paid leave supplement workers' compensation benefits.

If the health-care provider treating the employee for the workers' compensation injury certifies that the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a "light duty job." As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employer may require the use of accrued paid leave.

29 U.S.C. 825.207(e)

MAINTENANCE OF
HEALTH BENEFITS

During any FMLA leave, an employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. If an employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. Any other plan changes (e.g., in coverage, premiums, deductibles, and the like) that apply to all employees of the workforce would also apply to an employee on FMLA leave.

Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage, it must be provided by the employer.

An employee may choose not to retain group health plan coverage during FMLA leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as before taking leave without any qualifying period, physical examination, exclusion of pre-existing conditions, and the like.

29 U.S.C. 2614(c); 29 C.F.R. 825.209(a), (c)–(e)

LEAVES AND ABSENCES
FAMILY AND MEDICAL LEAVE

DECA
(LEGAL)

PAYMENT OF
PREMIUMS

During FMLA leave, the employee must continue to pay the employee's share of group health plan premiums in accordance with 29 C.F.R. 825.210. If premiums are raised or lowered, the employee would be required to pay the new premium rates. *29 C.F.R. 825.210*

FAILURE TO PAY
PREMIUMS

Unless an employer has an established policy providing a longer grace period, an employer's obligations to maintain health insurance coverage cease if an employee's premium payment is more than 30 days late. In order to terminate the employee's coverage, the employer must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. If the employer has established policies regarding other forms of unpaid leave that provide for the employer to cease coverage retroactively to the date the unpaid premium payment was due, the employer may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, if the required 15-day notice has been provided.

If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave, the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. The employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

29 C.F.R. 825.212

RECOVERY OF
BENEFIT COST

If an employee fails to return to work after FMLA leave has been exhausted or expires, an employer may recover from the employee its share of health plan premiums during the employee's unpaid FMLA leave, unless the employee's failure to return is due to one of the reasons set forth in 29 C.F.R. 825.213. An employer may not recover its share of health insurance premiums for any period of FMLA leave covered by paid leave. *29 C.F.R. 825.213*

MAINTENANCE OF
OTHER BENEFITS

An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate). *29 C.F.R. 825.209(h)*

LEAVES AND ABSENCES
FAMILY AND MEDICAL LEAVE

DECA
(LEGAL)

RIGHT TO
REINSTATEMENT

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. *29 C.F.R. 825.214, .216(a)*

MOONLIGHTING
DURING FMLA
LEAVE

If an employer, including a college district, has a uniformly applied policy governing outside or supplemental employment, the policy may continue to apply to an employee while on FMLA leave. An employer that does not have such a policy may not deny FMLA benefits on the basis of outside or supplemental employment unless the FMLA leave was fraudulently obtained. *29 C.F.R. 825.216(e)*

PAY INCREASES
AND BONUSES

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the employer's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave.

Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then the employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

29 C.F.R. 825.215(c)

"KEY EMPLOYEES"

A "key employee" is a salaried eligible employee who is among the highest paid ten percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed. An employer may deny job restoration to a key employee if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; 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 in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice. *29 U.S.C. 2614(b); 29 C.F.R. 825.102, .217-.219*

SECTION III: NOTICES AND MEDICAL CERTIFICATION

EMPLOYER NOTICES
GENERAL NOTICE

Every covered employer, including every qualified college district, must post and keep posted on its premises a notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints with the U.S. Department of Labor's (DOL) Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. Covered employers must post this general notice even if no employees are eligible for FMLA leave.

If a covered employer has any eligible employees, it shall also provide this general notice to each employee by:

1. Including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist; or
2. By distributing a copy of the general notice to each new employee upon hiring.

In either case, distribution may be accomplished electronically.

Employers may duplicate the text of the DOL prototype notice WHD Publication 1420 or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice.

Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer shall provide the general notice in a language in which the employees are literate.

29 U.S.C. 2619; 29 C.F.R. 825.300(a)

ELIGIBILITY NOTICE

When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.

Notification of eligibility may be oral or in writing; employers may use DOL optional form WH-381 to provide such notification to employees. The employer is obligated to translate the notice in any situation in which it is required to translate the general notice.

If, at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed, the employer must notify the employee of the change in eligibility status within five business days, absent extenuating circumstances.

29 C.F.R. 825.300(b)

RIGHTS AND
RESPONSIBILITIES
NOTICE

Employers shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The rights and responsibilities notice must include the information described by 29 C.F.R. 825.300(c)(1). The employer is obligated to translate the notice in any situation in which it is required to translate the general notice.

This notice shall be provided to the employee each time the eligibility notice is provided. The notice of rights and responsibilities may be distributed electronically so long as it meets the requirements of 29 C.F.R. 825.300.

If the specific information provided by the notice of rights and responsibilities changes, the employer shall, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed.

29 C.F.R. 825.300(c)

DESIGNATION
NOTICE

When the employer has enough information to determine whether leave is being taken for an FMLA-qualifying reason, the employer must notify the employee whether the leave will be designated and will be counted as FMLA leave within five business days absent extenuating circumstances. Only one notice of designation is required for each FMLA-qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employer determines that the leave will not be designated as FMLA-qualifying, the employer must notify the employee of that determination.

The designation notice must be in writing. If the leave is not designated as FMLA leave because it does not meet the requirements of the Act, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement. If the information provided by the employer to the employee in the

designation notice changes (e.g., the employee exhausts the FMLA leave entitlement), the employer shall provide, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

The designation notice must include the information required by 29 C.F.R. 825.300(d)(1) (substitution of paid leave), (d)(3) (fitness for duty certification), and (d)(6) (amount of leave charged against FMLA entitlement). For further provisions on designation of leave, see 29 C.F.R. 825.301.

29 C.F.R. 825.300(d)

RETROACTIVE
DESIGNATION

An employer may retroactively designate leave as FMLA leave, with appropriate notice as described above at DESIGNATION NOTICE or with an appropriate designation notice to the employee, if the employer's failure to timely designate leave does not cause harm or injury to the employee. In addition, an employer and an employee may agree that leave will be retroactively designated as FMLA leave. *29 C.F.R. 825.301(d)*

EMPLOYEE NOTICE

An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave, below. If the employee fails to explain the reasons, leave may be denied. *29 C.F.R. 825.301(b)*

FORESEEABLE
LEAVE

An employee must provide at least 30 days' advance notice before FMLA leave is to begin if the need for leave is foreseeable based upon an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member, or a planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days' notice is not practicable, the employee must give notice as soon as practicable. For leave due to a qualifying exigency, the employee must provide notice as soon as practicable regardless of how far in advance the leave is foreseeable. The form and content of the notice must comply with 29 C.F.R. 825.302(c).

When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations, subject to the approval of the health-care provider.

29 C.F.R. 825.302

LEAVES AND ABSENCES
FAMILY AND MEDICAL LEAVE

DECA
(LEGAL)

UNFORESEEABLE LEAVE	When the approximate timing of leave is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employer's usual and customary notice requirements applicable to such leave. The form and content of the notice must comply with 29 C.F.R. 825.303(b). 29 C.F.R. 825.303(a)
COMPLIANCE WITH EMPLOYER REQUIREMENTS	An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. Where an employee does not comply with the employer's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied. 29 C.F.R. 825.302(d), .303(c)
CERTIFICATION OF LEAVE	An employer, including a college district, may require that an employee's FMLA leave be supported by certification, as described below. The employer must give notice of a requirement for certification each time certification is required. At the time the employer requests certification, the employer must advise the employee of the consequences of failure to provide adequate certification. 29 U.S.C. 2613; 29 C.F.R. 825.305(a), (d)
TIMING	In most cases, the employer should request that an employee furnish certification at the time the employee gives notice of the need for leave or within five business days thereafter or, in the case of unforeseen leave, within five business days after the leave commences. The employer may request certification at a later date if the employer later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the employer within 15 calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the employer provides more than 15 days to return the certification. 29 C.F.R. 825.305(b)
INCOMPLETE OR INSUFFICIENT CERTIFICATION	The employer shall advise an employee if it finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. The employer must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent, good faith efforts) to cure any such deficiency. If the employee fails to provide the employer with a complete and sufficient certification, despite the opportunity to cure the certification, or fails to provide any certification, the employer may deny the taking of FMLA leave.

A certification is “incomplete” if one or more of the applicable entries have not been completed. A certification is “insufficient” if it is complete, but the information provided is vague, ambiguous, or non-responsive. A certification that is not returned to the employer is not considered incomplete or insufficient, but constitutes a failure to provide certification.

29 C.F.R. 825.305(c)–(d)

MEDICAL
CERTIFICATION OF
SERIOUS HEALTH
CONDITION

When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, an employer may require the employee to obtain medical certification from a health-care provider that includes the information described at 29 C.F.R. 825.306(a). An employer may use DOL optional form WH-380E when the employee needs leave due to the employee's own serious health condition and optional form WH-380F when the employee needs leave to care for a family member with a serious health condition. An employer may not require information beyond that specified in the FMLA regulations.

While an employee may choose to comply with the certification requirement by providing the employer with an authorization, release, or waiver allowing the employer to communicate directly with the health-care provider, the employee may not be required to provide such an authorization, release, or waiver.

For the definition of “health-care provider,” see 29 C.F.R. 825.102 and 29 C.F.R. 825.125.

29 C.F.R. 825.306

GENETIC
INFORMATION

Any receipt of genetic information in response to a request for medical information shall be deemed inadvertent if an employer uses language such as that at 29 C.F.R. 1635.8(b)(1)(i)(B). 29 C.F.R. 1635.8(b)(1)(i)(A) [See DAAA(LEGAL)]

AUTHENTICATION
AND CLARIFICATION

If an employee submits a complete and sufficient certification signed by the health-care provider, an employer may not request additional information from the health-care provider. However, an employer may contact the health-care provider for purposes of clarification and authentication of the certification after the employer has given the employee an opportunity to cure any deficiencies, as set forth above. To make such contact, the employer must use a health-care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances may the employee's direct supervisor contact the employee's health-care provider.

“Authentication” means providing the health-care provider with a copy of the certification and requesting verification that the infor-

mation on the form was completed and/or authorized by the health-care provider who signed the document; no additional medical information may be requested.

“Clarification” means contacting the health-care provider to understand the handwriting on the certification or to understand the meaning of a response. An employer may not ask the health-care provider for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule must be satisfied when individually identifiable health information of an employee is shared with an employer by a HIPAA-covered health-care provider.

29 C.F.R. 825.307(a)

SECOND AND THIRD
OPINIONS

An employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer’s expense in accordance with 29 C.F.R. 825.307(b). If the opinions of the employee's and the employer’s designated health-care providers differ, the employer may require the employee to obtain certification from a third health-care provider, again at the employer’s expense in accordance with 29 C.F.R. 825.307(c). *29 C.F.R. 825.307(b)–(c)*

FOREIGN MEDICAL
CERTIFICATION

If the employee or a family member is visiting another country, or a family member resides in another country, and a serious health condition develops, the employer shall accept medical certification as well as second and third opinions from a health-care provider who practices in that country. If the certification is in a language other than English, the employee must provide the employer with a written translation of the certification upon request. *29 C.F.R. 825.307(f)*

RECERTIFICATION

An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless 29 C.F.R. 825.308(b) or (c) apply. The employee must provide the requested recertification to the employer within the time frame requested by the employer, which must allow at least 15 calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

The employer may ask for the same information when obtaining recertification as that permitted for the original certification. As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employer may provide the health-care provider with a record of the employee's absence pattern and ask the health-care provider if the serious

health condition and need for leave is consistent with such a pattern.

Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required.

29 C.F.R. 825.308

ANNUAL MEDICAL
CERTIFICATION

Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year, the employer may require the employee to provide a new medical certification in each subsequent leave year. Such new medical certifications are subject to the provisions for authentication and clarification set forth in 29 C.F.R. 825.307, including second and third opinions. *29 C.F.R. 825.305(e)*

CERTIFICATION—
QUALIFYING
EXIGENCY LEAVE

The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of a military member, an employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military that indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service.

The employer may require that the leave for any qualifying exigency be supported by a certification that addresses the information described at 29 C.F.R. 825.309(b). DOL optional form WH-384, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in 29 C.F.R. 825.309. The employer may verify in accordance with 29 C.F.R. 825.309(d).

29 C.F.R. 825.309

CERTIFICATION—
MILITARY
CAREGIVER LEAVE

When leave is taken to care for a covered servicemember with a serious injury or illness, an employer may require the employee to obtain a certification completed by an authorized health-care provider of the covered servicemember. The employer may request that the health-care provider provide the information described at 29 C.F.R. 825.310(b). In addition, the employer may request that the employee and/or covered servicemember address in the certification the information described at 29 C.F.R. 825.310(c). The employer may require the employee to provide confirmation of a covered family relationship to the seriously injured or ill servicemember pursuant to 29 C.F.R. 825.122(j).

DOL optional form WH-385, WH-385-V, or another form containing the same basic information, may be used by the employer for this certification; however, no information may be required beyond that specified by 29 C.F.R. 825.310. An employer must accept as sufficient certification invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside. An employer must accept as sufficient certification of the servicemember's serious injury or illness documentation indicating the servicemember's enrollment in the U.S. Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

An employer may seek authentication and/or clarification of the certification under the procedures described above. Second and third opinions, as described above, are not permitted for leave to care for a covered servicemember when the certification has been completed by one of the types of health-care providers identified in 29 C.F.R. 825.310(a)(1)–(4). However, second and third opinions are permitted when the certification has been completed by a health care provider as defined in 29 C.F.R. 825.125 that is not one of the types identified in 29 C.F.R. 825.310(a)(1)–(4). Additionally, recertifications, as described above, are not permitted for leave to care for a covered servicemember.

Where medical certification is requested by an employer, an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee's diligent, good-faith efforts to obtain such documents.

29 C.F.R. 825.310

INTENT TO RETURN
TO WORK

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.
29 C.F.R. 825.311(a)

FITNESS FOR DUTY
CERTIFICATION

As a condition of restoring an employer who took FMLA leave due to the employee's own serious health condition, an employer may have a uniformly applied policy or practice that requires all similarly situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health-care provider that the employee is able to resume work.

An employer may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. Additionally, an employer may require that

the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, an employer must provide an employee with a list of the essential functions of the employee's job no later than with the designation notice required by 29 C.F.R. 825.300(d) and must indicate in the designation notice that the certification must address the employee's ability to perform those essential functions.

The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

29 C.F.R. 825.312(a)-(c)

FAILURE TO
PROVIDE
CERTIFICATION

If the employee fails to provide the employer with a complete and sufficient certification, despite the opportunity to cure, or fails to provide any certification, the employer may deny the taking of FMLA leave. This provision applies in any case where an employer requests a certification, including any clarifications necessary to determine if certifications are authentic and sufficient. *29 C.F.R. 825.305(d)*

For failure to provide timely certification of foreseeable leave, see 29 C.F.R. 825.313(a). For failure to provide timely certification of unforeseeable leave, see 29 C.F.R. 825.313(b). For failure to provide timely recertification, see 29 C.F.R. 825.313(c). For failure to provide timely fitness-for-duty certification, see 29 C.F.R. 825.313(d).

