



**Texas Association of School Boards**

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## **Resignations by Certified Personnel**

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An educator in your district wants to resign. Can the district enforce the contract? Can the educator decide not to resign after all? The answers to these and other questions depend on when and why the educator is resigning.

### **Educators may resign from their contracts *between* school years.**

An educator serving under a probationary, term, or continuing contract may resign, without penalty, by providing written notice to the board or the board's designee no later than the 45th day before the first day of instruction of the following school year—generally around the middle of July. Tex. Educ. Code §§ 21.105(a), .160(a), .210(a). The 45th day before the first day of instruction is sometimes referred to as the *penalty-free resignation date*. A term (or continuing) contract employee may exercise this annual statutory right to resign even if the employee has a contract for more than one school year. For example, a teacher who holds a continuing contract has an opportunity at the end of each school year to exercise the right to resign. Similarly, a principal who is employed under a two-year term contract may resign, without recourse by the district, at the end of the first year. In other words, regardless of an employee's contract terms, the employee can make this decision each summer.

### **An educator who wishes to resign *during* the school year must show good cause or obtain the consent of the board or the board's designee.**

If an educator resigns without permission, the district's remedies are limited to filing a complaint for *contract abandonment* with the State Board for Educator Certification (SBEC). SBEC may impose sanctions against an educator who is employed under a contract for the following school year and who fails without good cause to perform the contract. Tex. Educ. Code §§ 21.105, .160, .210; 19 Tex. Admin. Code § 249.17(d). The mandatory sanctions imposed by SBEC for abandonment of contract are listed at 19 Texas Administrative Code section 249.17(d)(3). The mandatory sanctions are applicable only in cases where factors of good cause, other considerations, or certain other mitigating factors do not apply. 19 Tex. Admin. Code § 249.17(d)(3).

Before imposing sanctions, SBEC must consider any mitigating factors relevant to the educator's conduct in abandoning the contract. Tex. Educ. Code §§ 21.105(e), .160(e), .210(e). If an educator provides written notice of resignation after the penalty-free resignation date, but not later than the 30th day prior to the first day of instruction, SBEC cannot suspend or revoke the educator's

certification. Tex. Educ. Code §§ 21.105(f), .160(f), .210(f). Instead, the rules require a sanction of an inscribed reprimand if an educator resigns 44-30 days prior to the first day of instruction for the following school year. 19 Tex. Admin. Code § 249.17(d)(3)(A). A complete list of available sanctions applicable to contract abandonment is found at 19 Texas Administrative Code section 249.15(a). In addition, SBEC may consider alternatives to sanctions, such as additional continuing education or training. Tex. Educ. Code §§ 21.105(e), .160(e), .210(e).

**SBEC may sanction an employee if there is no good cause for contract abandonment.**

The Texas Education Code authorizes SBEC to sanction an employee if there is no good cause for contract abandonment. Tex. Educ. Code §§ 21.105, .160, .210. Most contract abandonment cases are undisputed because the educator already decided to leave the teaching profession for a period of time and agreed to sanctions.

By rule, SBEC has defined the following factors as good cause when an educator is reported to have abandoned a contract:

- serious illness or health condition of the educator or the educator's close family member;
- relocation to a new city as a result of change in the educator's spouse's employer or partner who resides with the educator;
- significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment; or
- educator's reasonable belief that the educator had written permission from the school district administration to resign.

19 Tex. Admin. Code § 249.17(d)(1).

SBEC has identified the following mitigating factors to consider in determining whether to sanction a teacher who has abandoned a contract in violation of the Texas Education Code. If the educator:

- Gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;
- Assisted the school district in finding a replacement educator to fill the position;
- Continued to work until the school district hired a replacement educator;
- Assisted in training the replacement educator;
- Showed good faith in communications and negotiations with school district;
- Provided lesson plans for classes following the educator's resignation;

- Changed careers within the field of education: to a position that required a different class of educator certification or a position with a higher level of authority within the principal class of certificate, or to a position in an open-enrollment charter school or a district of innovation requiring a different certification or a higher level of authority;
- Had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district; or
- Resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator.

In addition, the rules charge SBEC with considering any other relevant circumstances or facts.

19 Tex. Admin. Code § 249.17(d)(2).

**While complaints usually result in action against the educator's certificate, an SBEC action is not automatic.**

SBEC will not pursue sanctions for contract abandonment against an educator unless the board: (1) renders a finding that the educator lacked good cause to resign; and (2) timely submits a written complaint to SBEC. 19 Tex. Admin. Code § 249.14(j). Thus, a board wishing to file a contract abandonment complaint should take the following steps:

1. Don't accept or approve the resignation. The commissioner will treat acceptance or approval as consent to contract abandonment. *Quitman Indep. Sch. Dist. v. Wilkerson*, Tex. Comm'r of Educ. Decision No. 142-TTC-698 (Dec. 2, 1999).
2. Render a finding that the educator did not have good cause to abandon the contract. This finding constitutes prima facie evidence of the educator's lack of good cause but is not a conclusive determination. 19 Tex. Admin. Code § 249.14(j)(2).
3. File a written complaint with SBEC within 30 days after the educator separates from employment. Separation from employment occurs on the first day that the educator fails to appear for work under the contract without district permission, unless the district and the educator have a written agreement to the contrary. 19 Tex. Admin. Code § 249.14(j)(1).
4. Submit to SBEC, attached to the written complaint, the following: (1) the educator's resignation letter, if any; (2) the agreement with the educator regarding the effective date of separation from employment, if any; (3) the educator's contract; and (4) board meeting minutes indicating a finding of "no good cause." 19 Tex. Admin. Code § 249.14(j)(3).
5. Notify the educator of the complaint, including the basis of the complaint, information on how to contact SBEC, and a reminder to verify the educator's mailing address on file with SBEC. Tex. Educ. Code §§ 21.105(d), .160(d), .210(d).

