

# Texas Classroom Teachers Association

P.O. Box 1489  
Austin, TX 78767

512-477-9415  
1-888-879-8282  
Fax 512-469-9527  
<http://www.tcta.org/>



## **Testimony of the Texas Classroom Teachers Association Before the Senate Education Committee February 1, 2011 Presented by Lonnie F. Hollingsworth, Jr.**

Good afternoon, Madam Chair and members. We look forward to working with you during this session as you address some inordinately difficult challenges.

The members of the Senate Education Committee during the 81st Legislative Session made note on multiple occasions during the regular session and during the interim that they wanted to make data-driven decisions, and we note that there has been minimal change in your membership. We support that philosophy, and think that particularly in lean economic times, it's important to have the facts when making decisions, especially those that have associated costs.

For that reason, I want to focus on the data regarding many of the issues that have been under discussion today, to illustrate where we really do, and don't, have significant problems to be addressed.

First, on the issue of class-size caps: TCTA made a Public Information Act request to the Texas Education Agency for the number of waivers of the standard 22-to-1 class-size cap in grades K-4. The response was that only five requests for class-size cap waivers have ever been denied, and no waiver requests have been denied in the last 10 years. The initial rationale behind the class-size cap for early grades was to utilize resources at an early age so that students could learn the basics such as reading and math skills in order to facilitate success throughout their school careers. Though some districts on occasion might find it challenging to comply with the class-size cap, it is evident that districts do not encounter denials when waivers are requested. Districts are required under the current process to notify parents when a waiver is requested; we believe that is appropriate and a feature that should be continued going forward since local control should include informed parents.

Next, on the issue of local flexibility: The legislature in its wisdom has already provided for significant local flexibility for school districts through a waiver process. A copy of Section 7.056 of the Texas Education Code is attached to my testimony for your reference. That statute has been in law since 1995, allowing the commissioner of education to waive any provision of state law that is not on that relatively brief list of policy items for which the legislature wanted standards that could not be relaxed. Anything else can be waived upon the request of a district. Exemplary campuses are exempt from most Education Code provisions except for a list similar to Section 7.056. They are also exempt from the K-4 class size limit upon application and the submission of a written plan showing that that exemption will not be harmful to the academic achievement of the students on the campus. The exemption remains in effect until the

commissioner determines that the achievement levels for the campus have declined. A copy of the Excellence Exemption statute, Section 39.232 is attached to my testimony for your reference. There is adequate flexibility in current law.

With regard to the rallying cry of unfunded mandates: It is truly impossible to determine which mandates are unfunded without specifying which are funded and telling districts with specificity how they are expected to spend the funds they receive, either from the state or from the taxing authority granted by the state. There is no law requiring that districts hire any administrators other than a building principal for each campus and a superintendent, yet we all know that most districts have multiple layers of administration and "professional support" personnel that are not required by law. No law requires that districts offer extracurricular activities, even football. Districts routinely exercise broad discretion in deciding which non-required activities to fund, making it a non-issue to object to certain requirements as "unfunded." A prohibition on unfunded mandates would mean that the state, while providing funding or the means to acquire funding, would lose the ability to establish any policies that so much as required a district to spend staff time to familiarize themselves with them, unless additional funds were sent for that purpose.

Many of the "unfunded mandates" about which we hear complaints are those that benefit teachers. It's important to keep in mind that teachers are the ones who actually provide educational services, which is the core mission of the public schools. Laws such as the ones providing for a thirty-minute duty-free lunch period and a planning and preparation period were put in place because without them, many teachers were not receiving these basic benefits. We would encourage you not to retreat from the minimal provisions in state law to provide a professional working environment for educators.

As for teacher contracts, it's not hard to fire a bad teacher in Texas. Over the years you have heard testimony to that effect not only from our organization, but from a former Commissioner of Education (Dr. Shirley Neeley) based upon her experience as a superintendent. You have also heard similar testimony from other superintendents. To quote Jim Walsh, a noted school lawyer representing school districts, and the co-author of The Educator's Guide to School Law, "You hear it said that it's 'impossible' to fire a bad teacher. I don't think that's true in Texas at all...The standard is not that high." There is no tenure in Texas; there are no rubber rooms and never have been here. Though there are literally hundreds of thousands of teachers in Texas, the number of contract termination or nonrenewal cases that are appealed to the Texas Education Agency is miniscule. Out of hundreds of thousands of educator contracts (including administrator and other certified employees), only 70 decisions with regard to contract terminations and nonrenewals combined have been issued by the commissioner since 2005. These data do not mean that there aren't enough teachers being let go; the attrition data clearly indicate otherwise. Teaching is hard work, and those who aren't good at it tend to self-select out. If they don't decide to pursue another profession on their own motion, they are often counseled out of the profession by their principals or even their teacher organizations. We often tell members that documentation developed by their administrators is likely to support a contract nonrenewal and that they are not likely to prevail either before the local school board or on appeal. The commissioner of education must affirm the decision of a local school board with regard to a nonrenewal unless the decision is illegal, arbitrary, or not supported by substantial evidence. From a legal standpoint, substantial evidence is defined as more than a scintilla but less than a preponderance, which

means that, if there is any evidence in the record to support the decision, an appeal will not be successful.