Note: Prototypes of the DOL notice and certification forms are available from the nearest office of the DOL Wage and Hour Division or on the Internet at <http://www.dol.gov/whd>.

SECTION IV: MISCELLANEOUS PROVISIONS

RECORDS

The FMLA provides that covered employers, including qualified college districts, shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act (FLSA) and the FMLA regulations. Employers must keep these records for no less than three years and make them available for inspection, copying, and transcription by representatives of the DOL upon request.

If an employer is preserving records electronically, the employer must comply with 29 C.F.R. 825.500(b). Covered employers who have eligible employees must maintain records with the data set

forth at 29 C.F.R. 825.500(c). Covered employers with no eligible employees must maintain just the data at 29 C.F.R. 825.500(c)(1). Covered employers in a joint employment situation, see 29 C.F.R. 825.500(e).

Records and documents relating to certifications, recertifications, or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of the FMLA containing family medical history or genetic information as defined in GINA shall be maintained in accordance with the confidentiality requirements of Title II of GINA [see 29 C.F.R. 1635.9], which permit such information to be disclosed consistent with the requirements of the FMLA. If the Americans with Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements [see 29 C.F.R. 1630.14(c)(1)], except as set forth in 29 C.F.R. 825.500(g).

29 C.F.R. 825.500

PROHIBITION AGAINST
DISCRIMINATION AND
RETALIATION

The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. *29 U.S.C. 2615; 29 C.F.R. 825.220*

DECB

Note: This policy addresses leave for an employee's military service. For provisions on leaves in general, see DEC. For provisions regarding the Family and Medical Leave Act (FMLA), including family and medical leave for an employee seeking leave because of a relative's military service, see DECA.

FEDERAL MILITARY
LEAVE
REEMPLOYMENT

Any person who is absent from a position of employment by reason of voluntary or involuntary service in the uniformed services shall be entitled to certain reemployment rights and benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301-4335, and its regulations at 20 C.F.R. Part 1002 if:

1. Unless notice is precluded by military necessity or is otherwise unreasonable or impossible, 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, calculated in accordance with 38 U.S.C. 4312(c); and
3. The person reports to or submits an application for reemployment to such employer in accordance with the provisions of 38 U.S.C. 4312(e) and (f) and 20 C.F.R. Part 1002, Subpart C.

38 U.S.C. 4312(a)-(c); 20 C.F.R. 1002.5(1)

For purposes of federal military leave, "uniformed services" means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; and any other category of persons designated by the president in time of war or emergency. *38 U.S.C. 4303(16)*

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. *38 U.S.C. 4303(13)*

A person who is reemployed under USERRA is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of uniformed service, plus the additional seniority rights, and benefits that such person would have attained if the person had remained continuously employed. *38 U.S.C. 4316(a)*

EXCEPTIONS

An employer, including a college district, is not required to reemploy a person if:

1. The employer's circumstances have so changed as to make reemployment impossible or unreasonable;
2. The person is entitled to reemployment under 38 U.S.C. 4313(a)(3), 4313(a)(4), or 4313 (b)(2)(B), and the reemployment of the person would impose an undue hardship on the employer; or
3. The employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

38 U.S.C. 4312(d)

A person's entitlement to the benefits of 38 U.S.C. Chapter 43 by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

1. A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.
2. A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the U.S. Secretary concerned.
3. A dismissal of such person permitted under or a dropping of such person from the rolls pursuant to 10 U.S.C. 1161(a) (dismissal of commissioned officers).

38 U.S.C. 4304

NOTICE

Each employer shall provide to persons entitled to rights and benefits under 38 U.S.C. Chapter 43 a notice of the rights, benefits, and obligations of such persons and such employers. The requirement for the provision of notice may be met by the posting of the notice

LEAVES AND ABSENCES
MILITARY LEAVE

DECB
(LEGAL)

where employers customarily place notices for employees. The U.S. Secretary of Labor shall provide to employers the text of the notice. *38 U.S.C. 4334*

STATE LEAVE FOR
MEMBER OF MILITARY
OR RESCUE TEAM
SHORT TERM

A person who is an officer or employee of the state, a municipality, a county, or another political subdivision of the state, including a college district, who is a member of the state military forces, a reserve component of the U.S. Armed Forces or a member of state or federally authorized Urban Search and Rescue Team shall be granted a paid leave of absence from the employee's duties without loss of time, efficiency rating, personal time, sick leave, or vacation time on all days during which the employee is engaged in authorized training or duty ordered or authorized by proper authority. Such leave shall not exceed 15 workdays in a federal fiscal year. *Gov't Code 431.005(a)*

CALLED TO DUTY

A member of the state military forces who is ordered to active state duty by the governor or other proper authority under state law is entitled to the same benefits and protections provided to persons performing service in the uniformed services under 38 U.S.C. 4301–4313 and 4316–4319 (USERRA) and to persons in the military service of the United States under 50 App. U.S.C. 501–536, 560, and 580–594, as those laws existed on April 1, 2003. *Gov't Code 431.017*

Such employees who are ordered to duty by proper authority shall be restored, when relieved from duty, to the position held by them when ordered to duty. *Gov't Code 431.005(c)*

LONG TERM
CHAPTER 431

An employer, including a college district, may not terminate the employment of an employee who is a member of the military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment. *Gov't Code 431.006(a)*

CHAPTER 613

A public employee, other than a temporary employee, who leaves a state position or a position with a local governmental entity, including a college district, to enter active military service is entitled to be reemployed by the state or the local governmental entity; in the same department, office, commission, or board of this state, a state institution, or 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 in the same position held at the time of the induction, enlistment, or order or to a position of

LEAVES AND ABSENCES
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similar seniority, status, and pay. To be entitled to reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions not later than the fifth anniversary after the date of induction, enlistment, or call to active military service and must be physically and mentally qualified to perform the duties of the position. *Gov't Code 613.001(3), .002*

A public employee who cannot perform the duties of the position because of a disability sustained during military service is entitled to reemployment 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 like seniority, status, and pay as the former position or the nearest possible seniority, status, and pay. *Gov't Code 613.003*

To be reemployed, a veteran must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service. The application must be made in writing to the head of the department, office, commission, or board of this state, the state institution, or the local governmental entity and have attached to it evidence of the veteran's discharge, separation, or release from military service under honorable conditions. *Gov't Code 613.004*

A person reemployed under Government Code Chapter 613 shall not be discharged without cause before the first anniversary of the date of the reemployment. *Gov't Code 613.005*

"Military service" means service as a member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, the Texas National Guard, or the Texas State Guard. *Gov't Code 613.001(2)*

DEE

COMPENSATION AND BENEFITS
EXPENSE REIMBURSEMENT

DEE
(LEGAL)

TRAVEL SERVICES

An employee of a public junior college who is engaged in official business may participate in the comptroller's contract for travel services. *Gov't Code 2171.055(f); 34 TAC 20.301(b)(2)(E)*

DF

RETIREMENT PROGRAMS

DF
(LEGAL)

The Board shall not require the retirement of any employee on the basis of age. *29 U.S.C. 623; Education Code 51.922*

TEACHER
RETIREMENT SYSTEM

All personnel, except faculty members in the optional retirement program, employed on a full-time, regular basis shall be members of the Teacher Retirement System of Texas. *Gov't. Code 822.001-.002; Atty. Gen. Op. H-871 (1976)*

OPTIONAL
RETIREMENT
PROGRAM

All faculty members shall be eligible and have the opportunity to participate in the optional retirement program, subject to such rules as may be prescribed by the Coordinating Board. [See *19 TAC 25.1-.6*]

"Faculty member" means a person who is employed by the College District on a full-time basis in any of the following positions:

1. A member of the faculty whose duties include teaching or research.
2. An administrator responsible for teaching and research faculty.
3. An athletic coach, associate athletic coach, or assistant athletic coach whose primary activity is coaching.
4. A professional librarian, a president, a vice president, or other professional staff person whose national mobility requirements are similar to those of faculty members and who fills a position that is subject to nationwide searches in the academic community.

Gov't. Code 821.001, 830.101

A faculty member may exercise the option to participate in the optional retirement program only once. Election to participate in the optional retirement program must be made before the ninety-first day after becoming eligible and is irrevocable. A faculty member who fails to elect the ORP during the 90-day period shall remain in the Teacher Retirement System or Employee Retirement System as applicable for the remainder of employment in Texas higher public education. *Atty. Gen. Op. H-1184 (1978); 19 TAC 25.4(f)*

The College District shall, within 15 business days of an ORP-eligible employee's initial ORP eligibility date, provide written notification to the ORP-eligible employee that indicates the beginning and ending dates of his or her ORP election period and the local procedures for submitting the election form and additional required paperwork. *19 TAC 25.4(f)(3)*

RETIREMENT PROGRAMS

DF
(LEGAL)

GOVERNMENTAL
EXCESS BENEFIT
ARRANGEMENT

The Board may establish a governmental excess benefit arrangement as provided by Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)) for the purpose of providing to participants in the optional retirement program any portion of a participant's benefits that would otherwise be payable under the terms of the program except for the limitation on benefits imposed by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Section 415). The Board may take any action necessary to establish and implement a governmental excess benefit arrangement authorized in accordance with Government Code 830.004(c). *Gov't Code 830.004(c)*

DG

EMPLOYEE RIGHTS AND PRIVILEGES

DG
(LEGAL)

EMPLOYEE FREE
SPEECH

College District employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to his or her official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.

Garcetti v. Ceballos, 547 U.S. 410 (2006); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) [See also GF]

WHISTLEBLOWER
PROTECTION

The Board or its agents shall not suspend or terminate the employment of, or take other adverse personnel action against, an employee who in good faith reports a violation of law by the College District or another public employee to an appropriate law enforcement authority.

A "report" is made to an "appropriate law enforcement authority" if the authority is a part of a state or local governmental entity or 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.

Gov't Code 554.002

A supervisor who suspends or terminates the employment of or takes an adverse personnel action against an employee for reporting a violation of law shall be subject to civil penalties. *Gov't Code 554.008*

DEFINITIONS

"Employee" means an employee or appointed officer who is paid to perform services for the College District. It does not include independent contractors. *Gov't Code 554.001(4)*

"Law" means a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance. *Gov't Code 554.001(1)*

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.

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

EMPLOYEE RIGHTS AND PRIVILEGES

DG
(LEGAL)

A “good faith” belief that a law enforcement authority is an appropriate one means:

1. The employee believed the governmental entity was authorized to:
 - a. Regulate under or enforce the law alleged to be violated in the report, or
 - b. 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.

Tex. Dept. of Trans. v. Needham, 82 S.W.3d 314 (Tex. 2002)

WHISTLEBLOWER
COMPLAINTS

An employee who alleges a violation of whistleblower protection may sue the College District for injunctive relief, actual damages, court costs, and attorneys’ fees, as well as other relief specified in Government Code 554.003. *Gov’t Code 554.003*

INITIATE
GRIEVANCE

Before suing, an employee must initiate action under the College District’s grievance policy or other applicable policies concerning suspension or termination of employment or adverse personnel action.

The employee must invoke the College District’s grievance procedure not later than the 90th day after the date on which the alleged suspension, termination, or other adverse employment action occurred or was discovered by the employee through reasonable diligence.

LEGAL ACTION

If the Board does not render a final decision before the 61st day after grievance procedures are initiated, the employee may elect to:

1. Exhaust the College District’s grievance procedures, in which case the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under Government Code Chapter 554; or
2. Terminate College District grievance procedures and sue within time lines established by Government Code 554.005 and 554.006.

Gov’t Code 554.006

BURDEN OF
PROOF

If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation of law, in which case the suspension, termination, or adverse

EMPLOYEE RIGHTS AND PRIVILEGES

DG
(LEGAL)

personnel action is presumed, subject to rebuttal, to be because the employee made the report.

AFFIRMATIVE
DEFENSE

It is an affirmative defense to a whistleblower suit that the College District would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under the whistleblower law.

Gov't Code 554.004

NOTICE OF RIGHTS

The Board shall inform its employees of their rights under this provision by posting a sign in a prominent location in the workplace. The design and content of the sign shall be as prescribed by the attorney general. *Gov't Code 554.009*

FIREARMS AND
AMMUNITION

The College District may not prohibit an employee who holds a license to carry a concealed handgun, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the College District provides for employees. *Education Code 52.061*

This section does not apply to a vehicle owned or leased by the College District and used by an employee in the course and scope of the employee's employment, unless the employee is required to transport or store a firearm in the official discharge of the employee's duties. *Education Code 52.062(a)(2)(A)*

This section does not authorize the person to possess a firearm or ammunition on any property where the possession of a firearm or ammunition is prohibited by state or federal law. The College District is not prohibited from prohibiting the employee from possessing a firearm the employee is otherwise authorized by law to possess on the premises of the College District. *Education Code 52.062(a)(1), (b)*

"Premises" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. *Penal Code 46.035(f)(3)*

IMMUNITY

Except in cases of gross negligence, the College District or the College District's principal, officer, director, employee, or agent, is not liable in a civil action for personal injury, death, property damage, or any other damages resulting from or arising out of an occurrence involving a firearm or ammunition that the College District is required to allow on the College District's property under this section.

EMPLOYEE RIGHTS AND PRIVILEGES

DG
(LEGAL)

The presence of a firearm or ammunition on the College District's property under the authority of this section does not by itself constitute a failure by the College District to provide a safe workplace.

For purposes of the immunity provisions, the College District, or the College District's principal, officer, director, employee, or agent, does not have a duty:

1. To patrol, inspect, or secure any parking lot, parking garage, or other parking area the College District provides for employees or any privately owned motor vehicle located in one of those areas; or
2. To investigate, confirm, or determine an employee's compliance with laws related to the ownership or possession of a firearm or ammunition or the transportation and storage of a firearm or ammunition.

Education Code 52.063

PROHIBITIONS

A College District employee may not:

1. Use official authority or influence or permit the use of a program administered by the state to interfere with or affect the result of an election or nomination of a candidate, or to achieve any other political purpose; or
2. Coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of anything of value to a person or political organization for a political purpose.

Gov't Code 556.004

NOTICE BY
ELECTRONIC MEDIA

If a state law requires the College District to provide written notification to its officers or employees of any requirement, right, duty, or responsibility provided by state law, the College District may provide the notification by use of electronic media.

The College District may adopt rules and guidelines to ensure that notification provided by electronic media is effective and that any required notification is provided to officers and employees who do not have access to electronic media.

Education Code 51.965

PROTECTION OF
NURSES

The College District may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against a person who advises a nurse of the nurse's rights under Occupations Code 301.352 or a nurse who refuses to engage in an act or omission relating to patient care that:

EMPLOYEE RIGHTS AND PRIVILEGES

DG
(LEGAL)

1. Would constitute grounds for reporting the nurse to the Board of Nurse Examiners under Occupations Code Chapter 301, Subchapter I;
2. Constitutes a minor incident, as defined at Occupations Code Section 301.419; or
3. Would violate Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners, if the nurse notifies the College District at the time of the refusal that this is the reason for refusing to engage in the act or omission.