**An educator may resign without penalty if the board implements a furlough.**

A district may implement a furlough program if the district's funding is reduced below the 2010-11 level. Tex. Educ. Code § 21.4021(a). If a board adopts a furlough program after the penalty-free resignation date, an educator who subsequently resigns is not subject to sanctions for abandonment of contract. Tex. Educ. Code § 21.4021(g).

**An educator may revoke a resignation under certain circumstances.**

An educator may revoke a resignation that is effective *during* the school year at any time up until the resignation is accepted by the district. The Texas Education Code authorizes the board to accept resignations and to designate the authority to accept resignations. Tex. Educ. Code §§ 21.105(b), .160(b), .210(b). See TASB Policy DFE(Local). The commissioner has opined that such a designation must be made to a specified individual and cannot be subdelegated. *Harris v. Fort Bend Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 028-R8-1011 (May 12, 2014). A district may accept a resignation by mail, unless the resignation specifies another mode of acceptance. If a resignation is accepted by mail, acceptance occurs when the letter is mailed. *Chilton v. Alvin Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 031-R10-0107 (Mar. 5, 2009).

If a resignation is effective at the *end* of the school year, the resignation is effective upon filing the resignation with the school board or the school board's designee. *Oliver v. Santa Rosa Indep. Sch. Dist.*, Proposed Tex. Comm'r of Educ. Decision. No. 014-R10-11-2020 (Apr. 7, 2021). The district cannot reject the resignation, but the educator also cannot withdraw the resignation without the district's agreement if it has been properly filed. *Fantroy v. Dallas Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision. No. 034-R8-0206 (Mar. 5, 2009).

**A superintendent must notify SBEC of the resignation when there is evidence of educator misconduct.**

In addition to reporting requirements under Texas Family Code section 261.101, the superintendent is required to file a report with SBEC if an educator resigned and there is evidence that the educator engaged in misconduct described by Texas Education Code section 21.006(b)(2). The notice is required within seven business days of when the superintendent knew about an educator's resignation following an alleged incident of misconduct. Tex. Educ. Code § 21.006(c). The notice to SBEC must be in writing and in the form prescribed by SBEC. Before accepting the resignation, the superintendent must give the employee written notice that a report will be made to SBEC and the report may result in sanctions against the educator's certificate. The superintendent must notify the board of trustees before filing a report of a resignation with SBEC. Tex. Educ. Code § 21.006(b)-(d). See TASB Policy DF(Legal). Additional resources describing reporting requirements, including TASB Legal Services' [Guidelines for Responding to Allegations of Educator Misconduct](#), are available on [TASB School Law eSource](#).

**The principal must tell the superintendent within seven business days of an educator’s resignation following an alleged incident of misconduct.**

By law, the campus principal is obligated to notify the district superintendent within seven business days of an educator resignation following an alleged incident of misconduct described in Texas Education Code section 21.006(b-2). The principal must also notify the superintendent within seven business days if the principal obtains information about an educator’s criminal record by means other than the criminal history clearinghouse. Tex. Educ. Code § 21.006(b-2). See TASB Policy DF(Legal).

**The superintendent must complete an investigation into misconduct despite an educator’s resignation.**

When an educator resigns and the circumstances involve evidence that the educator abused or committed an unlawful act with a student or was involved in a romantic relationship with a student, a superintendent must conduct an investigation. The fact that the educator resigned from the district prior to the completion of the investigation does not relieve the superintendent of the duty to investigate. Tex. Educ. Code § 21.006(b-1); 19 Tex. Admin. Code § 249.14(d).

**The superintendent must also file a report with SBEC if the resigned educator has a reported criminal history.**

Not later than the seventh business day after the superintendent obtains information about the criminal record of an educator who works for the district or receives a report from a principal about criminal history, the superintendent must notify SBEC by filing a written report. Tex. Educ. Code § 21.006(c). It is not uncommon for law enforcement to report an arrest or indictment of a former school district employee to the superintendent. A superintendent has a continuing duty to promptly notify SBEC if the superintendent obtains or has knowledge of information indicating that a certificate holder has a reported criminal history if the superintendent obtains this information by means other than the criminal history clearinghouse. This obligation exists even if the certificate holder is no longer employed by the district. “Reported criminal history” means information concerning any formal criminal justice system charges and dispositions. The term includes arrests, detentions, indictments, criminal informations, convictions, deferred adjudications, and probations in any state or federal jurisdiction. Tex. Educ. Code § 22.087; 19 Tex. Admin. Code § 249.14(d)(1).

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