

PREPARED TESTIMONY
SENATE EDUCATION COMMITTEE
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2009-10 Chairperson Texas Council of School Attorneys

Good morning. My name is Cheryl Mehl; thank you for inviting me to talk to you today about some proposals that I believe will (1) provide some flexibility for local school boards to address the apparent inevitability of fewer financial resources for personnel costs while also (2) enhancing their ability to meet ever-increasing standards for student academic achievement while complying with the monitoring and accountability regulations and requirements that accompany those standards.

First, let me be clear about the capacity in which I am speaking to you. Briefly: for over 30 years, I have been deeply involved in Texas public education law as a TASB policy writer, TASB legal assistant, and, since 1997, private attorney representing public schools—a period that has seen incredible ebbs and flows in the legal framework within which public education functions. I am a shareholder in one of the leading school law firms in the state; I am also the immediate past Chairperson of the Texas Council of School Attorneys, an organization made up of attorneys who represent Texas public school districts and their boards and open-enrollment charter schools. I speak to you today out of that background, history, and knowledge but only for myself—no one is paying me or my law firm for me to be here.

When I spoke to some of you in the Spring during a hearing of the Select Committee, these ideas were grounded in proposals that would offer greater opportunities for school districts to take prompt and necessary actions related to personnel with the goal of ensuring excellent and law-abiding teachers for all the students of Texas. Certainly, that is still a goal, but it is now somewhat overshadowed by the financial situation facing virtually every Texas school district for the 2011-12 school year and thereafter.

So, I present today, not only those recommendations made this past April, but also additional suggestions that I believe will provide some breathing room for school boards to responsibly address the fiscal reality staring at them.

At the top of list of new suggestions is the absolute necessity of repealing Tex. Educ. Code § 21.402(d)—which prohibits any school district from paying less on an annual basis in the future—for those primary duties of teaching, counseling, librarian, and

school nurse—to anyone in those categories than is being paid in this school year (for so long as the person continues employment in the same district). It bears recalling also that THIS YEAR's salaries are in fact AT LEAST the 2008-09 salaries that you locked in for 2009-10 and 2010-11 when you enacted H.B. 3646 in 2009. No one disputes that today's financial situation is far different –and worse– than it was when school boards adopted compensation plans for the 2008-09 school year. The law needs to reflect that reality.

Close behind that is a request for authority to actually reduce total compensation during a school year or contract term in response to a reduction in state funding. That can be accomplished by repealing Tex. Educ. Code § 21.401 (b)-(d) and adding new text to the currently empty § 21.4011 to read, "The board of trustees, in response to a reduction in state funding for the school district, may adjust or reduce an educator's work schedule, annual salary, or both, during a school year or contract term provided that no such reduction shall result in a decrease in the educator's annual salary of more than 10 %."

The other suggestions I am proposing today will re-establish some of the freedom of local governing bodies to contract for professional educators' services and to enforce those contracts. I believe these changes will also provide greater authority for school districts to ensure that their classrooms and administrative positions are filled with people who have and maintain all the credentials for their positions required by state and federal law and to remove "bad actors" or ineffective professionals without necessarily fearing "how much will it cost us to do this if there is a fight about it?" Many of these suggestions will remove "room to argue," and that will free up education dollars that would otherwise be spent litigating professional employee contract disputes.

In your written materials you have an outline of nine issues that, if addressed, have the potential to save significant amounts of money for school districts by eliminating or reducing districts' legal expenditures.

One of the most pressing is outlined in Issue #1: allowing a local board to conduct the hearing to terminate mid-contract based on reduction in force. Current law requires a hearing on the termination to be conducted by an independent Hearing Examiner, whose role in these hearings is often essentially to make sure that the school district has properly followed its local policy to identify those affected by the RIF. An IHE hearing routinely costs the school district \$15,000 to \$50,000, plus the cost of paying the person while the hearing is pending.

