



## Frequently Asked Questions Regarding Teacher Planning Periods

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Texas Education Code section 21.404 guarantees each classroom teacher a planning period. Specifically, each classroom teacher is entitled to at least 450 minutes within each two-week period for instructional preparation including parent-teacher conferences, evaluating students' work, and planning. A planning period may not be less than 45 minutes within the instructional day. During a planning period, a classroom teacher may not be required to participate in any other activity.<sup>1</sup>

### **Q: Which employees are entitled to planning periods?**

A: The statute provides that classroom teachers are entitled to planning periods. A *classroom teacher* is an educator who:<sup>2</sup>

- Is employed by a school district, and;
- Teaches in an academic instructional setting or a career and technology instructional setting, not less than an average of four hours each day

Teacher aides and full-time administrators are not classroom teachers.

There are two components to this definition. First, the employee must be a certified educator engaged in teaching duties. Therefore, an employee who is not a certified teacher is not entitled to a planning period.<sup>3</sup> Second, the employee must teach full-time. Thus, a teacher who teaches fewer than four hours per day, on average, is not entitled to a planning period.

### **Q: What is the required length of a planning period?**

A. A single planning period must be at least 45 minutes long.<sup>4</sup> Thus, for example, a 45 minute planning period cannot be divided into one period of 15 minutes and one period of 30 minutes.<sup>5</sup>

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<sup>1</sup> Tex. Educ. Code § 21.404.

<sup>2</sup> Tex. Educ. Code § 5.001(2).

<sup>3</sup> See *Fenter v. Quinlan Indep. Sch. Dist.*, Texas Comm'r of Educ. Decision No. 021-R10-1001 (2002) (holding librarian was not a "classroom teacher" as that term is used in Section 21.404.)

<sup>4</sup> Tex. Educ. Code § 21.404.

<sup>5</sup> Texas Education Agency *Teacher FAQs*, question 10, [www.tea.state.tx.us/WorkArea/DownloadAsset.aspx?id=2147503758](http://www.tea.state.tx.us/WorkArea/DownloadAsset.aspx?id=2147503758).

Total planning time must be at least 450 minutes in each two-week period.<sup>6</sup> The 450-minute provision allows districts that use block scheduling to have longer periods on fewer days.<sup>7</sup> For example, a teacher could have five 90-minute conference periods within a two-week period, rather than a 45-minute conference period each day.<sup>8</sup>

**Q: What does “instructional day” mean?**

- A. A teacher’s planning period must be within the *instructional day*: the time when students are receiving instruction at the school where the teacher is located.<sup>9</sup> Thus, a district violated Section 21.404 when teacher planning periods were scheduled after classes ended for the day.<sup>10</sup>

The commissioner of education has applied this definition to an itinerant teacher—a teacher who moves from one campus to another. The teacher began her workday at one high school and finished her workday at another. The district gave the teacher a planning period at the end of her workday. This time was within the instructional day of the campus on which she began her work day, but after the end of classes on the campus at which she ended her workday. The commissioner held that the district violated Section 21.404 because no students were receiving instruction at the campus at which the teacher was located during her planning period.<sup>11</sup>

**Q: Can the district require a teacher to attend meetings during planning periods?**

- A: Not without the teacher’s agreement. The statute provides that planning periods are for instructional preparation, including parent-teacher conferences. Accordingly, a district cannot require teachers to participate in faculty meetings during planning periods, even if the purpose of the meetings is to discuss group planning: “The statute clearly relieves the teacher of any duty during this period of time and prohibits the district and its administration from requiring the teacher to engage in any other activity the administration determines to be useful and important.”<sup>12</sup> Similarly, a district violated the predecessor to Section 21.404 when it required teachers to attend in-service faculty meetings during planning and preparation time, even though the meetings involved parent/teacher conferencing techniques, planning and preparation, and other areas:<sup>13</sup>

The school district argues that the purpose of the in-services was to train the teachers, to assist them in making the best use of the time allotted to them for parent-teacher conferences and planning and preparation in their various fields of discipline. There is, however, a difference between being allowed time to actually conference with parents and being required to attend a meeting to learn how to conference with parents; there is a difference between actually planning and preparing for future class periods and attending training concerning how to plan and prepare; and there is a difference between grading students’ work and attending an in-service concerning parent-teacher conferences and planning and preparation.

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<sup>6</sup> Tex. Educ. Code § 21.404.

<sup>7</sup> Texas Education Agency *Teacher FAQs*, question 10, [www.tea.state.tx.us/WorkArea/DownloadAsset.aspx?id=2147503758](http://www.tea.state.tx.us/WorkArea/DownloadAsset.aspx?id=2147503758).

<sup>8</sup> Texas State Teacher Association, *Planning and Preparation Time*, [tcta.org/node/13129](http://tcta.org/node/13129).

<sup>9</sup> *Carbajal v. El Paso Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 035-R10-0308 (2012).

