



## ***Districts of Innovation: Policy Guidance for After the Plan***

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Districts of innovation can access greater local control by seeking exemption from state legal requirements in such areas as teacher certification, elementary class size and student/teacher ratio, and the instructional calendar. Once a district has completed the steps required to become a district of innovation, it will need to determine how to implement the exemptions in practice. The paragraphs below provide guidance on how to develop local policies to address popular innovations.

### ***A Word of Caution: Exemptions from Chapter 21***

Among the permissible exemptions for districts of innovation are exemptions from aspects of Chapter 21 of the Texas Education Code, which governs the employment rights of certified school district employees. Thus far, most districts that have sought exemptions from parts of Chapter 21 have focused on two exemptions:

- Certification Required ([TEC 21.003](#)), to allow noncertified individuals to teach in specified teaching fields or to allow certified teachers to teach outside of their certification; and
- Probationary Contract Period ([TEC 21.102\(b\)](#)), to allow the district to offer more than one year of probationary contracts to teachers with prior experience (5 of the last 8 years) who are new to the district.

For the most part, both of these popular exemptions focus on newly hired employees. However, to the extent a district is seeking to apply an exemption to existing staff or to seek an exemption from another part of (or even all of) Chapter 21, the district must consult its school attorney and proceed with caution.

The district cannot interfere with the contract rights of existing employees in the course of current contracts. Any change to contract rights between years should be clearly explained, in writing, and before the penalty-free resignation date in July. Changes should appear not only in an innovation plan; they should also be reflected in local policy. Moreover, some changes to the procedures associated with Chapter 21 (such as nonrenewal rights) may require changes to the text of employment contracts. Again, districts seeking to adopt exemptions that may alter employment rights should consult with a school attorney.

## 1. Teacher certification

### State Law

*What statutes do we need to exempt in order to hire uncertified individuals to teach in specific instructional areas (such as CTE)?*

In order to be able to hire uncertified teachers in specific teaching areas, a district's innovation plan should identify an exemption from Texas Education Code section 21.003. This is the requirement in state law that all school district teachers be certified in accordance with rules adopted by the State Board for Educator Certification (SBEC). A district seeking innovations in hiring personnel for CTE or other permissible teaching areas must seek exemption from the law requiring all certification. Through the district's plan and policy, the district may clarify its intent to limit use of the exemption to specific instructional areas.

Section 21.003 is not the only law that governs teacher certification and qualifications. Allowable exemptions related to teacher certification requirements include the following:

- Certification Required ([TEC 21.003](#))
- Failure to Obtain Certification; Contract Void ([TEC 21.0031](#))
- Rules Regarding Field-Based Experience and Options for Field Experience and Internships ([TEC 21.051](#))
- Presentation and Recording of Certificates ([TEC 21.053](#))
- Parental Notification ([TEC 21.057](#))

Districts do not need to seek exemptions from all related statutes in order to be exempt from the certification requirement in Section 21.003. For example, Texas Education Code section 21.0031 provides that an employee's probationary, continuing, or term Chapter 21 contract is void for failure to maintain certification in certain circumstances. Texas Education Code section 21.053 requires a person wishing to teach in a school district to present a teaching certificate to the district before the employment contract becomes binding and the person can be paid. In addition, Texas Education Code section 21.057 requires parental notification of an uncertified teacher. Districts may accomplish the goal of hiring flexibility in specific instructional areas (like CTE) by seeking exemption from Section 21.003. Seeking exemption from the related statutes is unnecessary, as the related statutes will not apply to the uncertified individuals, and districts will want to retain the tools set out in the related statutes in managing the district's other certified employees.

Texas Education Code [section 21.044](#) does not impose any requirements on school districts but requires SBEC to establish educator preparation programs and certification fields. Pursuant to this statutory authority, SBEC has adopted regulations in the Texas Administrative Code, Title 19, Chapter 231, to establish specific requirements for school personnel assignments. Districts may choose to address these regulations in their innovation plans, but a district must waive the underlying statute, Section 21.003, in order to be exempt from the basic certification requirement.