Closely related and addressed at Issue #1 is a need to make changes to allow suspension without pay after a local hearing in appropriate circumstances, as outlined in your packet of materials. Current law requires that ANY suspension without pay, even for one day, requires a hearing before an independent hearing examiner.

An increasingly complex and frustrating issue is addressed at Issue #2—ensuring that professional educators have and maintain all the necessary credentials for their positions and that any contract under chapter 21 is void if those credentials fail for any reason by amending and clarifying Section 21.0031. Even though the 78th Legislature provided what most school district attorneys understood to be clear authority for boards to take such action, a decision from the Commissioner of Education, *Roberts v. Marlin ISD*, has significantly complicated the process.

Enacting the amendments proposed at Issue #4 will end 15 years of legal wrangling about the different definitions in chapter 21 of who is entitled to receive a chapter 21 contract and the attendant procedural rights that go with them.

Opening the door for additional uses of one-year probationary contracts, which may be terminated at year end simply by notice from the board of trustees that it has determined the district's best interest will be served by the termination, is discussed at Issues #5 and #9.

In the first instance, my proposal at Issue #5 would allow school districts to use a probationary contract for an existing term contract employee who is moving to a position that requires a different class of certificate with significantly different duties and functions—such as a classroom teacher who moves into a principal position. Under current law that person must remain on a term contract, significantly complicating the process for ending the contract at year-end if the person turns out not to be an effective campus leader.

Issue #9 would provide much greater flexibility and also cost savings by allowing school boards to simply negotiate the terms of employment with a retired educator who returns to school district employment by exempting a retired educator from the any of the contract requirements of chapter 21, and more importantly, from the mandatory minimum salary schedule—where they will always be within the highest paid category.

I am happy to answer questions about these or any of the other proposals before you.

Saving Money - Improving Education

Issue #1: Independent Hearing Examiner Process- RIFs & Suspension w/out Pay

Cost: \$15,000 - \$50,000 per hearing

Background:

Reductions in Force (RIF)

Under current law, districts must use the independent hearing examiner (IHE) process to terminate a contract during its term based on a RIF.

IHE hearings cost between \$15,000 and \$50,000, depending on the complexity of the case.

In RIFs, the mid-contract termination is based on “financial exigency,” meaning the district has experienced something—like a reduction in state or local funds—that is affecting its ability to honor all of its employment contracts. Having to use the costly IHE process only exacerbates the financial pressure on already struggling districts. And it seems an absurdity to have to spend up to \$50,000 to terminate a contract that the district already can’t afford to pay.

Suspension without Pay

The Legislature authorized districts to suspend employees without pay under certain circumstances, but it is too cost-prohibitive to be effective.

Districts need to use suspension without pay when (1) an employee is being investigated internally or by law enforcement for a criminal offense related to students, drug and alcohol offenses, or other serious crimes or (2) the employee has engaged in serious misconduct that warrants a serious response short of ending the employment relationship.

Current law offers only two scenarios for suspension without pay: “pending discharge” and “in lieu of termination” for a period up to the end of a school year. The commissioner of education has also rules that even to suspend without pay “pending discharge” requires one IHE hearing to suspend and ANOTHER ONE to terminate.

The prohibitive cost of the IHE virtually eliminates suspension without pay as an option in any circumstance, with the result that employees, who should be removed from campuses and the classroom pending internal or criminal investigation or as a disciplinary measure, are placed on administrative leave with pay pending an investigation and termination hearing.

Solution:

RIF - Allow districts to terminate employees based on a RIF using a hearing before the locally elected board of trustees.

Suspend without Pay - To help districts save money and keep their students and staff safe, Subtitle F of the Texas Education Code (TEC) should be amended to permit a district to suspend without pay for up to 30 days as a short-term disciplinary measure or during a criminal investigation.