Occupations Code 301.352(a)

IMMUNITY FOR
SHELTER WORKERS

An officer or employee of the College District is not civilly liable for an act performed in the discharge of duty if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by disaster. *Gov't Code 418.006, 431.085*

DGA

EMPLOYEE RIGHTS AND PRIVILEGES
FREEDOM OF ASSOCIATION

DGA
(LEGAL)

RIGHTS	Except as expressly prohibited by law, a College District employee shall have the full rights of freedom of association and political participation guaranteed by the state and federal constitutions. <i>Gov't Code 556.003</i>
LABOR ORGANIZATIONS	An individual may not be denied employment by the College District because of the individual's membership or nonmembership in a labor organization. <i>Gov't Code 617.004</i> "Labor organization" means any organization in which employees participate 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. <i>Gov't Code 617.001</i>
COLLECTIVE BARGAINING PROHIBITED	The Board may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of College District employees; nor shall it recognize a labor organization as the bargaining agent for a group of employees. <i>Gov't Code 617.002</i>
STRIKES PROHIBITED	College District employees may not strike or engage in an organized work stoppage against the College District. However, the right of an individual to cease work shall not be abridged if the individual is not acting in concert with others in an organized work stoppage. <i>Gov't Code 617.003(a), (c)</i>
PENALTIES	Any employee who participates in a strike or organized work stoppage shall forfeit all reemployment rights and any other rights, benefits, or privileges he or she enjoys as a result of public employment or former public employment. <i>Gov't Code 617.003(b)</i>

DGBA

PERSONNEL-MANAGEMENT RELATIONS
EMPLOYEE GRIEVANCES

DGBA
(LEGAL)

UNITED STATES
CONSTITUTION

A College District shall take no action abridging the freedom of speech or the right of the people to petition the Board for redress of grievances. *U.S. Const. Amend. I, XIV*

The Board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. But when the Board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys. *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995); *City of Madison v. Wis. Emp. Rel. Comm'n*, 429 U.S. 167, 174 (1976); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968) [See DG]

TEXAS CONSTITUTION

Employees shall have the right, in a peaceable manner, to assemble together for their common good and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance. *Tex. Const., Art. I, Sec. 27*

There is no requirement that the Board negotiate or even respond to complaints. However, the Board must stop, look, and listen and must consider the petition, address, or remonstrance. *Prof'l Ass'n of College Educators v. El Paso County Cmty (College) District*, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref'd n.r.e.)

FEDERAL LAWS
SECTION 504

The College District that receives federal financial assistance, directly or indirectly, and that employs 15 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 of the Rehabilitation Act of 1973. *34 CFR 104.7(b),.11*

AMERICANS WITH
DISABILITIES ACT

The College District 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 Code of Federal Regulations, Title 28, Part 35 (Americans with Disabilities Act regulations). *28 CFR 35.107,.140*

TITLE IX

The College District that receives federal financial assistance, directly or indirectly, shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. *34 CFR 106.8(b); North Haven Bd of Educ. v. Bell*, 456 U.S. 512 (1982)

PERSONNEL-MANAGEMENT RELATIONS
EMPLOYEE GRIEVANCES

DGBA
(LEGAL)

STATE LAWS

WAGES, HOURS,
CONDITIONS OF
WORK

The prohibition against collective bargaining and strikes [see DGA] does not impair the right of employees to 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. *Gov't Code 617.005*

The term "conditions of work" should be construed broadly to include any area of wages, hours, or conditions of employment, and any other matter that is appropriate for communications from employees to employer concerning an aspect of their relationship. *Atty. Gen. Op. JM-177 (1984)*; *Corpus Christi Fed. of Teachers v. Corpus Christi Indep. Sch. Dist.*, 572 S.W.2d 663 (Tex. 1978)

The statute protects grievances presented individually or individual grievances presented collectively. *Lubbock Prof'l Firefighters v. City of Lubbock*, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.)

REPRESENTATIVE

The College District cannot deny an employee's representative, including an attorney, the right to represent the employee at any stage of the grievance procedure, so long as the employee designates the representative and the representative does not claim the right to strike. *Lubbock Prof'l Firefighters v. City of Lubbock*, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.); *Sayre v. Mullins*, 681 S.W.2d 25 (Tex. 1984)

The College District should meet with employees or their designated representatives at reasonable times and places to hear grievances concerning wages, hours of work, and conditions of work. The right to present grievances is satisfied if employees have access to those in a position of authority to air their grievances. However, that authority is under no legal compulsion to take action to rectify the matter. *Att'y. Gen. Op. H-422 (1974)*; *Corpus Christi Indep. Sch. Dist v. Padilla*, 709 S.W.2d 700 (Tex. App.—Corpus Christi 1986, no writ)

OPEN MEETING ACT

A Board is not required to conduct an open meeting to hear a complaint or charge against an employee. However, a Board may not conduct a closed meeting if the employee who is the subject of the hearing requests a public hearing. *Gov't Code 551.074* [See BDA]

CLOSED MEETING

A Board may conduct a closed meeting on an employee complaint to the extent required or provided by law. *Gov't Code 551.082* [See BDA]

WHISTLEBLOWER
COMPLAINTS

Before bringing suit, an employee who seeks relief under Government Code Chapter 554 (whistleblowers) must initiate action under the College District's grievance or appeal procedures relating to suspension or termination of employment or adverse personnel action. *Gov't Code 554.006* [See DG]

DH

EMPLOYEE STANDARDS OF CONDUCT

DH
(LEGAL)

PUBLIC SERVANTS All College District employees are public servants and therefore subject to Title 8 of the Penal Code, regarding offenses against public administration, including bribery and corrupt influence (Chapter 36), perjury and other falsification (Chapter 37), obstructing governmental operation (Chapter 38), and abuse of office (Chapter 39). *Penal Code 1.07(a)(41), Title 8* [See DBD and BBFA]

DRUG AND ALCOHOL ABUSE PROGRAM A College District that receives a direct federal grant must agree to provide a drug-free workplace by:

FEDERAL DRUG-FREE WORKPLACE ACT

1. Publishing a statement notifying employees of the requirements of the federal Drug-Free Workplace Act (DFWA) and requiring that each employee be given a copy of the statement [see DO(EXHIBIT)];
2. Establishing a drug-free awareness program for employees pursuant to the DFWA;
3. Notifying the granting agency within ten days after receiving notice that an employee has been convicted under a criminal drug statute;
4. Imposing a sanction on an employee who is convicted of such a violation, or requiring the employee's satisfactory participation in a drug abuse or rehabilitation program; and
5. Making a good faith effort to continue to maintain a drug-free workplace.

41 U.S.C. 702(a)(1)

SEX OFFENDER REGISTRATION Not later than the seventh day after the date on which the person begins work, a person required to register under Chapter 62, Code of Criminal Procedure, who is employed or carries on a vocation shall report that fact to:

1. The authority for campus security for the institution; or
2. If an authority for campus security for the institution does not exist and the person is otherwise required by Chapter 62, Code of Criminal Procedure, to register at the authority, the local law enforcement authority of:
 - a. The municipality in which the institution is located; or
 - b. The county in which the institution is located, if the institution is not located in a municipality.

The person described above shall provide the authority for campus security or the local law enforcement authority all information the person is required to provide under Code of Criminal Procedure

Section 62.051(c). The person shall notify the authority for campus security or the local law enforcement authority not later than the seventh day after the date of termination of the person's status as a worker at the institution.

The authority for campus security or the local law enforcement authority shall promptly forward to the administrative office of the College District any information received from the person under Code of Criminal Procedure Section 62.153 and any information received from the department under Code of Criminal Procedure Section 62.005.

This provision does not impose the requirements of public notification or notification to public or private primary or secondary schools on an authority for campus security if those requirements relate to a person about whom the authority is not otherwise required by Chapter 62, Code of Criminal Procedure, to make notifications.

[See also GAA]

Code of Criminal Procedure 62.153

DH (Exhibit)

FACULTY CODE OF PROFESSIONAL ETHICS

Professional Educators affirm the inherent worth and dignity of all persons and the right of all persons to learn. Learning best occurs in an environment devoted to the pursuit of truth, excellence, and liberty. These flourish where both freedom and responsibility are esteemed.

In order to express more adequately the affirmation of our professional responsibilities, we the faculty members of the College do adopt, and hold ourselves and each other subject to, the following Code of Professional Ethics:

1. The Professional Educator will treat all persons with respect, dignity, and justice, discriminating against no one on any arbitrary basis such as ethnicity, creed, gender, disability, or age.
2. The Professional Educator will strive to help each student realize his or her full potential as a learner and as a human being.
3. The Professional Educator will by example and action encourage and defend the unfettered pursuit of truth by both colleagues* and students supporting the free exchange of ideas, observing the highest standards of academic honesty and integrity, and seeking always an attitude of scholarly objectivity and tolerance of other viewpoints.
4. The Professional Educator will work to enhance cooperation and collegiality among students, faculty, administrators, and other personnel.
5. The Professional Educator will recognize and preserve the confidential nature of professional relationships, neither disclosing nor encouraging the disclosure of information or rumor that might damage, embarrass, or violate the privacy of any other person.
6. The Professional Educator will maintain competence through continued professional development, will demonstrate that competence through consistently adequate preparation and performance, and will seek to enhance that competence by accepting and appropriating constructive criticism and evaluation.
7. The Professional Educator will make the most judicious and effective use of the College District's time and resources.
8. The Professional Educator will fulfill the employment agreement both in spirit and in fact, will give reasonable notice upon resignation, and will neither accept tasks for which we are not qualified nor assign tasks to unqualified persons.
9. The Professional Educator will support the goals and ideals of the College District and will act in public and private affairs in such a manner as to bring credit to the College District.
10. The Professional Educator will not engage in sexual harassment of students or colleagues and will adhere to the college's policy on sexual conduct.
11. The Professional Educator will observe the stated policies and procedures of the College District, reserving the right to seek revision in a judicious and appropriate manner.

EMPLOYEE STANDARDS OF CONDUCT

DH
(EXHIBIT)

12. The Professional Educator will participate in the governance of the College District by accepting a fair share of committee and institutional responsibilities.
13. The Professional Educator will support the right of all colleagues to academic freedom and due process and defend and assist a professional colleague accused of wrongdoing, incompetence, or other serious offense so long as the colleague's innocence may reasonably be maintained.
14. The Professional educator will not support a colleague whose persistently unethical conduct or professional incompetence has been demonstrated through due process.
15. The Professional Educator will accept all rights and responsibilities of citizenship, always avoiding use of the privileges of our public position for private or partisan advantage.

*In this code, the term "colleague" refers to all persons employed by colleges in the educational enterprise.

REFERENCE: Texas Community College Teachers Association, February 20, 1997.

DHB

EMPLOYEE STANDARDS OF CONDUCT
SEARCHES AND ALCOHOL/DRUG TESTING

DHB
(LEGAL)

SEARCHES—
GENERAL RULE

Citizens, including employees of a governmental entity such as a college district, have a right to be free from unreasonable searches and seizures. *U.S. Const. Amend. IV; Tex. Const. Art. I, Sec. 9*

A governmental entity 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)

In addition, the governmental entity may search an employee's workplace for noninvestigatory, 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)*

DRUG / ALCOHOL
TESTING

Blood, urine, and breath tests of public employees to determine drug use are searches under the Fourth Amendment of the U.S. Constitution. *Skinner v. Railway Labor Executives Ass'n, 489 U.S. 602 (1989)*

RANDOM DRUG
TESTING

A governmental entity 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); Nat'l Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989)*

SAFETY-
SENSITIVE
POSITIONS

Random alcohol and drug testing of employees in "safety-sensitive" positions may be permissible when the intrusiveness of the search is minimal and the governing board of a governmental entity is able to demonstrate that the drug-testing program furthers its interest in ensuring the physical safety of students. "Safety-sensitive" positions include those that involve the handling of potentially dangerous equipment or hazardous substances in an environment including a large number of children. *Aubrey v. School Board of LaFayette Parish, 148 F.3d 559 (5th Cir. 1998)*

Note: The following testing requirements apply to every employee who operates a commercial motor vehicle and is subject to commercial driver's license requirements in accordance with federal regulations.

EMPLOYEE STANDARDS OF CONDUCT
SEARCHES AND ALCOHOL/DRUG TESTING

DHB
(LEGAL)

TESTING OF DRIVERS	An employer, including a college district, shall conduct testing, in accordance with federal regulations, of commercial motor vehicle operators for use of alcohol or a controlled substance that violates law or federal regulation. <i>49 U.S.C. 31306; 49 C.F.R. Part 382</i>
COMMERCIAL MOTOR VEHICLE	<p>A commercial motor vehicle is defined as a motor vehicle used to transport passengers or property that:</p> <ol style="list-style-type: none">1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or2. Has a gross vehicle weight rating of 26,001 or more pounds; or3. Is designed to transport 16 or more passengers, including the driver; or4. 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 and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 C.F.R. part 172, subpart F). <p><i>49 C.F.R. 382.107</i></p>
TESTING PROCEDURES	Each employer shall ensure that all alcohol or controlled substances testing conducted under 49 C.F.R. Part 382 complies with the procedures set forth in 49 C.F.R. Part 40. <i>49 C.F.R. 382.105</i>
TESTS REQUIRED	Required testing includes preemployment, postaccident, random, reasonable suspicion, return-to-duty, and follow-up testing. No driver shall refuse to submit to a preemployment controlled substance test, a postaccident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, or a return-to-duty or follow-up alcohol or controlled substances test. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions. <i>49 C.F.R. 382.211, .309</i>
EDUCATIONAL MATERIALS	Each employer shall provide educational materials that explain the federal requirements and the employer's policies and procedures with respect to meeting these requirements and shall ensure that a copy of these materials is distributed to each driver before the start of alcohol and controlled substances testing under this policy and to each driver subsequently hired or transferred into a position that requires driving a commercial motor vehicle. Written notice to representatives of employee organizations of the availability of this information shall also be provided. The materials shall include

EMPLOYEE STANDARDS OF CONDUCT
SEARCHES AND ALCOHOL/DRUG TESTING

DHB
(LEGAL)

detailed discussion of at least the items listed at 49 C.F.R. 382.601.
49 C.F.R. 382.601

REPORTS

An employer required by federal safety regulations to conduct alcohol and drug testing of an employee who holds a commercial driver's license shall report the following information to the Department of Public Safety:

1. A valid positive result on an alcohol or drug test and whether the specimen producing the result was a dilute specimen.

"Valid positive result" means an alcohol concentration of 0.04 or greater on an alcohol confirmation test, or a result at or above the cutoff concentration levels listed in 49 C.F.R. 40.87 on a confirmation drug test.

"Dilute specimen" means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

2. A refusal to provide a specimen for an alcohol or drug test.
3. An adulterated specimen, or substituted specimen, as defined at 49 C.F.R. 40.3, on an alcohol or drug test.

For purposes of this requirement, the term "employee" includes applicants for employment subject to preemployment testing.

