



## **The Basics on Volunteers and Volunteering in Your District**

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Frequently schools are looking for a few good community members to volunteer their time, and many times school board members want to volunteer to assist their districts or help in recruiting other members from the community to fill such volunteer positions. This article will provide some basics to think about before raising your hand to volunteer and address some common issues that arise when a district turns to the community for volunteers.

### **Board Members as Volunteers**

Board members who have children in school, or merely want to be involved in their schools, sometimes wish to serve as volunteers on a campus in their district. The common-law incompatibility doctrine which would clearly prohibit a board member from serving as a teacher in the same district does not clearly permit or prohibit volunteer activity. The Texas attorney general has opined that a board member may serve as a volunteer in his or her own district if the volunteer duties are informal duties, which are not ordinarily performed by a compensated employee in a regular position, and do not involve regular hours on specific days or a specific period of time agreed upon in advance. Tex. Att’y Gen. Op. No. JC-0371 (2001). If the board member’s volunteer activities become routine, formalized, or compensated by the district in any way, the member risks violating the incompatibility doctrine and should refrain from serving as a volunteer.

In addition, as a practical matter, a board member should carefully consider the risk of creating potential governance problems if he or she will have a continued presence in one classroom or campus. If a board member gains a great deal of personal knowledge about a classroom or campus while serving as a volunteer, that knowledge may affect the board member’s ability to serve the district effectively as a board member. The best practice is to discuss the matter with the district’s superintendent and the campus principal.

### **Criminal History, Background Check Requirements**

After a district has found members of the community who are interested in serving as volunteers, the district will need to determine if a criminal history or background check is required before the individual begins volunteer duties. State law requires certain groups of people (e.g., certified educators, classroom teachers, etc.) to submit to a criminal history review. Volunteers are not required to submit fingerprints for a national criminal history review. However, a district must conduct a name-based state criminal history review on most volunteers.

As a general rule, a district is required to review the criminal history of a volunteer or a person who has indicated in writing an intention to serve as a volunteer, unless the volunteer falls into one of the three categories of exceptions to the general rule. Tex. Educ. Code § 22.0835(a)(2). A district is not required to review the criminal history of a person: 1) who is a parent, guardian, or grandparent of a student enrolled in the district where the person will perform volunteer services; 2) who will be accompanied by a district employee while on campus; OR 3) who is volunteering for a single event on a campus. Tex. Educ. Code § 22.0835(e). A district may, however, still choose to review the criminal history of a person covered by these exceptions if it wishes to. Tex. Educ. Code § 22.0835(f).

Once a person determines he or she is eligible to serve as a volunteer and has notified the school or district of his or her intent to serve, the volunteer will be required to provide the district with enough information to enable a name-based criminal history review. The volunteer may not begin performing any volunteer duties until the district obtains and reviews the person's criminal history. Tex. Educ. Code § 22.0835(d). It is acceptable for a district to require the volunteer to pay the cost of obtaining the criminal history or request reimbursement from the volunteer if the district has paid the cost of the criminal history in advance. Tex. Educ. Code § 22.0837.

### **Paying Volunteers**

Determining whether a volunteer is entitled to compensation for volunteer services will depend on whether the volunteer is an employee or non-employee of the district.

#### **Employee Volunteers**

An employee may volunteer hours of service to the district in which he or she is employed if "such services are not the same type of services which the individual is employed to perform for [the district]." 29 C.F.R. § 553.103(a). In addition, the volunteer services must be offered freely and without pressure or coercion, direct or implied, from the district. 29 C.F.R. § 553.101(a).

Same type of services means similar or identical services. 29 C.F.R. § 553.103(a). Criteria for determining whether an employee is volunteering to provide the same type of services include: (1) the duties and other factors in the definitions of occupations in the Dictionary of Occupational Titles; and (2) whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee. 29 C.F.R. § 553.103(a).

Examples of volunteer services that do not constitute the "same type of services" are described below:

- An individual who is employed by a district as a full-time bus driver may volunteer to be an assistant coach for the basketball team. However, any time spent driving the team to away games or other activities could not be treated as volunteer services.

