



Texas Association of School Boards

Legal Services

P.O. Box 400 • Austin, Texas 78767-0400 • 512.467.3610 • 800.580.5345 • legal.tasb.org • legal@tasb.org

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Revising School Calendars and Teacher Contracts in Light of COVID-19

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Districts may be considering adjustments to the school calendar to add more time for instruction, especially for students who experienced a loss of learning during the interruption of the coronavirus pandemic. The Texas Education Agency offers examples of a “COVID-19 response” or “intersessional calendar” showing how districts have taken steps to start school earlier in the summer and add instructional opportunities throughout the year. Longer midyear breaks could be adjusted as necessary to make up time if there is a closure due to resurgence of the pandemic. Breaks would also allow for deep cleaning of facilities and adjustments to instructional delivery, if necessary. TEA offers [guidance](#) about calendar options on its COVID-19 response web page.

The benefits of changing the school calendar appear significant, but districts may experience resistance when they attempt this kind of change. What are key considerations for a district hoping to add longer breaks or increase instructional time in the school calendar?

1. Time is of the essence.

If your district is interested in publishing a new or revised calendar for the next school year, we would advise the district to do so as quickly as possible. Advance notice is important not only for families who will need to plan work, travel, and childcare schedules, but also for teachers who have expectations for their duty schedules based on their teaching contracts.

Teachers typically sign their contracts early in the spring prior to the start of the next school year. That means 2021-2022 contracts may be signed by May 2021. Even though teachers regularly sign their contracts before receiving final information about the next year’s salary and instructional calendar, they have expectations based on prior years. School attorneys generally recommend that teachers be informed about any reduction in pay or change in conditions of work before the Penalty Free Resignation Date (PFRD), which is 45 calendar days before the first day of instruction. Note that starting school earlier would actually make the PFRD earlier, too. Notice of significant changes should be in writing, specific enough for employees to understand the impact of the change, and a formal communication from an official with authority, such as the superintendent or HR director.

2. Community preference is an important consideration.

While public preference may not be a legal consideration, community support for a revised calendar will help the district feel more confident about taking on any additional logistical challenges or increased costs. Many districts are surveying families about summer and fall options. Districts can also schedule community forums online (or in person with appropriate social distancing measures).

3. Make sure your school start and end dates are flexible.

Texas Education Code section 25.0811 provides that (except for year-round schools and very narrow exceptions for districts with over 190,000 enrollment or districts whose students complete grades in another state), a school district may not begin instruction for students for a school year before the fourth Monday in August. Texas Education Code section 25.0812 provides that (except for year-round schools) a school district may not schedule the last day of school for students for a school year before May 15.

- **District of Innovation:** A school district may be exempt from the requirements of Sections 25.0811 and 25.0812 if the district is a [District of Innovation](#) (DOI) and includes these provisions in its local innovation plan. TASB offers [guidance](#) on adopting or amending DOI plans. If your district is already a DOI, but has not sought exemption from these calendar provisions, you may want to add the provisions through the amendment process. The process to amend a DOI plan is not time-intensive but does require approval by the district advisory committee (DAC), or comparable committee, if applicable, and the board of trustees. On the other hand, becoming a DOI can be a lengthy process. If your district is not yet a DOI, the length of the initial process may prevent your district from accomplishing a calendar change for next year.
- **Year-round System:** In an [FAQ](#) on changing the school start date, TEA offers an alternative for districts that are not yet DOI: adopting a year-round system. Texas Education Code section 25.0811 provides that a school district may begin instruction for students for a school year before the fourth Monday in August if the district operates a year-round system under Section 25.084. Note, however, that Section 25.084 allows a district to modify the date of the first day of instruction of the school year under Section 25.0811, but only for a school that was operating year-round for the 2000-2001 school year. If your district is not a DOI and is considering adopting a year-round system in order to advance the school start date, please consult your school attorney.

4. State law sets a minimum duty period for teacher contracts (“Chapter 21 contracts”).

Even with advance notice (discussed above), changing key terms of a teacher’s employment contract could be viewed as a violation of the contract. If an essential contract term, like the time period of the teacher’s duty under the contract, is left uncertain, the uncertain term will be construed against the contract drafter (the district). Expanding the duty schedule

without increasing pay may be seen as a reduction in pay. Expanding the overall time period of a contract (e.g., expanding a 10-month contract into 11 months) may be seen as unilaterally altering an essential term of the contract.

Expanding teachers' duties under an amended calendar may lead to expectations for increased pay. For example, one court held that a teacher was entitled to additional pay for attending graduation even though the graduation day fell within the 10 months specified in the teacher's contract. The court emphasized that the district published a salary schedule for "187 duty days" and a duty calendar that reflected "187 duty days." Because graduation day in this district would have required a 188th day of service, the court held that the employee was entitled to be paid for this "extra" day. *North East Indep. Sch. Dist. v. Kelley*, No. 03-09-00641-CV, 2010 WL 5019850 (Tex. App.—Austin Dec. 9, 2010, pet. denied) (not designated for publication) (mem. op.).

So, what are the fundamental requirements of Chapter 21 contracts, and how much flexibility do districts really have?