Transp. Code 644.251-.252; 49 C.F.R. 40.3

DJ

WORK LOAD

DJ
(LEGAL)

WEIGHTING
ACTIVITIES

In adopting rules concerning faculty academic workloads, the Board shall recognize that classroom teaching, basic and applied research, and professional development are important elements of faculty academic workloads by giving appropriate weight to each activity when determining the standards for faculty academic workload. The College may give the same or different weight to each activity and to other activities recognized by the institution as important elements of faculty academic workloads. The College's rules and regulations shall be reported to the Coordinating Board and included in the operating budgets of each institution. *Education Code 51.402(b)*

DK

PROFESSIONAL DEVELOPMENT

DK
(LEGAL)

FACULTY MEMBERS'
USE OF ENGLISH

The Board shall establish a program or a short course in order to assist faculty members whose primary language is not English to become proficient in the use of English and to ensure that courses offered for credit at the College are taught in the English language and that all faculty members are proficient in the use of the English language, as determined by a satisfactory grade on the "Test of Spoken English" of the Educational Testing Service or a similar test approved by the Board.

A faculty member may use a foreign language to conduct foreign language courses designed to be taught in a foreign language and may provide individual assistance during course instruction to a non-English-speaking student in the native language of the student.

The cost of an English proficiency course shall be paid by the faculty member lacking proficiency in English. A faculty member shall take the course until deemed proficient in English by his or her supervisor. The cost will be deducted from said faculty member's salary.

Education Code 51.917

DLA

College Districts shall conduct end-of-course student evaluations of faculty and develop a plan to make evaluations available on the College District's Web site.

Education Code 51.974(h); 19 TAC 4.227(10), 4.228(e)

Section 51.974, Education Code, as added by HB 2504, applies beginning with the 2010 fall semester. In accordance with 19 TAC 4.228(g), College Districts must begin complying with the rules implementing HB 2504 by August 15, 2010.

DLC

Texas Southmost College
031501

STATUS OF EMPLOYMENT
PROMOTION AND DEMOTION

DLC
(LEGAL)

Contractual employees who are demoted during the term of the contract shall be afforded notice and a hearing. *Kelleher v. Flawn*, 761 F.2d 1079 (1985)

DMAA

TERM CONTRACTS
DISMISSAL

DMAA
(LEGAL)

GROUND FOR
DISMISSAL

Any employee may be dismissed for good cause before the completion of the term fixed in his or her contract.

NOTICE

Before any employee is dismissed, the employee shall be given reasonable notice in writing of the proposed action and the grounds, set out in sufficient detail to fairly enable him or her to show any error that may exist.

HEARING

If, upon written notification, the employee desires to be heard and to contest the proposed action of the Board, he or she shall give the Board written notice. The hearing shall be set on a date that affords the employee reasonable time to prepare an adequate defense.

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985); *Ferguson v. Thomas*, 430 F.2d 852 (5th Cir. 1970); *Bexar Cty. Sheriff's Civ. Serv. v. Davis*, 802 S.W.2d 659 (Tex. 1990);

The Board may conduct the hearing in open session or in closed session unless the employee requests a public hearing, in which case the hearing shall be open to the public. *Gov't Code 551.074*

At the hearing before the Board, the employee may employ counsel. The employee also has the right to hear the evidence upon which the charges are based, to cross-examine all adverse witnesses, and to present evidence of innocence or extenuating circumstances. Prior to dismissal, the Board shall determine the existence of good cause for termination. Such determination shall be based solely on the evidence presented in the hearing. *Ferguson v. Thomas*, 430 F.2d 852 (5th Cir. 1970)

GRIEVANCE RIGHTS
OF FACULTY
MEMBERS

A faculty member has a right to present a grievance, in person, to a member of the College District's administration designated by the Board on an issue related to the nonrenewal or termination of the faculty member's employment at the College District.

A college district may not by contract, policy, or procedure, restrict a faculty member's right to present a grievance under Education Code 51.960. A college district may adopt a method for presenting, reviewing, and acting on a grievance filed under Education Code 51.960.

"Faculty member" means a person employed full time by a college district as a member of the College District's faculty, including professional librarians, whose duties include teaching, research, administration, or the performance of professional services. The term does not include a person who holds faculty rank but who spends the majority of the person's time for the College District engaged in managerial or supervisory activities, including a chancellor, vice

TERM CONTRACTS
DISMISSAL

DMAA
(LEGAL)

chancellor, president, vice president, provost, associate or assistant provost, dean, or associate or assistant dean.

Education Code 51.960

SUSPENSION

The employee may be suspended with pay pending the outcome of the dismissal hearing. *Moore v. Knowles*, 482 F.2d 1069 (5th Cir. 1973)

DMAB

The Board may decide by vote or inaction not to offer any employee further employment with the College District beyond the term of the contract for any reason or no reason. *Perry v. Sindermann*, 408 U.S. 593 (1972); *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972)

GRIEVANCE RIGHTS
OF FACULTY
MEMBERS

A faculty member has a right to present a grievance, in person, to a member of the College District's administration designated by the Board on an issue related to the nonrenewal or termination of the faculty member's employment at the College District.

A College District may not by contract, policy, or procedure, restrict a faculty member's right to present a grievance under Education Code 51.960. A College District may adopt a method for presenting, reviewing, and acting on a grievance filed under Education Code 51.960.

"Faculty member" means a person employed full time by a College District as a member of the College District's faculty, including professional librarians, whose duties include teaching, research, administration, or the performance of professional services. The term does not include a person who holds faculty rank but who spends the majority of the person's time for the College District engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate or assistant provost, dean, or associate or assistant dean.

Education Code 51.960

DMB

TERMINATION OF EMPLOYMENT
TENURE

DMB
(LEGAL)

GRIEVANCE RIGHTS
OF FACULTY
MEMBERS

A faculty member has a right to present a grievance, in person, to a member of the College's administration designated by the Board on an issue related to the nonrenewal or termination of the faculty member's employment at the College.

A College may not by contract, policy, or procedure, restrict a faculty member's right to present a grievance under Education Code 51.960. A College may adopt a method for presenting, reviewing, and acting on a grievance filed under Education Code 51.960.

"Faculty member" means a person employed full time by a College as a member of the College's faculty, including professional librarians, whose duties include teaching, research, administration, or the performance of professional services. The term does not include a person who holds faculty rank but who spends the majority of the person's time for the College engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate or assistant provost, dean, or associate or assistant dean.

Education Code 51.960

DO

EMPLOYEE WELFARE

DO
(LEGAL)

HAZARD
COMMUNICATION

The College District shall perform the following duties in compliance with the Hazard Communication Act:

NOTICE

1. Post and maintain the notice promulgated by the Texas Department of State Health Services (TDSHS) in the workplace. *Health and Safety Code 502.017(a)*

EDUCATION AND
TRAINING

2. Provide an education and training program for employees using or handling hazardous chemicals. "Employee" means any person who may be or may have been exposed to hazardous chemicals in the person's workplace under normal operating conditions or foreseeable emergencies. Workers such as office workers or accountants who encounter hazardous chemicals only in nonroutine, isolated instances are not employees for purposes of these requirements. *Health and Safety Code 502.003(10), .009*

3. Maintain the written hazard communication program and a record of each training session to employees, including the date, a roster of the employees who attend, the subjects covered in the training session, and the names of the instructors. Records shall be maintained for at least five years. *Health and Safety Code 502.009(g)*

WORKPLACE
CHEMICAL LIST

4. Compile and maintain a work-place chemical list that includes required information for each hazardous chemical normally present in the workplace or temporary workplace in excess of 55 gallons or 500 pounds, or as determined by the TDSHS for certain highly toxic or dangerous hazardous chemicals. The list shall be readily available to employees and their representatives. *Health and Safety Code 502.005(a), (c)*

5. Update the list as necessary, but at least by December 31 each year, and maintain at least 30 years. Each workplace chemical list shall be dated and signed by the person responsible for compiling the information. *Health and Safety Code 502.005(b), (d)*

LABELING

6. As required by law, label new or existing stocks of hazardous chemicals with the identity of the chemical and appropriate hazard warnings, if such stocks are not already appropriately labeled. *Health and Safety Code 502.007*

MATERIAL SAFETY
DATA SHEETS

7. Maintain a legible copy of the most current manufacturer's material safety data sheets (MSDS) for each hazardous chemical; request such sheets from the manufacturer if not already provided or otherwise obtain a current MSDS; make such sheets readily available to employees or their representatives on request. *Health and Safety Code 502.006*

EMPLOYEE WELFARE

DO
(LEGAL)

PROTECTIVE
EQUIPMENT

8. Provide employees with appropriate personal protective equipment. *Health and Safety Code 502.017(b)*

DO (Exhibit)

EMPLOYEE WELFARE

DO
(EXHIBIT)

The following pages include an exhibit, in compliance with the Drug-Free Workplace Act, that is required for distribution to all College District employees, and an exhibit pointing to useful federal and state Web sites containing information on commonly abused drugs and the legal penalties for possession and use.

Exhibit A: Drug-Free Workplace Notice — 1 page

Exhibit B: Sources for Information on Illegal Drugs — 1 page

EXHIBIT A

DRUG-FREE WORKPLACE NOTICE

The College District prohibits the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances, illegal drugs, inhalants, and alcohol in the workplace.

Employees who violate this prohibition will be subject to disciplinary sanctions. Sanctions may include:

- Referral to drug and alcohol counseling or rehabilitation programs;
- Referral to employee assistance programs;
- Termination from employment with the College District; and
- Referral to appropriate law enforcement officials for prosecution.

As a condition of employment, an employee must:

- Abide by the terms of this notice; and
- Notify the College President in writing if the employee is convicted for a violation of a criminal drug statute occurring in the workplace. The employee must provide the notice in accordance with DH(LOCAL). [This notice complies with the requirements of the federal Drug-Free Workplace Act (*41 U.S.C. 702*).]

EXHIBIT B

SOURCES FOR INFORMATION ON ILLEGAL DRUGS

Commonly Abused Drugs

<http://www.nida.nih.gov/drugsfabuse.html>

Federal Trafficking Penalties

<http://www.usdoj.gov/dea/agency/penalties.htm>

Comparative Pharmacological Profiles of Abused Drugs

<http://www.tcada.state.tx.us/research/slang/compare98.pdf>

DOA

Note: This policy addresses harassment of College District employees. For legally referenced material relating to discrimination and retaliation, see DAA(LEGAL). For harassment of students, see FDE.

OFFICIAL
OPPRESSION

A public official commits a Class A misdemeanor if, while acting in his or her official or employment capacity, the official intentionally subjects another to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly. *Penal Code 39.03*

HARASSMENT OF
EMPLOYEES

Harassment on the basis of a protected characteristic is a violation of the federal anti-discrimination laws. A College District has an affirmative duty, under Title VII, to maintain a working environment free of harassment on the basis of sex, race, color, religion, and national origin. *42 U.S.C. 2000e, et seq.; 29 CFR 1606.8(a), 1604.11*

Harassment violates Title VII if it is sufficiently severe and pervasive to alter the conditions of employment. *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004)

Title VII does not prohibit all verbal and physical harassment in the workplace. For example, harassment between men and women is not automatically unlawful sexual harassment merely because the words used have sexual content or connotations. *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998)

HOSTILE
ENVIRONMENT

Verbal or physical conduct based on a person's sex, race, color, religion, or national origin constitutes unlawful harassment when the conduct:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;
2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
3. Otherwise adversely affects an individual's employment opportunities.

Pennsylvania State Police v. Suders, 542 U.S. 129 (2004); *Nat'l Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986); 29 CFR 1604.11, 1606.8

QUID PRO QUO

Conduct of a sexual nature also constitutes harassment when:

EMPLOYEE WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

DOA
(LEGAL)

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual.

29 CFR 1604.11(a)

SAME-SEX SEXUAL
HARASSMENT

Same-sex sexual harassment constitutes sexual harassment. *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998)

HARASSMENT POLICY

A College District should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate penalties, 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. *29 CFR 1604.11(f)*

CORRECTIVE ACTION

A College District is responsible for acts of unlawful harassment by fellow employees and by nonemployees if the College District, its agents, or its supervisory employees knew or should have known of the conduct, unless the College District takes immediate and appropriate corrective action. *29 CFR 1604.11(d), (e); 1606.8(d), (e)*

When no tangible employment action is taken, a College District may raise the following affirmative defense:

1. That the College District exercised reasonable care to prevent and promptly correct any harassing behavior; and
2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

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



TEXAS SOUTHMOST COLLEGE DISTRICT

BOARD AGENDA REQUEST FORM

Department/Division: Facilities and Planning	Board Meeting Date: April 18, 2013
Agenda Item: Consideration and possible action on approval of a contract with Carrier Corporation to provide and install HVAC equipment at the Arnulfo Oliveira Library.	
Rationale/Background: <p>As part of the assessments performed in the Oliveira Library for the renovation area of TSC's One Stop Student Services Center, an inspection was conducted on existing HVAC systems. Facilities personnel were able to identify that the existing HVAC units that supply this area is over 30 years old, in poor condition. The administration has received recommendations from the staff that the replacement of these units is a high priority project because the units won't be able to meet the new office capacity and might affect the scheduling of the facility if a failure were to occur.</p> <p>The Office of Facilities and Planning has requested a proposal from Carrier Corporation to provide and install HVAC units at the Oliveira Library building through Buy Board Contract #375-11. The proposal includes the purchase of one dual circuit 20 ton unit and the installation of two units. The proposed contract amount includes a ten percent owner's contingency for any unforeseen circumstances and the project schedule has a completion deadline of Friday, May 3rd.</p> <p>Buy Board is a purchasing cooperative that serves local government institutions by conducting bidding processes according to the requirements established by the State of Texas. Staff has verified that Carrier Corporation is an awarded vendor for Buy Board and that is authorized to sell under a Buy Board contract. In addition, terms and conditions have also been verified within the parameters of the contract.</p>	
Recommended Action: Motion to approve the proposal from Carrier Corporation to provide and install HVAC equipment at the Arnulfo Oliveira Library through a Buy Board contract in the amount of \$60,586 and authorize the President to execute the contract.	
Fiscal Implications: Budgeted Item: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If no, explain: Budgeted under Campus Improvements account	
Attachments (List): Carrier Corporation proposal	

FOR OFFICE USE ONLY:	
Board Action: Approved: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Tabled for action on: _____	
Certified by: _____ Title: _____ Date: _____	



Address 100 South Belt Industrial Dr
Houston, TX, 77047

Phone (713) 203-6731

Fax

E-mail james.a.cornish@carrier.utc.com

Contact Name

Account Name TEXAS SOUTHMOST COLLEGE

Phone

Site Address 80 FORT BROWN ST
BROWNSVILLE, TX, 785204956

Estimate Date 04/04/2013

Quote Number 00037966

Job Description 20 Ton Splits Phase 2

Scope of Work

Under Buy Board Contract 375-11, Supply 1, 20 ton, 480 V, 3P split system with dual circuit condensing unit, air handler and 30 kw heat kit and Install 2, 20 Ton split air conditioning condensing units, air handlers with electric heat strips. Install includes installation labor, lifts and transitional ductwork to tie into existing duct and misc materials necessary to complete the project.