*Should we seek exemption from the statutory requirement to notify parents when their children are taught by an uncertified teacher?*

Maybe. Under ESSA, federal law requires notifying parents of uncertified teachers if the district receives Title I funds. Under Texas Education Code section 21.057(e), districts are not required to provide state notice of an uncertified teacher if the district provides notice regarding a teacher who does not meet state certification requirements in accordance with ESSA. Therefore, exemption from Section 21.057 may not be necessary if the district receives Title I funds and provides notice under ESSA. Even if such notice is not legally required, TASB recommends keeping parents well informed about changes to class size and teacher certification. Considering the impact that these exemptions may have on students, districts should proceed with caution and transparency.

Other issues that a district should consider addressing in the innovation plan and, if appropriate, board-adopted local policy include:

- teaching positions for which state certification is still required (if, for example, the exemption is limited to a specific teaching area, such as CTE);
- local standards for hiring qualified individuals from nontraditional backgrounds for teaching positions;
- contractual rights of noncertified teachers; and
- board notification of noncertified teachers, if desired.

*Are there pitfalls or exemptions we should avoid?*

The board should avoid leaving ambiguity about which employees are required to hold certification and which are not. Important employee rights and benefits rely on the employee's status as an educator required to hold a certificate issued by SBEC. If a district is exempt from Section 21.003, local policy should fill the gap by stating clearly that all other instructional staff are required to hold valid SBEC certificates and will receive Chapter 21 contracts in accordance with law and policy.

Boards should also exercise caution in seeking exemptions that may have unintended consequences. Examples include Sections 21.0031 and 21.053, as described above.

In addition, districts may not use an innovation plan to hire uncertified teachers in certain instances. A district may not seek exemption from a certification requirement that applies to an open-enrollment charter school, such as requirements for special education or bilingual teachers under Texas Education Code chapter 29. Tex. Educ. Code § 12.104(b)(g). Nor may districts seek exemption from Texas Education Code section 28.0211(n), requiring certification for teachers of students promoted by a grade placement committee.

A district also may not use an innovation plan to seek exemptions from a requirement imposed by a state or federal program in which a district voluntarily participates. Even if a district is exempt from the Texas Education Code requirement for teacher certification, federal or state grants may require certified teachers within affected programs. Finally, please note that Texas Education Code [section 21.055](#), which sets out procedures for a school district to issue a local teaching permit to an uncertified individual, is a voluntary statute that cannot be the subject of an exemption.

Districts seeking an exemption from certification have asked TASB and TEA whether a bachelor's degree is a requirement for affected employees. For CTE courses that count for high school graduation credit, a bachelor's degree is necessary for funding purposes. See Tex. Educ. Agency, [2017-18 Student Attendance Accounting Handbook](#) (Aug. 2017). Teachers who provide instruction in other areas, as identified in the district's innovation plan, are not required by law to hold a bachelor's degree. Although state law requires charter school teachers to hold a bachelor's degree, TEA takes the position that this law does not apply to a district of innovation. Consequently, for example, if a district's innovation plan indicates that teachers providing instruction in Languages Other Than English (LOTE) are exempt from state certification requirements, the district may employ a native speaker of an LOTE who is not certified and who does not hold a bachelor's degree. Nonetheless, a district seeking exemption from certification in specific areas of instruction should consider establishing a local process for verifying the qualifications of these employees.

### TASB Policy

Including details about the hiring process, as well as contract eligibility, for noncertified employees in the innovation plan will facilitate the district's ability to adopt or revise appropriate policies. Districts seeking an exemption from Section 21.003 should ask their TASB policy consultant for assistance in considering changes to policies at the following codes:

- DBA—Employment Requirements and Restrictions—Credentials and Records
- DK—Assignment and Schedules

## 2. Class size and student/teacher ratio

### State Law

Allowable exemptions related to class size and student/teacher ratio requirements include the following:

- Student/Teacher Ratios ([TEC 25.111](#))
- Class Size ([TEC 25.112](#))
- Notice of Class Size ([TEC 25.113](#))
- Student/Teacher Ratios in P.E. Classes and P.E. Class Size ([TEC 25.114](#))

Note that each of the statutes listed above imposes a separate but related requirement. For example, Texas Education Code section 25.111 requires districts to employ a sufficient number of certified teachers to maintain an average ratio of not less than 1 teacher for each 20 students in average daily attendance. Texas Education Code section 25.112 generally prohibits a district from enrolling more than 22 students in a K-4th grade class unless the district claims an exemption through TEA's waiver procedure. Texas Education Code section 25.113 requires a campus or district that is granted a class size waiver to provide parental notice. Texas Education Code section 25.114 imposes student/teacher ratio and class size requirements specific to physical education.