Issue #2: Certification Problems and Effect on Contracts

Cost: Unnecessary administrative and legal costs to remove uncertified teacher

Background:

- The State Board of Educator Certification has established **seven “types”** of certificates (period of validity is key) and **nine “classes”** of certificates (job duties/functions are key).
- Several types of certificate may lapse or expire during a school year.
- In 2003, the legislature added TEC Section 21.0031, specifying that “an employee’s probationary, continuing or term contract under this chapter **is void** if the employee: (1) does not hold a certificate or permit issued by the State Board for Educator Certification; or (2) fails to fulfill the requirements necessary to extend the employee’s temporary or emergency certificate or permit” (emphasis added).
- The heading of TEC Section 21.0031 states, “Failure to Obtain Certification; Contract **Void**” (emphasis added).
- Clearly, the legislature intended contracts to be void as a matter of law when the employee is no longer qualified under state or federal law to be in that classroom, but in 2007, the commissioner of education interpreted this section to make the contracts of employees without the stated types of certificate or permit voidable, instead of void. That same decision ruled that the statute did not apply at all to persons with a “probationary certificate” - which did not exist at the time of the 2003 legislative session, but was clearly within the intent of the provision at TEC Section 21.0031 (a)(2).
- Under the commissioner’s ruling, until a school board takes affirmative action to declare a contract void, an uncertified teacher arguably may remain in the classroom or the district must incur the cost of paying the unqualified person to be on administrative leave, as well as the cost of a substitute. Likewise, counselors, librarians, principals—any class of certificate may be “probationary,” but when the probationary certificate expires, the person is no longer certified for the assignment or position and is in breach of the contract.
- Leaving the person in the position without appropriate certification is inconsistent with state certification requirements and with the federal No Child Left Behind Act.
- Moreover, it adds a costly level of administrative procedures to remove an individual who has failed to maintain certification.

Solution: Amend TEC Section 21.0031 to clarify the intent of the legislature that an educator’s failure to acquire or maintain certification or highly qualified status makes the employment contract void, not voidable, effective on the date the certificate or permit lapses.

Issue #3: Termination of Employees Adjudicated of Felonies

Cost: \$15,000 to \$50,000 per hearing + Employee pay while pending

Background:

- Under current law, school districts must undergo costly procedures to terminate an employee who has been convicted or otherwise adjudicated of a felony offense.
- TEC Section 21.058 requires districts to “as soon as practicable, terminate the employment of the person in accordance with the person’s contract and with this subchapter” for certified employees convicted of certain felony offenses with minor victims.
- As shown in **Issue #1**, given the constraints of Chapter 21, these individuals are generally **suspended with pay pending termination**.
- School districts should be permitted to use a less costly and less time consuming process to terminate employees **adjudicated** of felonies.
- This change would help districts keep their students and staff safe by encouraging the quick removal of these employees.

Solution: Amend TEC Chapter 21 to provide that the adjudication of a certified employee on a Ch. 21 contract for any felony makes the contract void under TEC Section 21.0031, effective on the date of the adjudication.

Issue #4: List of Positions Entitled to Ch. 21 Contract Inconsistent

Costs: Litigation and appeals to commissioner and courts

Background:

- TEC Section 21.002(a) lists the five categories of positions for which a school district must use a Chapter 21 contract, and section 21.002(b) plainly states that a school district is not required to employ anyone else under a Chapter 21 contract.
- However, subsequent provisions (TEC Sections 21.101, 21.151, and 21.201) confuse the contract entitlement issue by presenting different lists of positions to which the contract requirements apply.
- The Commissioner of Education has reconciled these seemingly inconsistent sections of Chapter 21 by awarding contract entitlement and the attendant procedural rights to the larger cast of characters, including any full-time professional employee who is required (by SBEC or the hiring school district) to hold SBEC-issued certification, plus some who are not (e.g., non-certified supervisors).
- When SBEC exercises its authority over certifying Texas educators, including changes to those requirements, it does so without considering that adding or eliminating certification requirements may directly determine whether a person in those positions must be employed under a Chapter 21 contract. This arrangement places inappropriate consequences on the certification process.
- Contract entitlement should be determined by the Texas Legislature, not by SBEC.