Exclusions / Clarifications

This quote does not include the waste disposal and labor performed outside normal business hours unless otherwise noted. In addition, the quoted price does not include any sales, excise, or similar taxes, any that apply will be added at cost. Additional exclusions are noted below:

Total Quoted Price

Total Price for Scope of Work excluding applicable taxes: \$55,584.00

This proposal is valid for 30 days from the date of proposal. Carrier's terms and conditions will govern in lieu of any other terms and conditions contained in any resulting Purchase, Order, Contract, Agreement, etc. Carrier would like to thank you for the continuing opportunity to be of service.

Sincerely,

James Cornish

Carrier Commercial Service

Customer Acceptance (typed/printed name)

Title

Customer Acceptance (signature)

Date

Purchase Order



TEXAS SOUTHMOST COLLEGE DISTRICT

BOARD AGENDA REQUEST FORM

Department/Division: Information Technology	Board Meeting Date: April 18, 2013
Agenda Item: Consideration and possible action on approval of computer equipment purchase for TSC's One Stop Student Services Center at the Oliveira Library from Dell Marketing, LP.	
Rationale/Background: <p>Texas Southmost College (TSC) is currently renovating the Oliveira Library into the TSC's One Stop Shop Student Services Center. In order to provide operational services to the students of TSC, the staff will need computers and printers for a functional facility.</p> <p>TSC staff has requested a proposal from Dell Marketing, LP through DIR contract SDD-1951 to provide computer equipment for the Student Services, Instruction, and Information Technology Departments that will support TSC operations. The proposal includes the purchase of (25) twenty-five desktop computers, (18) eighteen laptops, (44) forty-four desktop thin clients, and (7) seven printers required to support the students in the admissions, registration, advising, veteran affairs and testing processes. The installation of the equipment will be performed by Dynamic Campus staff.</p> <p>The Texas Department of Information Resources (DIR) is a purchasing cooperative that serves local government institutions by conducting bidding processes according to the requirements established by the State of Texas. Staff has verified that Dell Marketing, LP is an awarded vendor for DIR and that is authorized to sell under a DIR contract. In addition, terms and conditions have also been verified within the parameters of the contract.</p>	
Recommended Action: Motion to approve the proposal from Dell Marketing, LP to provide computer equipment through a DIR contract in the amount of \$90,881.88 and authorize the President to execute the contract.	
Fiscal Implications: Budgeted Item: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If no, explain: Budgeted under Campus Improvements account	
Attachments (List): Dell Marketing, LP Computer Equipment List	

FOR OFFICE USE ONLY:	
Board Action: Approved: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Tabled for action on: _____	
Certified by: _____ Title: _____ Date: _____	

Computer Equipment
Student Services, Instruction and Information Technology Departments

Equipment Description	Quantity	Unit Price	Total
Desktops	25	\$ 839.00	\$ 20,975.00
Laptops, Docking Stations and Monitors	18	\$ 1,486.64	\$ 26,759.52
Thin Clients with wireless, Monitor, Keyboard and Mouse	44	\$ 669.00	\$ 29,436.00
Tablets	8	\$ 449.00	\$ 3,592.00
Monitors	10	\$ 153.99	\$ 1,539.90
Multifunctional Printer Model B5465DNF	1	\$ 2,166.00	\$ 2,166.00
Multifunctional Printer Model B3465DNF	3	\$ 1,032.00	\$ 3,096.00
Color Laser Printer Model C3760DN	2	\$ 522.00	\$ 1,044.00
Laser Printer Model B5460DN	1	\$ 792.00	\$ 792.00
Printer accessories	1	\$ 1,481.46	\$ 1,481.46

Total Computer Equipment Purchase \$ 90,881.88

Vendor: Dell Marketing, LP
DIR Contract # SDD-1951



TEXAS SOUTHMOST COLLEGE DISTRICT

BOARD AGENDA REQUEST FORM

Department/Division: Information Technology	Board Meeting Date: April 18, 2013
Agenda Item: Consideration and possible action on approval of campus network equipment purchase from Insight Public Sector.	
Rationale/Background: <p>Texas Southmost College (TSC) is currently updating and enhancing the network it once shared with The University of Texas at Brownsville (UTB). The installation of networking equipment such as a high capacity switch in the TSC data center is required to support the college's technology initiatives. This core switch will be the central point where all the buildings for TSC will be connected.</p> <p>Dynamic Campus (DC) personnel have requested a proposal from Insight Public Sector to provide network equipment for the TSC data center that will support TSC campus buildings and servers through DIR contract SDD-1364. The proposal also includes networking equipment needed such as wireless equipment and network equipment for the remodeled space in the Oliveira Library for the TSC's One Stop Student Services Center. Dynamic Campus staff will perform the installation of the equipment.</p> <p>The Texas Department of Information Resources (DIR) is a purchasing cooperative that serves local government institutions by conducting bidding processes according to the requirements established by the State of Texas. Staff has verified that Insight Public Sector is an awarded vendor for DIR and that is authorized to sell under a DIR contract. In addition, terms and conditions have also been verified within the parameters of the contract.</p>	
Recommended Action: Motion to approve the proposal from Insight Public Sector to provide campus network equipment through a DIR contract in the amount of \$184,698.29 and authorize the President to execute the contract.	
Fiscal Implications: Budgeted Item: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If no, explain: Budgeted under Campus Technology account	
Attachments (List): Insight Public Sector proposal	

FOR OFFICE USE ONLY:
Board Action: Approved: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Tabled for action on: _____
Certified by: _____ Title: _____ Date: _____

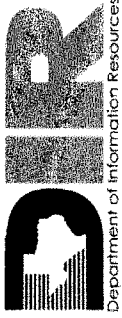
Insight Public Sector
6820 South Harl Avenue
Tempe, AZ 85283

Sales Rep: Darak Weaver
Phone: (956) 465-8080
darak.weaver@insight.com

Design Associate: Rose Owens
Phone: (512) 691-2046
Fax: (512) 691-9480
rose.owens@insight.com

Insight[®] PUBLIC SECTOR

DIR Contract# ___DIR-SDD-1369/1460___



Department of Information Resources

040413TSC

4/10/13

Texas Southmost College
Ed Brunke

Sales Quote:

Date:

Buyer:

Name:

Phone:

Email:

Part Number	Description	List Price	Discount	Unit Price	Quantity	Extended Price
Core Cisco Catalyst 6504						
WS-C6504-E	Catalyst 6500 Enhanced 4-slot chassis,5RU,no PS,no Fan Tray	\$3,000.00	47.00	\$1,590.00	1	\$1,590.00
MEM-C6K-INTFL1GB	Internal 1G Compact Flash	Included	47.00	\$0.00	1	\$0.00
MEM-SUP2T-2GB	Catalyst 6500 2GB memory for Sup2T and Sup2TXL	Included	47.00	\$0.00	1	\$0.00
VS-F6K-PFC4	Cat 6k 80G Sys Daughter Board Sup2T PFC4	Included	47.00	\$0.00	1	\$0.00
VS-SUP2T-10G	Catalyst 6500 Supervisor Engine 2T Baseboard	Included	47.00	\$0.00	1	\$0.00
WS-F6K-DFC4-A	Catalyst 6500 Dist Fwd Card DFC4	Included	47.00	\$0.00	1	\$0.00
WS-F6K-DFC4-E	Catalyst 6500 Dist Fwd Card DFC4	Included	47.00	\$0.00	1	\$0.00
WS-X6848-SFP	Catalyst 6500 48 Port 1G SFP Baseboard	Included	47.00	\$0.00	1	\$0.00
WS-X6904-40G	Catalyst 6500 4x40G/16x10G Baseboard	Included	47.00	\$0.00	1	\$0.00
CAB-AC-2500W-US1	Power Cord, 250Vac 16A, straight blade NEMA 6-20 plug, US	\$0.00	47.00	\$0.00	2	\$0.00
CON-SNT-WSC6504E	SMARTNET 8X5XNBD Cisco Catalyst 4-sl	\$2,536.00	31.00	\$1,749.84	1	\$1,749.84
CVR-CFP-4SFP10G	CFP to SFP10G Adapter module	\$1,000.00	47.00	\$530.00	1	\$530.00
FAN-MOD-4HS	High-Speed Fan Module for 7604/6504-E	\$0.00	47.00	\$0.00	1	\$0.00
GLC-LH-SMD	100BASE-LX/LH SFP transceiver module, MMF/SMF, 1310nm, DOM	\$995.00	47.00	\$527.35	10	\$5,273.50
GLC-SX-MMD	100BASE-SX SFP transceiver module, MMF, 850nm, DOM	\$500.00	47.00	\$265.00	2	\$530.00
GLC-T	100BASE-T SFP	\$395.00	47.00	\$209.35	20	\$4,187.00
PWR-2700-AC/4	2700W AC Power Supply for Cisco 7604/6504-E	\$3,000.00	47.00	\$1,590.00	2	\$3,180.00
S2TISK9-15101SY	Cisco CAT6000-VS-S2T IOS IP SERV FULL ENCRYPT	\$10,000.00	47.00	\$5,300.00	1	\$5,300.00
SFP-10G-LR	10GBASE-LR SFP Module	\$3,995.00	47.00	\$2,117.35	4	\$8,469.40
VS-S2T-10G	Cat 6500 Sup 2T with 2 x 10GbE and 3 x 1GbE with MSFC5 PFC4	\$28,000.00	47.00	\$14,840.00	1	\$14,840.00
WS-X6848-SFP-2T	Catalyst 6500 48-port GigE Mod: fabric-enabled with DFC4	\$25,000.00	47.00	\$13,250.00	1	\$13,250.00
WS-X6904-40G-2T	Catalyst 6900 Series 4-port 40G/16-port 10G Fiber Mod DFC4	\$36,000.00	47.00	\$19,080.00	1	\$19,080.00
X2-10GB-SR	10GBASE-SR X2 Module	\$1,995.00	47.00	\$1,057.35	2	\$2,114.70
MDF - Library Addition - Switches						
WS-C3850-48F-L	Cisco Catalyst 3850 48 Port Full PoE LAN Base	\$11,400.00	47.00	\$6,042.00	1	\$6,042.00
PWR-C1-1100WAC	1100W AC Config 1 Power Supply	Included	47.00	\$0.00	1	\$0.00
C3850-NM-2-10G	Cisco Catalyst 3850 2 x 10GE Network Module	\$2,500.00	47.00	\$1,325.00	1	\$1,325.00
CAB-TA-NA	North America AC Type A Power Cable	\$0.00	47.00	\$0.00	1	\$0.00
CON-SNT-WSC388FL	SMARTNET 8X5XNBD Cisco Catalyst 3850 48 Port Full PoE LAN	\$684.00	31.00	\$471.96	1	\$471.96
S3850UK9-32-0SE	CAT3850 UNIVERSAL	\$0.00	47.00	\$0.00	1	\$0.00
SFP-10G-LR=	10GBASE-LR SFP Module	\$3,995.00	47.00	\$2,117.35	1	\$2,117.35
STACK-T1-50CM	50CM Type 1 Stacking Cable	\$0.00	47.00	\$0.00	1	\$0.00
WS-C3850-48T-L	Cisco Catalyst 3850 48 Port Data LAN Base	\$8,900.00	47.00	\$4,717.00	1	\$4,717.00

TERMS AND CONDITIONS

Transaction is governed by the applicable contract between Insight Public Sector and the Texas Department of Information Resources

Pursuant to that contract, the warranties and disclaimers located at the following URL apply to this transaction: www.insight.com/pages/legal.web#

The above referenced contract and warranties and disclaimers are hereby incorporated herein by this reference.

INSIGHT PUBLIC SECTOR SPECIFICALLY OBJECTS TO ANY ADDITIONAL TERMS BEING ADDED THROUGH A PURCHASE ORDER OR OTHER SIMILAR DOCUMENT OR COMMUNICATION (A 'PURCHASE ORDER'). BY ORDERING ANY OF THE ITEMS IDENTIFIED HEREIN, CUSTOMER AGREES THAT ANY ADDITIONAL TERMS CONTAINED IN A PURCHASE ORDER SHALL NOT BECOME PART OF THE AGREEMENT BETWEEN THE PARTIES AND SPECIFICALLY THAT THE TERMS AND CONDITIONS CONTAINED HEREIN OR INCORPORATED HEREIN BY REFERENCE SHALL SUPERSEDE ANY CONFLICTING, CONTRARY, OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER.



TEXAS SOUTHMOST COLLEGE DISTRICT

BOARD AGENDA REQUEST FORM

Department/Division: Information Technology	Board Meeting Date: April 18, 2013
Agenda Item: Consideration and possible action on approval of a contract with Perceptive Software, LLC to purchase a Document Imaging Solution.	
Rationale/Background: <p>Texas Southmost College (TSC) is currently sharing the document tracking application. Documents tracking for UTB/TSC students are currently handled electronically through the use of ImageNow Software from Perceptive Software.</p> <p>Dynamic Campus (DC) personnel have requested a proposal under DIR contract SDD-1753 from Perceptive Software, LLC to provide software that will assist TSC with the need to install and implement ImageNow to view and continue utilizing electronic document storage to meet the TSC document storage and retrieval needs. This software solution will primarily be utilized in the Student Services department to gather and scan data provided by the students.</p> <p>The Texas Department of Information Resources (DIR) is a purchasing cooperative that serves local government institutions by conducting bidding processes according to the requirements established by the State of Texas. Staff has verified that Perceptive Software, LLC is an awarded vendor for DIR and that is authorized to sell under a DIR contract. In addition, terms and conditions have also been verified within the parameters of the contract.</p>	
Recommended Action: Motion to approve the proposal from Perceptive Software, LLC to provide a document imaging solution through a DIR contract in the amount of \$122,357.00 and authorize the President to execute the contract.	
Fiscal Implications: Budgeted Item: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If no, explain: Budgeted under Campus Technology account	
Attachments (List): Perceptive Software, LLC proposal	

FOR OFFICE USE ONLY:	
Board Action: Approved: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Tabled for action on: _____	
Certified by: _____ Title: _____ Date: _____	

ORDER FORM

Address information:

Detail, Terms and Conditions:

Bill To:

Attn: Arnold Gonzalez
80 Fort Brown
Brownsville, Texas 78520

Ship To:

Attn: Arnold Gonzalez
80 Fort Brown
Brownsville, Texas 78520

Quote Form for: Texas Southmost
College

Quote No: 2013-37235 / OP-122718

Date: March 28, 2013

Proposed By: Mark Newland

Pricing Expires: May 27, 2013

Billing Method: Email

Currency: USD

Taxes: Texas Southmost College shall be responsible for the payment of any applicable sales tax.

