



The Basics on Volunteers and Volunteering in Your District

Published online in [TASB School Law eSource](#)

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-371 (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. In 2007, the Texas Legislature passed Senate Bill 9, requiring 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

Exempt employees are those employed in an administrative, professional, or executive capacity and paid a salary that compensates them for all hours worked. Thus, exempt employees are not entitled to additional compensation for extra work, including work performed as a volunteer.

Nonexempt employees, on the other hand, are entitled to be paid for *all* work they perform on behalf of the district even if they "volunteer" for the work. There are two exceptions to this rule. First, a district is not required to compensate a nonexempt employee who performs volunteer work as a parent if: (a) the activities directly involving the education and participation of the employee's child; (b) the activities are performed without expectation of compensation; and (c) there is no coercion or pressure on the employee to provide the volunteer services. This is an exception to the requirement that the employee be paid for the work. Wage & Hour Op. FLSA 2006-40 (Oct. 20, 2006).

Second, a district is not required to pay overtime for hours a nonexempt employee works in a different capacity if that work is performed on an occasional and sporadic basis. This is an exception to the overtime pay requirements: the employee is still entitled to at least minimum wage for the hours worked. The occasional and sporadic exception allows the employer to pay just straight time for additional hours worked if: (1) the employee volunteered for the assignment; (2) the work is different from the employee's regular work; and (3) the assignment is occasional and sporadic. All three prongs must be met and the employee still must be paid at least minimum wage for the additional hours. 29 C.F.R. § 553.30.

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/Governance/documents/volunteering_in_district_jan15.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.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.

Updated January 2015