Solution 1: Amend TEC Section 21.002 to clarify that it provides the definitive statutory list of education professionals who must be employed on Chapter 21 contracts. Amend TEC Sections 21.101, 21.151, and 21.201 to reference section 21.002, eliminating all confusion.

Solution 2: Certification as a basis for contract entitlement. Implementing Solution 1 will also correct this problem.

ISSUE # 5: Probationary Contract Limits

Cost: Nonrenewal hearing costs \$8,000 - \$20,000

Background:

- TEC Section 21.102(b) limits the probationary period to one year when, at the time of initial employment, the person has been employed as a teacher in public education for five of the eight years immediately preceding employment.
- Districts have been constrained by the one-year limitation when hiring employees new to the districts, but employed in a position requiring a different class of certificate than the employees' previous experience (e.g., **a former teacher hired by a new district as a first-year principal**).
- Or if a teacher or other contract employee has a **term contract** and is promoted or changes to a position requiring a different class of certificate, the employee remains on a **term contract** - this is not good public policy. If the employee is not successful in the new position and the district must nonrenew the term contract, a costly hearing will likely ensue, ranging from \$8,000 - \$20,000.
- To return a teacher to a probationary contract from a term contract, the teacher must agree to the contract change after receiving notice from of the superintendent intent to recommend or the board's proposed discharge, termination, or nonrenewal.
- Districts would be more eager to promote from within and give teachers the opportunity to be administrators **if employees could be given probationary contracts** based on a change to a position requiring a new class of certificate.

Solution: Amend TEC Sections 21.102 and 21.106 to provide that, if an experienced educator is hired into or promoted to a position requiring a new class of certificate, the district may employ that person on a probationary contract, not a term contract.

Issue # 6: "Good cause" for Termination

Cost: \$15,000 - 50,000 per hearing + appeals costs

Background:

- Under TEC Sections 21.104, 21.156, and 21.211, the Texas Legislature authorized a school district to terminate a teacher employed under a probationary, continuing, or term contract, respectively, "at any time for good cause *as determined by the board of trustees.*" (Emphasis added.)
- Mid-contract terminations must first be heard by IHEs under Chapter 21, Subchapter F. IHEs are directed, under TEC Section 21.257, to make findings of fact and conclusions of law after the hearing.
- A school board must consider the hearing examiner's findings and recommendations before voting on a proposed termination and is authorized by the Texas Legislature to adopt, reject, or change the IHE's conclusions of law, but may change an IHE's findings of fact only if it concludes they are not supported by substantial evidence.
- The commissioner has reversed school boards' changes to findings of fact in almost every case that has been appealed. Accordingly, boards do not typically attempt to change a finding of fact. This complicates and prolongs the already expensive process of contract termination.
- The commissioner has concluded that a hearing examiner's finding on whether or not there is good cause for contract termination (or nonrenewal in the small number of districts that use the IHE process for nonrenewal) is a finding of fact, not a conclusion of law.
- As a result, a local board may change a hearing examiner's finding that there is NOT good cause only if it can demonstrate that there is NOT "substantial evidence" (or "more than an scintilla") for that finding. This effectively usurps the local board's statutory authority to decide "good cause as determined by the board."

Solution: Amend Texas Education Code Subchapter F to provide that "good cause" is a conclusion of law, not a finding of fact.

Issue # 7: Providing Notice of Proposed Nonrenewal

Cost: Costly appeal of procedural issue (\$3,000 - \$7,000 above nonrenewal)

Background:

- TEC Section 21.206 (a) requires a board to provide notice of proposed nonrenewal on or before the 45th day before the last day of instruction of the school year.
- TEC Section 21.206 (b) states that, “[t]he board’s failure to give the notice required by Subsection (a) within the time specified constituted an election to employ the teacher in the same professional capacity for the following school year.”
- To avoid contract nonrenewal, teachers who believe their contracts are in jeopardy sometimes attempt to avoid the required notice by being absent from work or refusing to pick up certified mail. As a result, districts are forced to re-employ teachers whose contracts should be nonrenewed for another school year or take a chance anyway that it will not be reversed on appeal.
- Teachers, on the other hand, are permitted to serve notice of resignation under all the relevant resignation sections by prepaid certified or regular mail.