LICENSES			
Qty	Product Description	Unit Price	Extended Price
25	ImageNow Client Concurrent License	\$1,920.00	\$48,000.00
3	CaptureNow Adrenaline	\$1,495.00	\$4,485.00
1	ImageNow Enterprise Server	\$15,500.00	\$15,500.00
1	ImageNow Mail Agent	\$2,000.00	\$2,000.00
SUBTOTAL OF LICENSE FEES: (SMSA is calculated on this amount)			\$69,985.00
*Software is invoiced upon delivery			
*SMSA is 20% of published licenses (will be co-terminus with existing annual agreement)			

ANNUAL SUPPORT AND MAINTENANCE	
SUBTOTAL - ANNUAL SUPPORT AND MAINTENANCE	\$13,997.00
*20% of published licenses (will be co-terminus with existing annual agreement)	

PROFESSIONAL SERVICE DETAIL		
Solution Overview:		
Qty	Description	Estimated Total
1	Professional Services – Bucket of Hours <small>*Includes hours for a Technical Architect to review your current infrastructure</small>	\$21,250.00
1	Document Deletion Script	\$4,900.00
1	Server Migration	\$3,875.00
1	Test Environment Configuration	\$2,000.00
1	ImageNow Enterprise Server	\$2,875.00
1	ImageNow Mail Agent Installation and Configuration	\$1,275.00
ESTIMATED SUBTOTAL - Professional Services		\$36,175.00
*Professional Service estimated hours quoted will be billed as incurred on a monthly basis. Actual hours invoiced may be higher or lower than the estimated hours provided within. If scope or requirements changes, additional services will be quoted accordingly. Travel and expenses are billed as incurred.		

TRAINING			
Qty	Training Description	Unit Price	Extended Price
1	Product Training – Client Fundamentals For Administrators	\$2,200.00	\$2,200.00
SUBTOTAL - TRAINING			\$2,200.00

TOTAL ORDER SUMMARY	
	Extended Price
Licenses	\$69,985.00
Professional Services	\$36,175.00
Training	\$2,200.00
TOTAL NON-RECURRING COSTS	\$106,335.00
ANNUAL RECURRING SMSA	\$13,997.00
TOTAL FIRST YEAR COSTS	\$122,357.00

PURCHASE ORDER NOTICE	
Is a PO required by the Customer? Please enter Yes or No _____ (Yes/No)	Purchase Order #: _____
<p><i>* If a PO is required the PO Number must be inserted above upon Customer's execution of this instrument. Any terms and conditions appearing in any Purchase Order shall have no effect unless agreed to in writing by both parties hereof.</i></p>	

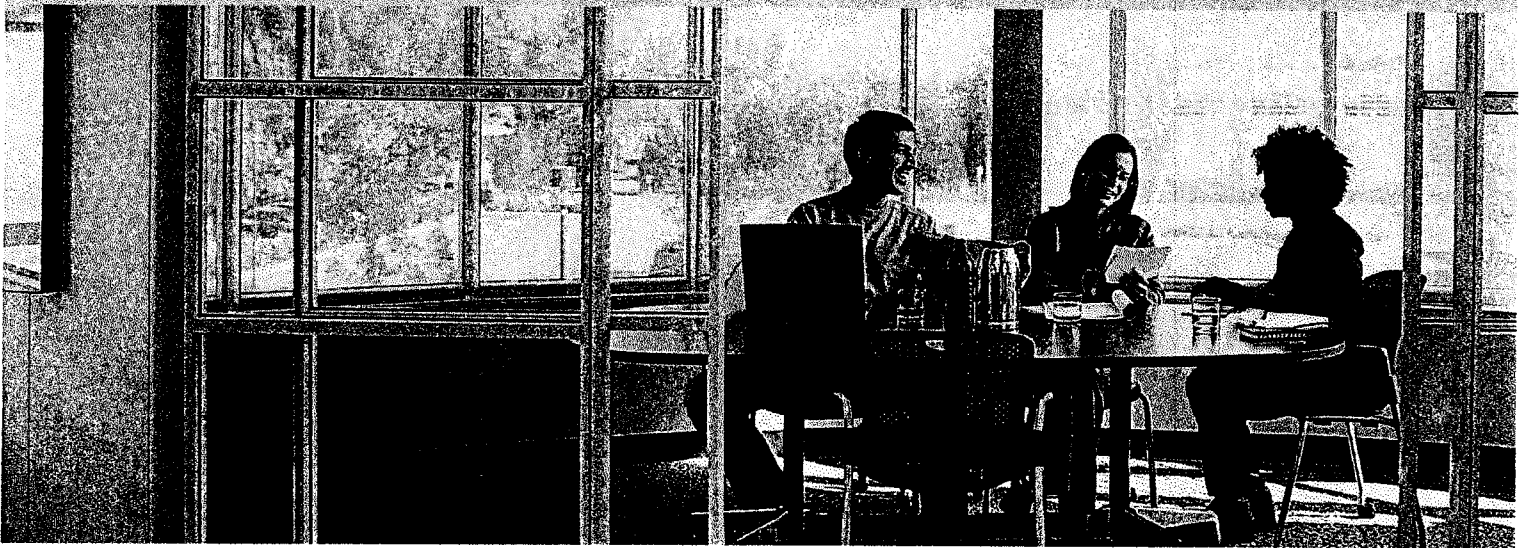
Please send signed quote to orderprocessing@perceptivesoftware.com

Signature

Title

Name

Date



System Division Project
Statement of Work

FOR

Texas Southmost College

STATEMENT OF WORK

SERVICES OVERVIEW

Perceptive Software, LLC ("Perceptive Software") Professional Services will assist with a document migration project that includes migrating the University of Texas – Brownsville ImageNow system to the Texas Southmost College's newly configured environment. This project will facilitate the capturing, organizing, processing, retrieving and storage of documents for the Admissions, Financial Aid, Registrar, Veteran Affairs, and Academic Advising departments.

SERVICES IN SCOPE

The services in scope assume the following:

- Perceptive Software will assist with the installation and configuration of the following:
 - ImageNow Enterprise Server
 - User Replication Agent
 - Mail Agent
 - One (1) fully-replicated ImageNow Test Environment
- Perceptive Software will replicate all required configuration and documents of the UTB ImageNow system and assist with technical redeployment in the TSC environment
- Perceptive Software will develop and configure a deletion script that TSC will be responsible for executing to remove any UTB documents from the TSC environment. TSC will provide document identification criteria to the Perceptive Software team prior to iScript development.
- Perceptive Software will help manage and direct a Professional Services Consulting Contract to assist with the reconfiguration of the following items; workflow, capture profiles, application plans, security, users and groups, views, projects, scan stations, and document types to fit TSC's specific needs. TSC will work with Perceptive Software to determine areas of greatest need and allocate the hours accordingly.

SOLUTION DEVELOPMENT

The following components are part of the System Division project and will be developed, implemented, and tested according to provided requirements:

- **Document Deletion Script:** iScript will leverage Document View identification criteria to target documents for removal from TSC system.

ASSUMPTIONS

Specific assumptions and constraints will be determined pending discovery of unique requirements surrounding your business processes and IT environment. Assumptions and constraints will be identified and documented during the Scope and Plan phase and the Analyze and Design phase described previously.

- Any services that are not explicitly identified in the Services in Scope section above will be considered out of scope (such as Go-Live Support, Change Management, End User training, etc.). These services may be purchased for an additional charge.
- Cost and schedule details are estimates only and may adjust depending on the overall scope of the project.
- Travel and expenses are billed as incurred.

Texas Southmost College Signature

Perceptive Software, LLC Signature

Signature Date

Signature Date



TEXAS SOUTHMOST COLLEGE DISTRICT

BOARD AGENDA REQUEST FORM

Department/Division: Finance Office	Board Meeting Date: April 18, 2013
Agenda Item: 2 nd Quarter Financial Statements and Investment Report for Fiscal Year 2013	
Rationale/Background: Presentation of the 2 nd Quarter Financial Statements and Investment Report for Fiscal Year 2013.	
Recommended Action: For the Board's review. No Action necessary.	
Fiscal Implications: Budgeted Item: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A If no, explain:	
Attachments (List): 2 nd Quarter Financial Statements and Investment Report for Fiscal Year 2013	

FOR OFFICE USE ONLY:
Board Action: Approved: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Tabled for action on: _____
Certified by: _____ Title: _____ Date: _____

Texas Southmost College
Statement of Revenues & Expenditures
General Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Operating Revenues					
State Grants & Contracts					
Building Lease - UTB	\$ 1,291,597	\$ 1,291,597	\$ 645,798	\$ (645,799)	50%
S3 Developmental Education	15,000	15,000	15,000	-	100%
Total State Grants & Contracts	\$ 1,306,597	\$ 1,306,597	\$ 660,798	\$ (645,799)	51%
Total Operating Revenues	\$ 1,306,597	\$ 1,306,597	\$ 660,798	\$ (645,799)	
Non-Operating Revenues					
Local Tax Revenues					
Ad Valorem Taxes	\$ 10,275,118	\$ 10,275,118	\$ 9,757,917	\$ (517,201)	95%
Total Local Tax Revenues	\$ 10,275,118	\$ 10,275,118	\$ 9,757,917	\$ (517,201)	
Investment Income					
Investment Earnings	\$ 26,862	\$ 26,862	\$ 15,767	\$ (11,095)	59%
Total Investment Income	\$ 26,862	\$ 26,862	\$ 15,767	\$ (11,095)	
Other Non-Operating					
Other Income - TSC	\$ 10,000	\$ 200,000	\$ 190,040	\$ (9,960)	95%
Total Other Non-Operating	\$ 10,000	\$ 200,000	\$ 190,040	\$ (9,960)	
Total Non-Operating Revenues	\$ 10,311,980	\$ 10,501,980	\$ 9,963,724	\$ (538,256)	
Total REVENUES	\$ 11,618,577	\$ 11,808,577	\$ 10,624,522	\$ (1,184,055)	
EXPENSES					
Operating Expenses					
Institutional Support					
President's Office	\$ 313,152	\$ 313,152	\$ 105,032	\$ 208,120	34%
Board of Trustees	58,500	58,500	5,523	52,977	9%
District Operations Office	772,682	772,682	78,862	693,820	10%
Finance Office	561,727	561,727	200,108	361,619	36%
Facilities & Planning	270,083	270,083	90,198	179,885	33%
VP of Instruction & Student Services	532,677	532,677	106,434	426,243	20%
Marketing & Communications	65,000	65,000	-	65,000	0%
General Institution					
Attorney Fees	309,499	309,499	14,487	295,012	5%
Auditor Fees	35,000	35,000	25,600	9,400	73%
Cameron Appraisal District	197,653	197,653	89,205	108,448	45%
Catalogs/Publications/News	500	500	-	500	0%
Commencement	15,000	15,000	1,421	13,579	9%
Consulting Fees	404,000	2,447,000	1,110,852	1,336,148	45%
Dues/Memberships	49,920	82,920	29,551	53,369	36%
Instit. Official Functions	108,000	75,000	24,204	50,796	32%
Insurance	1,605,281	1,605,281	27,452	1,577,829	2%
Promotional/Advertising	60,000	250,000	21,155	228,845	8%
Total General Institution	2,784,853	2,784,853	1,343,927	3,673,926	
S3 Developmental Education	15,000	15,000	1,832	13,168	12%
Golf Course	135,000	135,000	50,158	84,842	37%
Fort Brown Memorial Center	340,945	340,945	-	340,945	0%
Rancho Del Cielo	165,631	165,631	83,203	82,428	50%
Brownsville Urban System	45,542	45,542	-	45,542	0%
Total Institutional Support	\$ 6,045,792	\$ 6,045,792	\$ 2,065,277	\$ 6,215,347	

Texas Southmost College
Statement of Revenues & Expenditures
General Fund
From 9/1/2012 - 2/28/2013

UTB Commitments	\$ 2,800,000	\$ 2,800,000	\$ 232,277	\$ 2,567,723	8%
Total Operating Expenses	<u>\$ 8,845,792</u>	<u>\$ 8,845,792</u>	<u>\$ 2,297,554</u>	<u>\$ 8,783,070</u>	
Total EXPENSES	<u>\$ 8,845,792</u>	<u>\$ 8,845,792</u>	<u>\$ 2,297,554</u>	<u>\$ 8,783,070</u>	
Interfund Transfers					
Transfer to Campus Facilities	\$ 2,458,104	\$ 2,458,104	\$ -	\$ 2,458,104	0%
Transfer to General Revenue Bd	450,000	450,000	225,000	225,000	50%
Transfer from Auxiliary Fund	(150,319)	(150,319)	-	(150,319)	0%
Transfer from Campus Facilities	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	
Total Interfund Transfers	<u>\$ 2,757,785</u>	<u>\$ 2,757,785</u>	<u>\$ 225,000</u>	<u>\$ 2,532,785</u>	
Increase/(Decrease) in Net Assets	<u>\$ 15,000</u>	<u>\$ 205,000</u>	<u>\$ 8,101,968</u>	<u>\$ 10,131,800</u>	

Texas Southmost College
Statement of Revenues & Expenditures
General Fund - Contracted Services
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Operating Revenues					
Tuition & Fees					
Student Tuition	\$ 5,511,141	\$ 5,511,141	\$ 2,000,422	\$ (3,510,719)	36%
Lab Fees	155,090	155,090	48,867	(106,223)	32%
Advising Fee	813,044	813,044	200,238	(612,806)	25%
Library Fee	536,832	536,832	193,304	(343,528)	36%
Athletic Fee	779,942	779,942	281,185	(498,757)	36%
International Education Fee	32,522	32,522	7,815	(24,707)	24%
Medical Services Fee	316,389	316,389	94,480	(221,909)	30%
Developmental Writing Fee	-	-	5,476	5,476	
Designated Tuition	11,017,117	11,017,117	4,015,105	(7,002,012)	36%
Add/Drop Fees	82,178	82,178	16,060	(66,118)	20%
Technology Fee	2,020,205	2,020,205	641,149	(1,379,056)	32%
Off Campus Course Fee	-	-	3,995	3,995	
Remediation Fees	108,771	108,771	62,625	(46,146)	58%
Records Fee	169,244	169,244	47,487	(121,757)	28%
Total Tuition & Fees	\$ 21,542,475	\$ 21,542,475	\$ 7,618,208	\$ (13,924,267)	
State Grants & Contracts					
Texas Grant Program	\$ 1,320,769	\$ 1,320,769	\$ 768,500	\$ (552,269)	58%
TEOG Grant	-	-	449,859	449,859	
Charley Wootan Grant	-	-	3,675	3,675	
College Workstudy Program	-	-	50,026	50,026	
TWC Carling Technologies	-	-	110,271	110,271	
Total State Grants & Contracts	\$ 1,320,769	\$ 1,320,769	\$ 1,382,331	\$ 61,562	
Federal Grants & Contracts					
Carl Perkins Basic Grant	\$ 331,335	\$ 331,335	\$ -	\$ (331,335)	0%
Total Federal Grants & Contracts	\$ 331,335	\$ 331,335	\$ -	\$ (331,335)	
Local Grants & Contracts					
Criminal Justice Institute	\$ 120,000	\$ 120,000	\$ -	\$ (120,000)	0%
Child Care	710,323	710,323	271,411	(438,912)	38%
Total Local Grants & Contracts	\$ 830,323	\$ 830,323	\$ 271,411	\$ (558,912)	
General Operating Revenues					
Orientation Fees	\$ 169,511	\$ 169,511	\$ -	\$ (169,511)	0%
Total General Operating Revenues	\$ 169,511	\$ 169,511	\$ -	\$ (169,511)	
Total Operating Revenues	\$ 24,194,413	\$ 24,194,413	\$ 9,271,950	\$ (14,922,463)	
Non-Operating Revenues					
State Grants & Contracts					
THECB Appropriations	\$ 11,154,853	\$ 11,154,853	\$ 3,612,892	\$ (7,541,961)	32%
THECB Nursing Program	-	-	86,366	86,366	
THECB Top 10%	-	-	32,000	32,000	
Total State Grants & Contracts	\$ 11,154,853	\$ 11,154,853	\$ 3,731,258	\$ (7,423,595)	
Other Non-Operating					
Other Income	\$ 23,292	\$ 23,292	\$ -	\$ (23,292)	0%
Total Other Non-Operating	\$ 23,292	\$ 23,292	\$ -	\$ (23,292)	
Total Non-Operating Revenues	\$ 11,178,145	\$ 11,178,145	\$ 3,731,258	\$ (7,446,887)	
Total REVENUES	\$ 35,372,558	\$ 35,372,558	\$ 13,003,208	\$ (22,369,350)	