<sup>10</sup> *Canutillo Educators’ Assn v. Canutillo Indep. Sch. Dist.*, Tex. Comm’r of Educ. Dec. No. 042-R10-203 (2010).

<sup>11</sup> *Carbajal v. El Paso Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 035-R10-0308 (2012).

<sup>12</sup> *Chaffin v. Los Fresnos Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 128-R10-1290 (1991).

<sup>13</sup> *Strater v. Houston Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 129-R8-685 (1986).

In another decision, the commissioner concluded that a principal violated the statute when she directed a teacher to meet with her during the teacher's planning period.<sup>14</sup>

**Q: *Can a teacher voluntarily relinquish his or her planning period?***

A: It depends on whether the teacher will be performing teaching or non-teaching duties during the planning period.

Non-teaching activities: The commissioner has held that a teacher may voluntarily give up a planning period for non-teaching activities, such as staff development training, as long as attendance at the activity is not mandatory.<sup>15</sup> Similarly, a district may ask a teacher to attend an ARD meeting during her planning time, although this should be a rare occurrence to protect the teacher's planning and preparation time. TASB Legal Services advises districts to document a teacher's voluntary decision to use planning time for district-related functions.

Teaching activities: Conversely, the commissioner has held that Section 21.404 prohibits a district from assigning teaching duties during a teacher's planning period, even if the teacher agrees to the duties.<sup>16</sup> The commissioner reasoned that a district cannot contract for teaching duties in exchange for monetary compensation outside of a Chapter 21 contract.

Surplus planning time: An exception to the above rule regarding teaching activities applies where a district provides more than the statutorily required time for planning periods. For example, some districts provide 600, 750, or 900 minutes of planning time in each two-week period. The commissioner has held that Section 21.404 would not be violated if a teacher gave up surplus planning time to teach a class.<sup>17</sup>

**Q: *What process must a district follow to discontinue a stipend associated with duties performed during a planning period?***

A: The answer depends on whether the duties performed during the planning period involve teaching or non-teaching activities.

Non-teaching activities: Districts often pay stipends to teachers who agree to perform specific duties during their planning periods. No special process is required to terminate a stipend associated with a non-teaching activity, unless the district contractually committed to the duty or otherwise communicated that the duty would not be at-will. In the majority of cases, teachers perform additional duties during their planning periods on an at-will basis. Thus, the duty—and the associated stipend—may be terminated by either party at any time.

Teaching activities: As discussed above, districts and teachers cannot agree that a teacher will perform teaching duties during planning time unless the planning time in question is over and above that required by Section 21.404. Even where it is permissible for a teacher to relinquish a planning period, a district should exercise caution before discontinuing the stipend. The commissioner has

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<sup>14</sup> *Gonzalez v. South San Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 086-R10-704 (2007).

<sup>15</sup> *Chaffin v. Los Fresnos Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 128-R10-1290 (1990).

<sup>16</sup> *Bledsoe v. Huntington Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 033-R10-1103 (2014).

<sup>17</sup> *Aielli v. Austin Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 020-R10-1106 (2009).

held that the stipend a teacher receives for teaching during extra planning time is protected by Chapter 21, *even if the district and the teacher did not enter into a written contract for the stipend*. Thus, the legal principles governing reduction in educator compensation apply to reduction or elimination of the stipend:

- During the school year: The district may reduce or terminate the stipend with the employee's agreement;
- Between school years: The district may reduce or terminate the stipend if the district provides sufficient notice.<sup>18</sup>

**Q: *Are there any activities a teacher cannot engage in during a planning period?***

A: A teacher must use his or her planning period for instructional preparation, including parent-teacher conferences, evaluating students' work, and planning.<sup>19</sup> A planning period should not be used for personal pursuits. As one teacher association stated: "[A] planning and prep period is duty time, not a free time when employees could leave campus or engage in non-school related activities."<sup>20</sup>

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/faq\\_teacher\\_planning\\_period\\_feb15.pdf](http://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/faq_teacher_planning_period_feb15.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoolawesource.tasb.org](http://schoolawesource.tasb.org).

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<sup>18</sup> To be sufficient, notice of a reduction in pay—including reduction or discontinuation of a stipend—must be formal and specific. To be formal, the notice must be in writing from a person in a position of authority. To be specific, the notice must convey how much of a reduction of salary is possible. The question to be answered is whether the employees actually knew or reasonably could have known, before the penalty-free resignation date, the amount their salaries could be reduced. *Brajenovich v. Alief Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 021-R10-1106 (Mar. 6, 2009) (denying appeal where administrator could determine possible salary reduction from district's salary schedule).

<sup>19</sup> Tex. Educ. Code § 21.404.

<sup>20</sup> Texas Association of Federated Teachers, *Know Your Rights: Planning and Prep Periods*, [aldine.tx.aft.org/files/article\\_assets/188EF486-E150-10F3-7B66390C2F531661.pdf](http://aldine.tx.aft.org/files/article_assets/188EF486-E150-10F3-7B66390C2F531661.pdf).