Solution: Allow districts to serve teachers with the notice required by TEC Section 21.206(a) by prepaid certified or regular mail. This would not prejudice teachers, since their deadline under TEC Section 21.207(a) to request a hearing on the proposed nonrenewal is 15 days from “the date the teacher receives the notice of proposed action.”

Issue # 8: Ch. 21 Resignation Deadline

Costs: Diminished hiring pool and late recruiting

Background:

- Late summer teaching resignations make it hard for districts to find qualified replacement teachers.
- Teachers who sign contracts are free to resign without penalty up to 45 days before the school year begins, generally around mid-July.
- As teacher supply conditions worsen, the problems caused by late resignations also worsen.

Solution: Change TEC Sections 21.105, 21.160, 21.210 to require 60 days notice rather than 45 days notice to resign from a contract before the school year begins.

Issue # 9: Flexibility Needed in Employing Retired Educators

Costs: Higher salaries, costly nonrenewal hearings

Background:

- TEC Chapter 21 contains no exceptions to the minimum salary requirements or contract requirements for retired educators who return to school district employment.
- By definition, retired educators will be at the top of the state minimum schedule and local salary systems.
- Districts that hire back their own retirees must employ on term contract, even though the need for the teacher may be for only the coming school year.
- Districts hiring retirees of other school districts have only one year of probationary contract available and must move the person to term in any subsequent year.
- Districts should have the flexibility to negotiate salary and employment terms with retired educators who are also receiving 8-12 months of retirement benefits each year.

Solution: Add TEC Section 21.0032 to Subchapter A, General Provisions, to exempt retired educators from Subchapters C, D, and E, and TEC Section 21.402.

Alternatively, amend TEC Section 21.402 (a) to exempt retired educators and amend TEC Section 21.102 to allow districts to use unlimited probationary contracts to employ a full-time retired educator.

Appendix – Bill Drafts for Solutions

Solution Issue #1

SECTION 1. Section 21.159 (b), Education Code, is amended as follows:

(b) A teacher who notifies the board of trustees within the time prescribed by Subsection (a) with regard to proposed action under Section 21.156(a) is entitled to a hearing as provided by Subchapter F. A teacher who notifies the board of trustees within the time prescribed by Subsection (a) with regard to proposed action under Section 21.156(b) or Section 21.157 is entitled to a hearing as provided by Subchapter E.

SECTION 2. Section 21.207(a), Education Code, is amended as follows:

If the teacher desires a hearing after receiving notice of the proposed nonrenewal or termination under Section 21.211(a)(2), the teacher shall notify the board of trustees in writing not later than the 15th day after the date the teacher receives the notice of the proposed action. The board shall provide for a hearing to be held not later than the 15th day after the date the board receives the request for a hearing unless the parties agree in writing to a different date. The hearing must be closed unless the teacher requests an open hearing.

SECTION 3. Section 21.208(a), Education Code, is amended as follows:

(a) If the teacher does not request a hearing, the board of trustees shall:

(1) take the appropriate action to renew, ~~[or]~~ not renew, or terminate based upon a reduction in personnel, the teacher's contract; and

(2) notify the teacher in writing of that action not later than the 30th day after the date the notice of proposed nonrenewal was sent to the teacher.

SECTION 4. Section 21.209, Education Code, is amended as follows:

A teacher who is aggrieved by a decision of a board of trustees on the nonrenewal or termination based upon a reduction in personnel of the teacher's term contract may appeal to the commissioner for a review of the decision of the board of trustees in accordance with the provisions of Subchapter G. The commissioner may not substitute the commissioner's judgment for that of the board of trustees unless the board's decision was arbitrary, capricious, unlawful, or not supported by substantial evidence.