Texas Southmost College
Statement of Revenues & Expenditures
General Fund - Contracted Services
From 9/1/2012 - 2/28/2013

EXPENSES

Operating Expenses

Contracted Services w/ UTB

Tuition

Student Paid Tuition	\$ 5,511,141	\$ 5,511,141	\$ 2,000,422	\$ 3,510,719	36%
Total Tuition	<u>\$ 5,511,141</u>	<u>\$ 5,511,141</u>	<u>\$ 2,000,422</u>	<u>\$ 3,510,719</u>	
Designated Transfers to UTB	\$ 31,102,157	\$ 31,102,157	\$ 11,248,147	\$ 19,854,010	36%
Total Contracted Services w/ UTB	<u>\$ 36,613,298</u>	<u>\$ 36,613,298</u>	<u>\$ 13,248,568</u>	<u>\$ 23,364,730</u>	
Total Operating Expenses	<u>\$ 36,613,298</u>	<u>\$ 36,613,298</u>	<u>\$ 13,248,568</u>	<u>\$ 23,364,730</u>	
Interfund Transfers					
Transfer from Auxiliary Fund	\$ (1,240,740)	\$ (1,240,740)	\$ (460,034)	\$ (780,706)	37%
Total Interfund Transfers	<u>\$ (1,240,740)</u>	<u>\$ (1,240,740)</u>	<u>\$ (460,034)</u>	<u>\$ (780,706)</u>	
Increase/(Decrease) in Net Assets	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 214,674</u>	<u>\$ 214,674</u>	

Texas Southmost College
Statement of Revenues & Expenditures
Auxiliary Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Operating Revenues					
Tuition & Fees					
Parking Fees	\$ 300,000	\$ 300,000	\$ 353,867	\$ 53,867	118%
Student Services Fees	1,240,740	1,240,740	460,034	(780,706)	37%
Total Tuition & Fees	\$ 1,540,740	\$ 1,540,740	\$ 813,901	\$ (726,839)	
Auxiliary Enterprises					
Bookstore	\$ 187,056	\$ 187,056	\$ -	\$ (187,056)	0%
Communications	-	-	12,360	12,360	
Condominiums	420,000	420,000	187,967	(232,033)	45%
Port Mansfield	2,400	2,400	1,000	(1,400)	42%
Total Auxiliary Enterprises	\$ 609,456	\$ 609,456	\$ 201,327	\$ (408,129)	
Total Operating Revenues	\$ 2,150,196	\$ 2,150,196	\$ 1,015,228	\$ (1,134,968)	
Non-Operating Revenues					
Investment Income					
Investment Earnings	\$ 963	\$ 963	\$ 808	\$ (155)	84%
Total Investment Income	\$ 963	\$ 963	\$ 808	\$ (155)	
Total Non-Operating Revenues	\$ 963	\$ 963	\$ 808	\$ (155)	
Total REVENUES	\$ 2,151,159	\$ 2,151,159	\$ 1,016,036	\$ (1,135,123)	
Operating Expenses					
Auxiliary Enterprises					
Bookstore	\$ 20,000	\$ 20,000	\$ -	\$ 20,000	0%
Condominiums	420,000	420,000	217,798	202,202	52%
Port Mansfield	20,100	20,100	1,323	18,777	7%
Total Auxiliary Enterprises	\$ 460,100	\$ 460,100	\$ 219,121	\$ 240,979	
Total Operating Expenses	\$ 460,100	\$ 460,100	\$ 219,121	\$ 240,979	
Total EXPENSES	\$ 460,100	\$ 460,100	\$ 219,121	\$ 240,979	
Interfund Transfers					
Transfer to Restricted Parking	\$ 300,000	\$ 300,000	\$ 353,867	\$ (53,867)	118%
Transfer to General Fund	150,319	150,319	-	150,319	0%
Transfer to General Fund - Contracted Services	1,240,740	1,240,740	460,034	780,706	37%
Total Interfund Transfers	\$ 1,691,059	\$ 1,691,059	\$ 813,901	\$ 877,158	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ (16,986)	\$ (16,986)	

Texas Southmost College
Statement of Revenues & Expenditures
Campus Facilities
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Investment Income	\$ 9,896	\$ 9,896	\$ 8,287	\$ (1,609)	84%
Total Non-Operating Revenues	\$ 9,896	\$ 9,896	\$ 8,287	\$ (1,609)	
Total Revenues	\$ 9,896	\$ 9,896	\$ 8,287	\$ (1,609)	
EXPENSES					
Operating Expenses					
Maintenance & Operations					
Campus Improvements	\$ 2,368,000	\$ 1,643,000	\$ 36,879	\$ 1,606,121	2%
Campus Technology	100,000	825,000	75,043	749,957	9%
Total Maintenance and Operations	\$ 2,468,000	\$ 2,468,000	\$ 111,922	\$ 2,356,078	
Total EXPENSES	\$ 2,468,000	\$ 2,468,000	\$ 111,922	\$ 2,356,078	
Interfund Transfers					
Transfer from General Fund	\$ (2,458,104)	\$ (2,458,104)	\$ -	\$ (2,458,104)	0%
Total Interfund Transfers	\$ (2,458,104)	\$ (2,458,104)	\$ -	\$ (2,458,104)	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ (103,635)	\$ (103,635)	

Texas Southmost College
Statement of Revenues & Expenditures
Restricted Parking
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Investment Income	\$ 885	\$ 885	\$ 1,159	\$ 274	131%
Total Non-Operating Revenues	<u>\$ 885</u>	<u>\$ 885</u>	<u>\$ 1,159</u>	<u>\$ 274</u>	
Total REVENUES	<u>\$ 885</u>	<u>\$ 885</u>	<u>\$ 1,159</u>	<u>\$ 274</u>	
EXPENSES					
Operating Expenses					
Maintenance & Operations					
Parking Projects	\$ 300,885	\$ 300,885	\$ 57,101	\$ 243,784	19%
Total Maintenance & Operations	<u>\$ 300,885</u>	<u>\$ 300,885</u>	<u>\$ 57,101</u>	<u>\$ (243,784)</u>	
Total Operating Expenses	<u>\$ 300,885</u>	<u>\$ 300,885</u>	<u>\$ 57,101</u>	<u>\$ 243,784</u>	
Total EXPENSES	<u>\$ 300,885</u>	<u>\$ 300,885</u>	<u>\$ 57,101</u>	<u>\$ 243,784</u>	
Interfund Transfers					
Transfer from Auxiliary	\$ (300,000)	\$ (300,000)	\$ (353,867)	\$ 53,867	118%
Total Interfund Transfers	<u>\$ (300,000)</u>	<u>\$ (300,000)</u>	<u>\$ (353,867)</u>	<u>\$ 53,867</u>	
Increase/(Decrease) in Net Assets	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 297,925</u>	<u>\$ 297,925</u>	

Texas Southmost College
Statement of Revenues & Expenditures
2000 Student Union Revenue Bond Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Operating Revenues					
Tuition & Fees					
Student Union Fees	\$ 592,248	\$ 592,248	\$ 481,370	\$ (110,878)	81%
Contracted Services	<u>144,754</u>	<u>144,754</u>	<u>-</u>	<u>(144,754)</u>	0%
Total Tuition & Fees	<u>\$ 737,002</u>	<u>\$ 737,002</u>	<u>\$ 481,370</u>	<u>\$ (255,632)</u>	
Total Operating Revenues	<u>\$ 737,002</u>	<u>\$ 737,002</u>	<u>\$ 481,370</u>	<u>\$ (255,632)</u>	
Non-Operating Revenues					
Investment Income	<u>\$ 4,688</u>	<u>\$ 4,688</u>	<u>\$ 1,965</u>	<u>\$ (2,723)</u>	42%
Total Investment Income	<u>\$ 4,688</u>	<u>\$ 4,688</u>	<u>\$ 1,965</u>	<u>\$ (2,723)</u>	
Total Non-Operating Revenues	<u>\$ 4,688</u>	<u>\$ 4,688</u>	<u>\$ 1,965</u>	<u>\$ (2,723)</u>	
Total REVENUES	<u>\$ 741,690</u>	<u>\$ 741,690</u>	<u>\$ 483,335</u>	<u>\$ (258,355)</u>	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	<u>\$ 11,100</u>	<u>\$ 11,100</u>	<u>\$ -</u>	<u>\$ 11,100</u>	0%
Total Institutional Support	<u>\$ 11,100</u>	<u>\$ 11,100</u>	<u>\$ -</u>	<u>\$ 11,100</u>	
Debt Service					
Interest on Capital	<u>\$ 273,590</u>	<u>\$ 273,590</u>	<u>\$ 136,795</u>	<u>\$ 136,795</u>	50%
Principal on Capital	<u>395,000</u>	<u>395,000</u>	<u>-</u>	<u>395,000</u>	0%
Total Debt Service	<u>\$ 668,590</u>	<u>\$ 668,590</u>	<u>\$ 136,795</u>	<u>\$ 531,795</u>	
Total Non-Operating Expenses	<u>\$ 679,690</u>	<u>\$ 679,690</u>	<u>\$ 136,795</u>	<u>\$ 542,895</u>	
Total EXPENSES	<u>\$ 679,690</u>	<u>\$ 679,690</u>	<u>\$ 136,795</u>	<u>\$ 542,895</u>	
Increase/(Decrease) in Net Assets	<u>\$ 62,000</u>	<u>\$ 62,000</u>	<u>\$ 346,540</u>	<u>\$ 284,540</u>	

Texas Southmost College
Statement of Revenues & Expenditures
2002 General Revenue Bond Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Investment Income					
Investment Earnings	\$ 2,446	\$ 2,446	\$ 463	\$ (1,983)	19%
Total Investment Income	\$ 2,446	\$ 2,446	\$ 463	\$ (1,983)	
Total Non-Operating Revenues	\$ 2,446	\$ 2,446	\$ 463	\$ (1,983)	
Total REVENUES	\$ 2,446	\$ 2,446	\$ 463	\$ (1,983)	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 4,950	\$ 4,950	\$ -	\$ 4,950	0%
Total Institutional Support	\$ 4,950	\$ 4,950	\$ -	\$ 4,950	
Debt Service					
Interest on Capital	\$ 252,496	\$ 252,496	\$ 126,248	\$ 126,248	50%
Principal on Capital	195,000	195,000	-	195,000	0%
Total Debt Service	\$ 447,496	\$ 447,496	\$ 126,248	\$ 321,248	
Total Non-Operating Expenses	\$ 452,446	\$ 452,446	\$ 126,248	\$ 326,198	
Total EXPENSES	\$ 452,446	\$ 452,446	\$ 126,248	\$ 326,198	
Interfund Transfers					
Transfer from General	\$ (450,000)	\$ (450,000)	\$ (225,000)	\$ (225,000)	50%
Total Interfund Transfers	\$ (450,000)	\$ (450,000)	\$ (225,000)	\$ (225,000)	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ 99,215	\$ 99,215	

Texas Southmost College
Statement of Revenues & Expenditures
2005 REK Center Rev. Bond Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Operating Revenues					
Tuition & Fees					
Student Recreation Fee	\$ 979,682	\$ 979,682	\$ 797,187	\$ (182,495)	81%
Contracted Services	3,049	3,049	-	(3,049)	0%
Total Tuition & Fees	<u>\$ 982,731</u>	<u>\$ 982,731</u>	<u>\$ 797,187</u>	<u>\$ (185,544)</u>	
Total Operating Revenues	<u>\$ 982,731</u>	<u>\$ 982,731</u>	<u>\$ 797,187</u>	<u>\$ (185,544)</u>	
Non-Operating Revenues					
Investment Income					
Investment Earnings	\$ 9,890	\$ 9,890	\$ 5,616	\$ (4,274)	57%
Total Investment Income	<u>\$ 9,890</u>	<u>\$ 9,890</u>	<u>\$ 5,616</u>	<u>\$ (4,274)</u>	
Total Non-Operating Revenues	<u>\$ 9,890</u>	<u>\$ 9,890</u>	<u>\$ 5,616</u>	<u>\$ (4,274)</u>	
Total REVENUES	<u>\$ 992,621</u>	<u>\$ 992,621</u>	<u>\$ 802,803</u>	<u>\$ (189,818)</u>	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 10,640	\$ 10,640	\$ -	\$ 10,640	0%
Total Institutional Support	<u>\$ 10,640</u>	<u>\$ 10,640</u>	<u>\$ -</u>	<u>\$ 10,640</u>	
Debt Service					
Interest on Capital	\$ 546,981	\$ 546,981	\$ 273,491	\$ 273,490	50%
Principal on Capital	435,000	435,000	-	435,000	0%
Total Debt Service	<u>\$ 981,981</u>	<u>\$ 981,981</u>	<u>\$ 273,491</u>	<u>\$ 708,490</u>	
Total Non-Operating Expenses	<u>\$ 992,621</u>	<u>\$ 992,621</u>	<u>\$ 273,491</u>	<u>\$ 719,130</u>	
Total EXPENSES	<u>\$ 992,621</u>	<u>\$ 992,621</u>	<u>\$ 273,491</u>	<u>\$ 719,130</u>	
Increase/(Decrease) in Net Assets	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 529,312</u>	<u>\$ 529,312</u>	

Texas Southmost College
Statement of Revenues & Expenditures
2005 Tax Debt Service Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Local Tax Revenues	\$ 1,610,043	\$ 1,610,043	\$ 1,524,620	\$ (85,423)	95%
Investment Income					
Investment Earnings	\$ 2,545	\$ 2,545	\$ 918	\$ (1,627)	36%
Total Investment Income	\$ 2,545	\$ 2,545	\$ 918	\$ (1,627)	
Total Non-Operating Revenues	\$ 1,612,588	\$ 1,612,588	\$ 1,525,538	\$ (87,050)	
Total REVENUES	\$ 1,612,588	\$ 1,612,588	\$ 1,525,538	\$ (87,050)	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 4,300	\$ 4,300	\$ 300	\$ 4,000	7%
Total Institutional Support	\$ 4,300	\$ 4,300	\$ 300	\$ 4,000	
Debt Service					
Interest on Capital	\$ 668,288	\$ 668,288	\$ 342,075	\$ 326,213	51%
Principal on Capital	940,000	940,000	940,000	-	100%
Total Debt Service	\$ 1,608,288	\$ 1,608,288	\$ 1,282,075	\$ 326,213	
Total Non-Operating Expenses	\$ 1,612,588	\$ 1,612,588	\$ 1,282,375	\$ 330,213	
Total EXPENSES	\$ 1,612,588	\$ 1,612,588	\$ 1,282,375	\$ 330,213	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ 243,163	\$ 243,163	