- **Teaching duties must be covered by a Chapter 21 contract.** In past cases about extending the school year, the commissioner ruled that Texas Education Code section 21.002 requires teachers to be employed under Chapter 21 contracts for *all* teaching duties. If the duties are those of a classroom teacher, principal, librarian, nurse, or counselor, a district must employ the individual under a Chapter 21 contract. *Socorro Educ. Ass'n, et al. v. Socorro Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 039-R10-101 (Feb. 11, 2002). Consequently, a district looking to engage teachers for longer to add more instructional time may not do so through a supplemental duty or non-Chapter 21 contract.
- **Chapter 21 contracts are for a minimum of 10 months.** Texas Education Code Chapter 21 requires that educator contracts be for a minimum of 10 months of service. Tex. Educ. Code § 21.401(a). Generally, an educator employed under a 10-month contract must provide a minimum of 187 days of service. Tex. Educ. Code § 21.401(b). The 187-day minimum service requirement exceeds the minimum instructional schedule of 75,600 minutes of operation per year. Tex. Educ. Code § 25.081. The minimum service requirement builds in an allowance for in-service and teacher preparation days. Most educators work a 10-month duty schedule, while campus administrators may work 11 months and district administrators may work a full 12 months.

5. What calendar options are available when teachers are on 10-month contracts?

Without renegotiating Chapter 21 teacher contracts to increase the duty months (e.g., to go from 10 months to 11 months), the following are options you may want to consider in consultation with your teachers and school attorney:

- **Add instructional minutes without adding duty days:** Most educator contracts allow the district to set the employee’s work schedule. For example, a model TASB term contract for next year would provide, “You will be employed on a ten-month basis for the 20__-20__ school year(s), according to the hours and dates set by the District as they exist or may hereafter be amended.” With the flexibility for the district to set the hours of work, your district could add instructional time by keeping its current calendar but adding minutes of instruction to each school day. This option may draw mixed reactions from parents and staff, so community feedback is important.
- **Make the most of 10 months:** Given the district’s flexibility to set the “hours and dates” of work under a typical 10-month contract, the district could consider changing the calendar to have a new start and end date and to maximize instructional time over 10 consecutive months. Changes could include longer midyear breaks. Teachers could agree (see below) to provide additional optional instruction during the midyear breaks.
- **Use all duty days for instruction:** In order to maximize instructional time next year, some districts are converting existing professional development days to instructional days, potentially adding up to seven more school days. Of course, this leaves the district with the logistical challenge of fitting in required professional development. If teachers are expected to attend professional development on additional duty days (such as during the summer), districts typically pay teachers extra for that time.
- **Define 10 months as 10 duty months, not consecutive calendar months.** Some districts are taking an even bolder step to adopt a new calendar that still provides for 187 days of service from teachers (10 months of service) but with an instructional calendar that starts and ends over a total time period of 10 and a half or 11 months. The districts’ position is that the total duty time did not change, so the change was permissible under existing contracts. Even if most families and employees support the new calendar, unilaterally extending the teacher duty schedule beyond a 10-month time period is likely to draw an employee grievance. We suggest working with your school attorney on any calendar change, but especially this option.

6. Are additional calendar options available if teachers are willing to sign new contracts?

As mentioned above, teaching duties are required to be covered by a teacher’s contract. If teachers are willing to sign revised contracts or add an addendum for extra teaching duties to their existing contracts in exchange for additional compensation, districts will have several more options for increasing instructional time. Districts could add summer school, expand the regular academic year, move to a year-round system, or offer “intersessional” instruction (optional instruction during midyear breaks) to students in need of accelerated instruction.

- **Stipend for extra duty time:** To attract teachers for the additional duty time, districts could offer a stipend to cover the additional days of service for summer school or midyear instruction. Teachers could sign an additional duty agreement or addendum to their contracts.
- **Longer contract term:** A district moving to a year-round system or increasing the duty schedule by a month or more will probably want to move teachers to 11- or 12-month contracts in exchange for increased pay through their regular salary.

Superintendents in districts that have moved to expanded academic calendars report that many teachers are willing to agree to additional service time because the change is optional and increases their pay. If district staff do not join in numbers sufficient to provide the additional instruction, the district could open the opportunity to teachers from surrounding districts and retired teachers.

7. What additional funding might be available to cover the cost of teacher compensation under an expanded instructional calendar?

[TEA's Guidance](#) points districts to the Additional Days School Year (ADSY) program, which was created by House Bill 3 and became available on September 1, 2020.

ADSY incentivizes school districts to add up to 30 instructional days to any elementary school schedule. The program provides additional funding to participating campuses that provide instruction beyond both requirements of 180 days of instruction and 75,600 minutes of operation. Each additional instructional day is funded at half of the district's regular rate. Instruction must be provided for at least two hours, and student attendance is not compulsory. The ADSY funding is formula funding for qualifying districts; no grant application is required.

[TEA's HB 3 in 30 webinar on ADSY](#) suggests three program options for districts implementing ADSY:

- optional summer programming,
- an intersessional calendar that adds days throughout the year, or
- a full-year redesign that adds days throughout the school year and summer to create a year-long calendar.

TEA emphasizes that these options are not exclusive—a district can combine options or develop new ways to add instructional days. Teachers working for summer programming or intersessional instruction could be paid through a stipend. Districts choosing the full-year design may decide to extend a teacher's contract to 11- or 12-months and pay their regular salary.

A district that adopts a year-round system under Texas Education Code section 25.084 may receive the ADSY funding if the district meets the criteria.

Unfortunately, the ADSY incentive funding is limited to half days up to 30 days specifically for elementary grades. To reach full-day funding and/or provide instruction for middle and high school students, districts may combine the ADSY funding with other sources. For example, the district could consider using compensatory education funds or [21st Century Community Learning Centers/Texas ACE](#) opportunities.

Conclusion

In summary, districts have many options for responding to needs created by the pandemic by adjusting their academic calendars. Making decisions early in the summer and involving staff and community members will be essential if changes are under consideration. Districts are encouraged to consult legal counsel before amending their calendars.

This document is continually updated at tasb.org/services/legal-services/tasb-school-law-essource/personnel/documents/revising-school-calendars-and-teacher-contracts-in-light-of-covid-19.pdf. For more information on school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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