SECTION 5. Section 21.211(b), Education Code, is amended as follows:

(b) ~~[For a good cause,]~~ A[a]s determined by the board, the board of trustees may suspend a teacher without pay for a period not to extend beyond the end of the school year:

(1) pending discharge of the teacher; ~~[or]~~

(2) in lieu of terminating the teacher~~[.];~~ or

(3) as a disciplinary action, for a period not to exceed 30 school days.

SECTION 6. Section 21.104(b), Education Code, is amended as follows:

(b) ~~[In lieu of discharge,]~~ A [a] school district may suspend a teacher without pay for good cause as specified by Subsection (a) for a period not to extend beyond the end of the current school year or as a disciplinary measure not to exceed 30 school days.

SECTION 7. Section 21.251, Education Code, is amended as follows:

(a) This subchapter applies if a teacher requests a hearing after receiving notice of the proposed decision to:

- (1) terminate the teacher's continuing contract at any time;
- (2) terminate the teacher's probationary or term contract before the end of the contract period; or
- (3) suspend the teacher without pay in lieu of discharge under Section 21.104(a) or 21.156(b) or pending discharge or in lieu of termination under Section 21.211(b)(1) or (2).

(b) This subchapter does not apply to:

- (1) a decision to terminate a teacher's employment at the end of a probationary contract; ~~[or]~~
- (2) a decision not to renew a teacher's term contract, unless the board of trustees of the employing district has decided to use the process prescribed by this subchapter for that purpose ~~;~~ ~~[-]~~
- (3) a decision to suspend a teacher without pay as a disciplinary measure for a period not to exceed 30 school days; or
- (4) a decision to terminate a teacher's continuing, term, or probationary contract before the end of the contract period for a financial exigency that requires a reduction in personnel.

Solution Issue #2

SECTION ____ Section 21.0031, Education Code, is amended as follows:

(a) An employee's probationary, continuing, or term contract under this chapter is void if the employee:

- 1) Does not hold a valid certificate or permit issued by the State Board for Educator Certification; [e~~r~~]
- 2) Fails to fulfill the requirements necessary to renew or extend the employee's temporary, probationary, or emergency certificate or any other certificate or permit issued under the authority of Subchapter B of this Chapter; or
- 3) Fails to comply with any requirement under Subchapter C of Chapter 22 of this Code resulting in certificate suspension or revocation under Section 22.0831 (f)(2).

(b) If a school district has knowledge of a void contract under subsection (a) [~~an employee receives notice that the employee's contract is void under Subsection (a)~~]:

(1) a school district may:

- (A) terminate the employee;
- (B) suspend the employee with or without pay; or
- (C) retain the employee for the remainder of the school year on an at-will employment

basis in a position other than classroom teacher or other position under section 21.002 of this chapter at the employee's existing rate of pay or at a reduced rate; and

(2) the employee is not entitled to the minimum salary prescribed by Section 21.402.

Solution Issue #3

SECTION ____ . Section 21.058, Education Code, is amended as follows:

(a) Subsection (b) ~~[This section]~~ applies only:

(1) to conviction of a felony offense under Title 5, Penal Code, or an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and

(2) if the victim of the offense is under 18 years of age.

(b) Notwithstanding Section 21.041(b)(7), not later than the fifth day after the date the board receives notice under Article 42.018, Code of Criminal Procedure, of the conviction of a person who holds a certificate under this subchapter, the board shall:

(1) revoke the certificate held by the person; and

(2) provide to the person and to any school district or open-enrollment charter school employing the person at the time of revocation written notice of:

(A) the revocation; and

(B) the basis for the revocation.

(c) A school district or open-enrollment charter school that receives notice under Subsection (b) of the revocation of a certificate issued under this subchapter, or notice that a person who holds a certificate under this subchapter has been adjudicated of any felony shall:

(1) immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; ~~and~~

(2) suspend the person without pay; and

(3) declare the employee's probationary, continuing, or term contract void by providing written notice to the employee at the employee's address of record, and as soon as practicable, terminate the employment of the person ~~[in accordance with the person's contract and with this subchapter]~~.