Texas Southmost College
Statement of Revenues & Expenditures
2006 Tax Debt Service Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Local Tax Revenues	\$ 1,731,826	\$ 1,731,826	\$ 1,633,799	\$ (98,027)	94%
Investment Income					
Investment Earnings	\$ 1,664	\$ 1,664	\$ 1,085	\$ (579)	65%
Total Investment Income	\$ 1,664	\$ 1,664	\$ 1,085	\$ (579)	
Total Non-Operating Revenues	\$ 1,733,490	\$ 1,733,490	\$ 1,634,884	\$ (98,606)	
Total REVENUES	\$ 1,733,490	\$ 1,733,490	\$ 1,634,884	\$ (98,606)	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 3,750	\$ 3,750	\$ 300	\$ 3,450	8%
Total Institutional Support	\$ 3,750	\$ 3,750	\$ 300	\$ 3,450	
Debt Service					
Interest on Capital	\$ 1,074,740	\$ 1,074,740	\$ 544,329	\$ 530,411	51%
Principal on Capital	\$ 655,000	\$ 655,000	\$ 655,000	\$ -	100%
Total Debt Service	\$ 1,729,740	\$ 1,729,740	\$ 1,199,329	\$ 530,411	
Total Non-Operating Expenses	\$ 1,733,490	\$ 1,733,490	\$ 1,199,629	\$ 533,861	
Total EXPENSES	\$ 1,733,490	\$ 1,733,490	\$ 1,199,629	\$ 533,861	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ 435,255	\$ 435,255	

Texas Southmost College
Statement of Revenues & Expenditures
2006 Maintenance Tax Notes Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Local Tax Revenues	\$ 379,058	\$ 379,058	\$ 359,061	\$ (19,997)	95%
Investment Income					
Investment Earnings	\$ 870	\$ 870	\$ 228	\$ (642)	26%
Total Investment Income	\$ 870	\$ 870	\$ 228	\$ (642)	
Total Non-Operating Revenues	\$ 379,928	\$ 379,928	\$ 359,289	\$ (20,639)	
Total REVENUES	\$ 379,928	\$ 379,928	\$ 359,289	\$ (20,639)	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 3,300	\$ 3,300	\$ 300	\$ 3,000	9%
Total Institutional Support	\$ 3,300	\$ 3,300	\$ 300	\$ 3,000	
Debt Service					
Interest on Capital	\$ 166,628	\$ 166,628	\$ 85,414	\$ 81,214	51%
Principal on Capital	210,000	210,000	210,000	-	100%
Total Debt Service	\$ 376,628	\$ 376,628	\$ 295,414	\$ 81,214	
Total Non-Operating Expenses	\$ 379,928	\$ 379,928	\$ 295,714	\$ 84,214	
Total EXPENSES	\$ 379,928	\$ 379,928	\$ 295,714	\$ 84,214	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ 63,575	\$ 63,575	

Texas Southmost College
Statement of Revenues & Expenditures
2007 Tax Debt Service Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Local Tax Revenues	\$ 1,019,891	\$ 1,019,891	\$ 961,300	\$ (58,591)	94%
Investment Income					
Investment Earnings	\$ 1,329	\$ 1,329	\$ 629	\$ (700)	47%
Total Investment Income	\$ 1,329	\$ 1,329	\$ 629	\$ (700)	
Total Non-Operating Revenues	\$ 1,021,220	\$ 1,021,220	\$ 961,929	\$ (59,291)	
Total REVENUES	\$ 1,021,220	\$ 1,021,220	\$ 961,929	\$ (59,291)	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 3,450	\$ 3,450	\$ -	\$ 3,450	0%
Total Institutional Support	\$ 3,450	\$ 3,450	\$ -	\$ 3,450	
Debt Service					
Interest on Capital	\$ 552,770	\$ 552,770	\$ 281,326	\$ 271,444	51%
Principal on Capital	465,000	465,000	465,000	-	100%
Total Debt Service	\$ 1,017,770	\$ 1,017,770	\$ 746,326	\$ 271,444	
Total Non-Operating Expenses	\$ 1,021,220	\$ 1,021,220	\$ 746,326	\$ 274,894	
Total EXPENSES	\$ 1,021,220	\$ 1,021,220	\$ 746,326	\$ 274,894	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ 215,603	\$ 215,603	

Texas Southmost College
Statement of Revenues & Expenditures
2007 Maintenance Tax Notes Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Local Tax Revenues	\$ 149,023	\$ 149,023	\$ 141,038	\$ (7,985)	95%
Investment Income					
Investment Earnings	\$ 148	\$ 148	\$ 86	\$ (62)	58%
Total Investment Income	\$ 148	\$ 148	\$ 86	\$ (62)	
Total Non-Operating Revenues	\$ 149,171	\$ 149,171	\$ 141,124	\$ (8,047)	
Total REVENUES	\$ 149,171	\$ 149,171	\$ 141,124	\$ (8,047)	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 3,500	\$ 3,500	\$ -	\$ 3,500	0%
Total Institutional Support	\$ 3,500	\$ 3,500	\$ -	\$ 3,500	
Debt Service					
Interest on Capital	\$ 70,671	\$ 70,671	\$ 36,133	\$ 34,538	51%
Principal on Capital	75,000	75,000	75,000	-	100%
Total Debt Service	\$ 145,671	\$ 145,671	\$ 111,133	\$ 34,538	
Total Non-Operating Expenses	\$ 149,171	\$ 149,171	\$ 111,133	\$ 38,038	
Total EXPENSES	\$ 149,171	\$ 149,171	\$ 111,133	\$ 38,038	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ 29,991	\$ 29,991	

Texas Southmost College
Statement of Revenues & Expenditures
2008 Tax Debt Service Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Local Tax Revenues	\$ 274,799	\$ 274,799	\$ 260,973	\$ (13,826)	95%
Investment Income					
Investment Earnings	\$ 2,467	\$ 2,467	\$ 199	\$ (2,268)	8%
Total Investment Income	\$ 2,467	\$ 2,467	\$ 199	\$ (2,268)	
Total Non-Operating Revenues	\$ 277,266	\$ 277,266	\$ 261,172	\$ (16,094)	
Total REVENUES	\$ 277,266	\$ 277,266	\$ 261,172	\$ (16,094)	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 2,200	\$ 2,200	\$ -	\$ 2,200	0%
Total Institutional Support	\$ 2,200	\$ 2,200	\$ -	\$ 2,200	
Debt Service					
Interest on Capital	\$ 165,066	\$ 165,066	\$ 83,633	\$ 81,433	51%
Principal on Capital	110,000	110,000	110,000	-	100%
Total Debt Service	\$ 275,066	\$ 275,066	\$ 193,633	\$ 81,433	
Total Non-Operating Expenses	\$ 277,266	\$ 277,266	\$ 193,633	\$ 83,633	
Total EXPENSES	\$ 277,266	\$ 277,266	\$ 193,633	\$ 83,633	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ 67,539	\$ 67,539	

Texas Southmost College
Statement of Revenues & Expenditures
2008 Maintenance Tax Notes Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Local Tax Revenues	\$ 380,034	\$ 380,034	\$ 358,448	\$ (21,586)	94%
Investment Income					
Investment Earnings	\$ 729	\$ 729	\$ 197	\$ (532)	27%
Total Investment Income	\$ 729	\$ 729	\$ 197	\$ (532)	
Total Non-Operating Revenues	\$ 380,763	\$ 380,763	\$ 358,645	\$ (22,118)	
Total REVENUES	\$ 380,763	\$ 380,763	\$ 358,645	\$ (22,118)	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 2,350	\$ 2,350	\$ -	\$ 2,350	0%
Total Institutional Support	\$ 2,350	\$ 2,350	\$ -	\$ 2,350	
Debt Service					
Interest on Capital	\$ 178,413	\$ 178,413	\$ 91,206	\$ 87,207	51%
Principal on Capital	200,000	200,000	200,000	-	100%
Total Debt Service	\$ 378,413	\$ 378,413	\$ 291,206	\$ 87,207	
Total Non-Operating Expenses	\$ 380,763	\$ 380,763	\$ 291,206	\$ 89,557	
Total EXPENSES	\$ 380,763	\$ 380,763	\$ 291,206	\$ 89,557	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ 67,439	\$ 67,439	#

Texas Southmost College
Statement of Revenues & Expenditures
2009 Tax Debt Service Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Local Tax Revenues	\$ 443,648	\$ 443,648	\$ 420,968	\$ (22,680)	95%
Investment Income					
Investment Earnings	\$ 5,002	\$ 5,002	\$ 258	\$ (4,744)	5%
Total Investment Income	\$ 5,002	\$ 5,002	\$ 258	\$ (4,744)	
Total Non-Operating Revenues	\$ 448,650	\$ 448,650	\$ 421,226	\$ (27,424)	
Total REVENUES	\$ 448,650	\$ 448,650	\$ 421,226	\$ (27,424)	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 2,350	\$ 2,350	\$ -	\$ 2,350	0%
Total Institutional Support	\$ 2,350	\$ 2,350	\$ -	\$ 2,350	
Debt Service					
Interest on Capital	\$ 109,300	\$ 109,300	\$ 56,600	\$ 52,700	52%
Principal on Capital	337,000	337,000	260,000	77,000	77%
Total Debt Service	\$ 446,300	\$ 446,300	\$ 316,600	\$ 129,700	
Total Non-Operating Expenses	\$ 448,650	\$ 448,650	\$ 316,600	\$ 132,050	
Total EXPENSES	\$ 448,650	\$ 448,650	\$ 316,600	\$ 132,050	
Increase/(Decrease) in Net Assets	\$ -	\$ -	\$ 104,626	\$ 104,626	

Texas Southmost College
Statement of Revenues & Expenditures
2009 Maintenance Tax Notes Fund
From 9/1/2012 - 2/28/2013

(In Whole Numbers)

	Total Original Budget	Total Budget Revised	Current Period Actual	YTD Revised Budget Variance	
REVENUES					
Non-Operating Revenues					
Local Tax Revenues	\$ 284,648	\$ 284,648	\$ 267,231	\$ (17,417)	94%
Investment Income					
Investment Earnings	\$ 865	\$ 865	\$ 146	\$ (719)	17%
Total Investment Income	\$ 865	\$ 865	\$ 146	\$ (719)	
Total Non-Operating Revenues	\$ 285,513	\$ 285,513	\$ 267,377	\$ (18,136)	
Total REVENUES	\$ 285,513	\$ 285,513	\$ 267,377	\$ (18,136)	
EXPENSES					
Non-Operating Expenses					
Institutional Support					
Fiscal Agent Fees	\$ 2,350	\$ 2,350	\$ -	\$ 2,350	0%
Total Institutional Support	\$ 2,350	\$ 2,350	\$ -	\$ 2,350	
Debt Service					
Interest on Capital	\$ 114,663	\$ 114,663	\$ 58,338	\$ 56,325	51%
Principal on Capital	168,500	168,500	140,000	28,500	83%
Total Debt Service	\$ 283,163	\$ 283,163	\$ 198,338	\$ 84,825	
Total Non-Operating Expenses	\$ 285,513	\$ 285,513	\$ 198,338	\$ 87,175	
Total EXPENSES	\$ 285,513	\$ 285,513	\$ 198,338	\$ 87,175	
 Increase/(Decrease) in Net Assets	 \$ -	 \$ -	 \$ 69,039	 \$ 69,039	

TEXAS SOUTHWEST COLLEGE DISTRICT
INVESTMENT REPORT
FOR QUARTER ENDED
FEBRUARY 28, 2013

RETIREMENT OF INDEBTEDNESS

Instrument	Book Value	Market Value	Book Value	Market Value	Avg. Yield	Maturity	Interest Earned
	11/30/2012	11/30/2012	2/28/2013	2/28/2013			
TSC Debt Service Fund	\$209,065.29	\$209,065.29	\$209,177.80	\$209,177.80	0.210%	N/A	\$108.74
TSC 1987 Tax Debt Service Fund	\$504,047.87	\$504,047.87	\$508,184.76	\$508,184.76	0.210%	N/A	\$263.62
TSC 2005 Tax Debt Service Fund	\$1,289,377.19	\$1,289,377.19	\$401,064.68	\$401,064.68	0.210%	N/A	\$650.48
TSC 2005 WRKC Debt Service Fund	\$4,882,253.87	\$4,882,253.87	\$5,445,918.91	\$5,445,918.91	0.210%	N/A	\$2,883.22
TSC 2006 Tax Debt Service	\$1,460,637.39	\$1,460,637.39	\$683,545.72	\$683,545.72	0.210%	N/A	\$753.87
TSC 2007 Tax Debt Service	\$854,028.83	\$854,028.83	\$356,289.41	\$356,289.41	0.210%	N/A	\$437.16
TSC 2008 Tax Debt Service	\$257,789.34	\$257,789.34	\$131,365.74	\$131,365.74	0.210%	N/A	\$132.97
TSC 2009 Tax Debt Service	\$357,609.89	\$357,609.89	\$149,562.62	\$149,562.62	0.210%	N/A	\$183.49
TSC 2006 Maintenance Tax Debt Service	\$313,842.81	\$313,842.81	\$111,080.68	\$111,080.68	0.210%	N/A	\$159.11
TSC 2007 Maintenance Tax Debt Service	\$119,136.22	\$119,136.22	\$44,526.10	\$44,526.10	0.210%	N/A	\$60.79
TSC 2008 Maintenance Tax Debt Service	\$285,111.77	\$285,111.77	\$86,461.14	\$86,461.14	0.210%	N/A	\$144.43
TSC 2009 Maintenance Tax Debt Service	\$210,575.41	\$210,575.41	\$81,080.26	\$81,080.26	0.210%	N/A	\$108.16
TSC Student Union Bldg Fees	\$1,623,150.91	\$1,623,150.91	\$1,994,656.20	\$1,994,656.20	0.210%	N/A	\$1,055.95
							<u>\$6,941.99</u>

AGENCY FUNDS

Instrument	Book Value	Market Value	Book Value	Market Value	Avg. Yield	Maturity	Interest Earned
	11/30/2012	11/30/2012	2/28/2013	2/28/2013			
TSC Alumni Association	\$10,766.59	\$10,766.59	\$10,772.38	\$10,772.38	0.210%	N/A	\$5.60
							<u>\$5.60</u>


TOTAL INTEREST EARNED THIS QUARTER


\$23,134.86

Note: All investments are in accordance with the stated strategies, District Board Investment Policy 4.60, and relevant provisions of the law.

Interest Summary

FUNDS	Earned 1st Qtr	Earned 2nd Qtr	Earned 3rd Qtr	Earned 4th Qtr
Current Funds	\$6,880.12	\$9,694.84		
Loan Funds	\$20.60	\$19.15		
Endowment & Similar Funds	\$5.23	\$5.26		
Plant Funds	\$12,072.56	\$13,410.01		
Agency Funds	\$6.03	\$5.60		
TOTAL	\$18,984.54	\$23,134.86		


Chet Lewis, III
Vice President of Finance
and Administration


Nancy Saldana
Director of Finance