- A teacher assistant who works with students in the classroom during the day may volunteer to be an assistant coach for the basketball team.
- A school secretary may volunteer to be the head volleyball coach.
- A teacher assistant may volunteer to be the chess club sponsor at the high school where she works, provided the duties performed as a teaching assistant are not the “same or similar duties.”
- A secretarial or clerical employee may volunteer as a ticket-taker, usher, box office personnel, or security worker at games during football or basketball season or at infrequent special events such as concerts or theater performances, provided the employee’s regular duties do not involve the same or similar services.

U.S. Dep’t of Labor, Wage and Hour Division, [FLSA2006-40](#) (Oct 20, 2006); U.S. Dep’t of Labor, Wage and Hour Division, [FLSA2004-6](#) (July 14, 2004).

A special exception applies to employees who seek to volunteer as parents. A district is not required to pay an employee who is a parent (or who stands in loco parentis) of a child in the district and who volunteers in activities directly involving the child’s education and participation. U.S. Dep’t of Labor, Wage and Hour Division, [FLSA2006-40](#) (Oct 20, 2006). This exception applies only if the activities are performed without expectation of compensation and there is no coercion or pressure on the employee by the district to provide the volunteer services.

For example, a paraprofessional employed by a district may seek to volunteer services in the schools his children attend. U.S. Dep’t of Labor, Wage and Hour Division, [FLSA2006-40](#) (Oct 20, 2006). Similarly, a full-time bus driver would not qualify as a volunteer if the driver drove the basketball team to away games on the activity bus. Driving a school bus constitutes the same, identical, or similar service, regardless of the characterization of the passengers as students or student athletes, and regardless of whether the transportation is to and from school or school authorized activities. If, however, the bus driver were a parent of one of the members of the basketball team, the services may qualify as volunteer services provided the bus driver either received no compensation or was compensated on a nominal basis. U.S. Dep’t of Labor, Wage and Hour Division, [FLSA2004-6](#) (July 14, 2004).

Districts are not required to pay employees who volunteer for school-related entities that are truly separate from the district. The organization must be a not-for-profit with its own board of directors and independent from the district. The following examples illustrate this rule:

- A cafeteria worker may volunteer to serve a meal at the PTA meeting she attends as a parent, provided the PTA is a separate public agency.
- A secretary/bookkeeper may volunteer to keep the books for the athletic booster club, provided the athletic booster club is a separate public agency.

U.S. Dep’t of Labor, Wage and Hour Division, [FLSA2006-40](#) (Oct 20, 2006).

## Non-employee Volunteers

An individual (e.g., a parent) who is not otherwise employed by the district may volunteer services for the district and need not be paid minimum wage or overtime. The key is that the person must not be an *employee* of the district. Under the Fair Labor Standards Act (FLSA), an individual is an employee, and not a volunteer, if the individual expects or receives compensation for the services rendered. However, an individual may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing his status as a volunteer. 29 C.F.R. § 553.106(a). A fee is not “nominal” if it is a substitute for compensation or tied to productivity. 29 C.F.R. § 553.106(e); *see also* Wage & Hour Op. FLSA 2004-6 (July 14, 2004).

### In Conclusion

They say it takes a village to raise a child. When members of that village come to your district eager to volunteer, it is helpful to have volunteer guidelines in place and understand the regulations necessary to keep your students safe and get the help you need.

For a more in-depth look at volunteers and volunteering for schools, feel free to check out TASB’s eSource on-line or call the TASB Legal Line at 800.580.5345.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/services/legal-services/tasb-school-law-esource/community/documents/basics-on-volunteers-and-volunteering-in-district.pdf](https://tasb.org/services/legal-services/tasb-school-law-esource/community/documents/basics-on-volunteers-and-volunteering-in-district.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoollawesource.tasb.org](https://schoollawesource.tasb.org).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district’s own attorney in order to apply these legal principles to specific fact situations.*

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