(d) A person whose certificate is revoked under Subsection (b) may reapply for a certificate in accordance with board rules.

(e) A school district's action under subsection (c) is not subject to appeal under this Chapter, and the notice and hearing requirements of this Chapter do not apply to the decision.

Solution Issue #4

SECTION 1. Section 21.002(a) and (b), Education Code, is amended as follows:

(a) A school district shall employ each classroom teacher, principal, librarian, registered nurse, or counselor under:

- (1) a probationary contract, as provided by Subchapter C;
- (2) a continuing contract, as provided by Subchapter D; or
- (3) a term contract, as provided by Subchapter E.

(b) A district is not required to employ a person other than an employee listed in Subsection (a) under a probationary, continuing, or term contract, except that a school district shall employ a superintendent under a term contract, as provided by Subchapter E.

SECTION 2. Section 21.101, Education Code, is amended as follows:

In this subchapter, "teacher" means a person listed in Section 21.002(a) [~~principal, supervisor, classroom teacher, counselor, or other full-time professional employee who is required to hold a certificate issued under Subchapter B or a nurse. The term does not include a superintendent or a person who is not entitled to a probationary, continuing, or term contract under Section 21.002, an existing contract, or district policy.~~].

SECTION 3. Section 21.151, Education Code, is amended as follows:

In this subchapter, "teacher" means a person listed in Section 21.002(a) [~~has the meaning assigned by Section 21.101~~].

SECTION 4. Section 21.201, Education Code, is amended as follows:

In this subchapter:

- (1) Subject to Section 21.212, "teacher" means a person listed in Section 21.002(a) and (b). [~~superintendent, principal, supervisor, classroom teacher, counselor, or other full-time professional employee who is required to hold a certificate issued under Subchapter B or a nurse. The term does not include a person who is not entitled to a probationary, continuing, or term contract under Section 21.002, an existing contract, or district policy.~~].
- (2) "School district" means any public school district in this state.
- (3) "Term contract" means any contract of employment for a fixed term between a school district and a teacher.

Solution Issue # 5

SECTION 1. Section 21.102(b), Education Code, is amended as follows:

(b) A probationary contract may not be for a term exceeding one school year. The probationary contract may be renewed for two additional one-year periods, for a maximum permissible probationary contract period of three school years. The [~~-, except that the~~] probationary period [~~may not exceed one year~~] for a person who has been employed as a teacher in public education for at least five of the eight years preceding employment by the district may not exceed one year unless the person is employed in a position in the district requiring a different class of certificate under Subchapter B than the position last held by the person, whether employed in the district or in another public school district, in which case the maximum permissible probationary contract period is three school years.

SECTION 2. Section 21.106, Education Code, is amended by adding subsection (e) as follows:

Sec. 21.106. RETURN TO PROBATIONARY STATUS. (a) In lieu of discharging a teacher employed under a continuing contract, terminating a teacher employed under a term contract, or not renewing a teacher's term contract, a school district may, with the written consent of the teacher, return the teacher to probationary contract status.

(b) Except as provided by Subsection (d) and (e), a teacher may agree to be returned to probationary contract status only after receiving written notice that the board of trustees of the school district has proposed discharge, termination, or nonrenewal.

(c) A teacher returned to probationary contract status must serve a new probationary contract period as provided by Section 21.102 as if the teacher were employed by the district for the first time.

(d) A teacher may agree to be returned to probationary contract status after receiving written notice of the superintendent's intent to recommend discharge, termination, or nonrenewal. Notice under this subsection must inform the teacher of the school district's offer to return the teacher to probationary contract status, the period during which the teacher may consider the offer, and the teacher's right to seek counsel. The district must provide the teacher at least three business days after the date the teacher receives notice under this subsection to agree to be returned to probationary contract status. This subsection does not require a superintendent to provide notice of an intent to recommend discharge, termination, or nonrenewal.