A district is not required to seek exemption from all of the statutes relevant to class size and student/teacher ratio in order to adopt innovative practices in this area. The district's innovation plan should clearly identify the statutes from which the district seeks exemption. As a best practice, the plan should also discuss which relevant state law requirements the district will continue to meet and identify any local alternative procedures.

For example, a district may exempt itself from student/teacher ratio under Section 25.111 and K-4 class size requirements under Section 25.112 in order to have more local control over hiring decisions and adopt local standards for determining the appropriate number of students in a class. Arguably, a district that has exempted itself from Section 25.112 in its innovation plan is not required to provide notice of a TEA class size waiver under Section 25.113. Nonetheless, the district may wish to adopt local standards for class size and continue keeping parents informed when a class temporarily exceeds these limits. If so, the district should consider using the innovation plan to communicate this intent to the community.

### TASB Policy

Districts seeking exemptions related to class size should ask their TASB policy consultant for assistance in considering changes to policies at the following codes:

- BF—Board Policies [reference to campus class size waivers]
- EEB—Instructional Arrangements—Class Size
- EHAA—Basic Instructional Program—Required Instruction [student/teacher ratio in PE classes]

### **3. Instructional calendar**

#### State Law

- Minutes of Instruction ([TEC 25.081](#))
- First Day of Instruction ([TEC 25.0811](#))
- Last Day of School ([TEC 25.0812](#))
- School Day Interruptions ([TEC 25.083](#))

Many districts are taking advantage of the opportunity to create a more localized calendar with exemptions from laws that impose mandatory school start and end dates. Some districts are also looking at changing the length of an instructional day in order to make more time for professional development or other innovations.

A district considering exemption from Texas Education Code section 25.081 on minimum minutes of instruction should be certain that the district understands the financial impact of exemption from this law. A district can be exempt from Section 25.081, but funding may still be proportionally reduced pursuant to the Student Attendance Accounting Handbook. Similarly, Texas open-enrollment charter schools are not subject to Section 25.081, but they do not receive full funding unless they teach the full number of minutes.<sup>1</sup>

A district seeking more local control over the instructional calendar may also consider exemptions from the laws that require 187 teacher contract days ([TEC 21.401](#)).

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<sup>1</sup> Effective for the 2018-19 school year, House Bill 2442 (85th Legislature, 2017 repealed Texas Education Code section 25.082(a) which required a school day to be at least seven hours each day, and eliminated the reference to 420 minutes of instruction in Texas Education Code section 25.081(e). House Bill 2442 also modified the law to provide that a district *operates*, rather than provides instruction, for at least 75,600 minutes each year. Minutes of operation include time allocated for instruction, intermissions, and recesses for students. Because the provisions in House Bill 2442 are now in effect, districts who sought this exemption may want to reexamine their plans for amendment or renewal purposes.

### TASB Policy

Districts seeking exemptions related to the instructional calendar should ask their TASB policy consultant for assistance in considering changes to policies at the following codes:

- EB—School Year
- EC—School Day
- DC—Employment Practices

## **4. Minimum attendance for credit or final grade (90% rule)**

### State Law

- Minimum Attendance for Class Credit or Final Grade (90% Rule) ([TEC 25.092](#))

While a district of innovation may replace the 90 percent attendance rule with a more localized standard for issuing class credit or a final grade, note that compulsory attendance laws still apply.

### TASB Policy

Districts seeking an exemption related to the 90 percent rule should ask their TASB policy consultant for assistance in considering changes to policies at the following codes:

- EI—Academic Achievement
- FEC—Attendance for Credit

## **5. Employee appraisal**

### State Law

- Local Role ([TEC 21.352](#))
- Appraisal on Basis of Classroom Teaching Performance ([TEC 21.353](#))
- Appraisal of Certain Administrators ([TEC 21.354](#))
- Appraisal and Professional Development System for Principals ([TEC 21.3541](#))

In appraising teachers and administrators, school districts may either use the system developed by the commissioner (T-TESS and P-TESS) or follow certain statutory procedures to adopt a local system. Therefore, an exemption from state law is not strictly necessary in order to use a local appraisal system.

Texas Education Code section 21.352 establishes the basic standards for teacher appraisal. Section 21.353 requires a teacher who also directs an extracurricular activity to be appraised based on classroom teaching performance rather than performance in connection with the extracurricular activity. Section 21.354 addresses appraisal of administrators other than principals and prohibits a district from paying an administrator who has not been evaluated in the last 15 months. Section 21.3541 establishes an appraisal system for principals.

Because each of the appraisal statutes sets out slightly different procedures for developing a local appraisal system, districts that include exemptions from one or more of these statutes in their innovation plans should consider adopting local policy to replace the statutory procedures.

### TASB Policy

Districts seeking exemptions related to employee appraisal should ask their TASB policy consultant for assistance in considering changes to policies at the following codes:

- BJCD—Superintendent Evaluation
- DN—Performance Appraisal
- DNA—Evaluation of Teachers
- DNB—Evaluation of Other Professional Employees

## **6. Campus behavior coordinator**

### State Law

- Designation of Campus Behavior Coordinator ([TEC 37.0012](#))

Since 2015, Texas Education Code section 37.0012 has required school districts to appoint a person at each campus to serve as campus behavior coordinator with primary responsibility for maintaining student discipline. The statute also requires the campus behavior coordinator to promptly notify parents, by telephone and in writing, when a student is suspended, removed to a disciplinary alternative education program (DAEP) or a juvenile justice alternative education program (JJAEP), or taken into custody by a law enforcement officer.

Some districts are seeking exemption from Section 37.0012 in order to have greater local control over campus disciplinary processes. A district that includes this exemption in an innovation plan would be wise also to address whether the district intends to opt out of the statutory notification procedures as well as the designation of a campus behavior



coordinator, and, if so, whether a local procedure will require notifying parents of disciplinary removals. In addition, the district should ensure that the board adopts a student code of conduct to match the innovation plan and local policy.

### TASB Policy

Districts seeking an exemption related to the campus behavior coordinator should ask their TASB policy consultant for assistance in considering changes to policies at the following codes:

- FO—Student Discipline
- FOA—Student Discipline—Removal By Teacher or Bus Driver
- FOC—Student Discipline—Placement in a DAEP
- GRA—Relations with Governmental Entities [cross reference to campus behavior coordinator notice requirements]
- Student Code of Conduct

## **7. District-level and site-based decision-making**

### State Law

- Planning and Decision-Making Process ([TEC 11.251](#))
- District-Level Planning and Decision-Making ([TEC 11.252](#))
- Campus Planning and Site-Based Decision-Making ([TEC 11.253](#))
- Dropout Prevention Review ([TEC 11.255](#))

Some districts may seek exemptions from statutory requirements in order to create a more localized approach to planning educational programs. Districts considering innovations in this area should take note of the different statutes that govern the district- and campus-level planning process. Each of the statutes listed above establishes different requirements, but these requirements occasionally overlap. For example, Sections 11.252 and 11.253 govern the committees and improvement plans at the district- and campus-level, respectively. Both of these statutes, however, incorporate elements of Section 11.251. As such, a district seeking exemption from any part of the planning and decision-making process should consider an exemption from the general planning and decision-making statute (Section 11.251) as well as the statute, or statutes, pertaining to the planning process that the district wishes to change.

### TASB Policy

Districts seeking an exemption related to the district- or campus-level decision-making and planning processes should ask their TASB policy consultant for assistance in considering changes to policies at the following codes:

- BQ—Planning and Decision-Making Process
- BQA—Planning and Decision-Making Process—District-Level
- BQB—Planning and Decision-Making Process—Campus-Level

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/Districts-of-Innovation/documents/doi\\_policy\\_guidance\\_after\\_plan.aspx](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/Districts-of-Innovation/documents/doi_policy_guidance_after_plan.aspx). For more information on this and other school law topics, visit TASB School Law eSource at [schoolawesource.tasb.org](https://schoolawesource.tasb.org).

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