(e) A district may return a teacher to probationary status without the teacher's consent upon a promotion or other change that requires the teacher to hold a different class of certificate issued under Subchapter B.

Solution Issue # 6:

SECTION ____ . Section 21.257, Education Code, is amended by adding subsection (a-1) as follows:

(a) Not later than the 60th day after the date on which the commissioner receives a teacher's written request for a hearing, the hearing examiner shall complete the hearing and make a written recommendation that:

- (1) includes proposed findings of fact and conclusions of law; and
- (2) may include a proposal for granting relief.

(a-1) In a hearing to which this Subchapter applies, a determination of good cause for the termination or suspension without pay of a probationary, continuing, or term contract teacher is a conclusion of law.

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Solution Issue #7

SECTION ____. Section 21.206(a), Education Code, is amended as follows: (a) Not later than the 45th day before the last day of instruction in a school year, the board of trustees shall notify in writing each teacher whose contract is about to expire whether the board proposes to renew or not renew the contract. Notice may be hand-delivered or mailed by prepaid certified or regular mail to the employee's address of record with the district. Notice mailed on or before the 45th day before the last day of instruction is timely, regardless of the date of receipt.

Solution Issue # 8

SECTION 1. Section 21.105(a), Education Code, is amended as follows:

(a) A teacher employed under a probationary contract for the following school year may relinquish the position and leave the employment of the district at the end of a school year without penalty by filing with the board of trustees or its designee a written resignation not later than the 60 [45]th day before the first day of instruction of the following school year. A written resignation mailed by prepaid certified or registered mail to the president of the board of trustees or the board's designee at the post office address of the district is considered filed at the time of mailing.

SECTION 2. Section 21.160(a), Education Code, is amended as follows:

(a) A teacher employed under a continuing contract may relinquish the position and leave the employment of the district at the end of a school year without penalty by filing with the board of trustees or its designee a written resignation not later than the 60 [45]th day before the first day of instruction of the following school year. A written resignation mailed by prepaid certified or registered mail to the president of the board of trustees or the board's designee at the post office address of the district is considered filed at time of mailing.

SECTION 3. Section 21.210(a), Education Code, is amended as follows:

(a) A teacher employed under a term contract with a school district may relinquish the teaching position and leave the employment of the district at the end of a school year without penalty by filing a written resignation with the board of trustees or the board's designee not later than the 60 [45]th day before the first day of instruction of the following school year. A written resignation mailed by prepaid certified or registered mail to the president of the board of trustees or the board's designee at the post office address of the district is considered filed at the time of mailing.

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Solution Issue # 9

SECTION 1. Amend Subchapter A, Chapter 21, Texas Education Code, by adding section 21.0032, as follows:
Sec. 21.0032. Retired Educators.

An educator who has retired under the Texas Teacher Retirement System and who subsequently returns to employment in a school district is not subject to Subchapters C, D, and E of this Chapter and Section 21.402 of this Chapter.

Alternative:

SECTION 1. Amend Section 21.402 (a) to read as follows:

Sec. 21.402 (a). Except as provided by Subsection (d), (e), or (f), a school district must pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time registered [school] nurse, other than a classroom teacher, librarian, counselor, or registered nurse who retired under the Texas Teacher Retirement System, not less than the minimum monthly salary, based on the employee's level of experience in addition to other factors,

SECTION 2. Amend Section 21.102 (a) to read as follows:

Sec. 21.102 (a). Except as provided by Section 21.202(b), a person who is employed as teacher by a school district for the first time, or who has not been employed the district for two consecutive school years subsequent to August 28, 1967, shall be employed under a probationary contract. A person who previously was employed as a teacher by a district and, after at least a two-year lapse in district employment, returns to district employment, may be employed under a probationary contract. A person who is a retired educator under the Texas Teacher Retirement System may be employed under a probationary contract without regard to the limits under Section 21.102(b)