The existing contractual system represents a balance worked out years ago between administrators and employees, and it has served everyone well. Remember that the contract system protects districts as well, in that an employee who has a bad day doesn't have the option of quitting on the spot (as a non-contractual employee can) without risking certification sanctions from the State Board for Educator Certification.

We are not entirely unsympathetic to the complaints of districts about too many mandates. For example, we heard from a member last week who wanted to know if he could give candy to a special education student without violating the standards regarding food of minimum nutritional values. As you may know, in addition to the state standards, federal standards are also on the way regarding what food may be served to students and when. Responding to our member required reviewing standards that came from the Texas Department of Agriculture to determine that indeed, a special education plan could override the rules. That's a lot of data for school employees to keep up with, and an example of the "mission creep" that is beginning to overwhelm schools as they are asked to take increasing responsibility not just for a child's education, but for his weight, his health, his fitness level, his mental health, and his sexual, drug, and alcohol practices.

We encourage you during this difficult budget cycle to focus on the real issues and to avoid passing laws of dubious educational value as a consolation prize for a lack of funding, and we look forward to working with you to constructively address the funding crisis while making every effort to keep the cuts away from the classroom.

## **Waiver Authority of the Commissioner of Education**

**Sec. 7.056. WAIVERS AND EXEMPTIONS.** (a) Except as provided by Subsection (e), a school campus or district may apply to the commissioner for a waiver of a requirement, restriction, or prohibition imposed by this code or rule of the board or commissioner.

(b) A school campus or district seeking a waiver must submit a written application to the commissioner not later than the 31st day before the campus or district intends to take action requiring a waiver. The application must include:

(1) a written plan approved by the board of trustees of the district that states the achievement objectives of the campus or district and the inhibition imposed on those objectives by the requirement, restriction, or prohibition; and

(2) written comments from the campus- or district-level committee established under Section 11.251.

(c) If the commissioner objects to an application for a waiver, the commissioner must notify the school campus or district in writing that the application is denied not later than the 30th day after the date on which the application is received. If the commissioner does not notify the school campus or district of an objection within that time, the application is considered granted.

(d) A waiver granted under this section is effective for the period stated in the application, which may not exceed three years. A school campus or district for which a requirement, restriction, or prohibition is waived under this section for a period of three years may receive an exemption from that requirement, restriction, or prohibition at the end of that period if the campus or district has fulfilled the achievement objectives stated in the application. The exemption remains in effect until the commissioner determines that achievement levels of the campus or district have declined.

(e) Except as provided by Subsection (f), a school campus or district may not receive an exemption or waiver under this section from:

(1) a prohibition on conduct that constitutes a criminal offense;

(2) a requirement imposed by federal law or rule, including a requirement for special education or bilingual education programs; or

(3) a requirement, restriction, or prohibition relating to:

(A) essential knowledge or skills under Section 28.002 or high school graduation requirements under Section 28.025;

(B) public school accountability as provided by Subchapters B, C, D, E, and J, Chapter 39;

(C) extracurricular activities under Section 33.081 or participation in a University Interscholastic League area, regional, or state competition under Section 33.0812;

(D) health and safety under Chapter 38;

(E) purchasing under Subchapter B, Chapter 44;

(F) elementary school class size limits, except as provided by Section 25.112;

(G) removal of a disruptive student from the classroom under Subchapter A, Chapter 37;

(H) at-risk programs under Subchapter C, Chapter 29;

(I) prekindergarten programs under Subchapter E, Chapter 29;

(J) educator rights and benefits under Subchapters A, C, D, E, F, G, and I, Chapter 21, or under Subchapter A, Chapter 22;

(K) special education programs under Subchapter A, Chapter 29;

(L) bilingual education programs under Subchapter B, Chapter 29; or

(M) the requirements for the first day of instruction under Section 25.0811.

(f) A school district or campus that is required to develop and implement a student achievement improvement plan under Section 39.102 or 39.103 may receive an exemption or waiver under this section from any law or rule other than:

(1) a prohibition on conduct that constitutes a criminal offense;

(2) a requirement imposed by federal law or rule;

(3) a requirement, restriction, or prohibition imposed by state law or rule

relating to:

(A) public school accountability as provided by Subchapters B, C, D, E, and J, Chapter 39; or

(B) educator rights and benefits under Subchapters A, C, D, E, F, G, and I, Chapter 21, or under Subchapter A, Chapter 22; or

(4) textbook selection under Chapter 31.

(g) In a manner consistent with waiver authority granted to the commissioner by the United States Department of Education, the commissioner may grant a waiver of a state law or rule required by federal law, including Subchapter A, B, or C, Chapter 29. Before exercising any waiver authority under this subsection, the commissioner shall notify the Legislative Budget Board and the office of budget and planning in the governor's office.

## **K-4 Class Size Cap Statute including Waiver Provisions**

**Sec. 25.112. CLASS SIZE.** (a) Except as otherwise authorized by this section, a school district may not enroll more than 22 students in a kindergarten, first, second, third, or fourth grade class. That limitation does not apply during:

(1) any 12-week period of the school year selected by the district, in the case of a district whose average daily attendance is adjusted under Section 42.005(c); or

(2) the last 12 weeks of any school year in the case of any other district.

(b) Not later than the 30th day after the first day of the 12-week period for which a district whose average daily attendance is adjusted under Section 42.005(c) is claiming an exemption under Subsection (a), the district shall notify the commissioner in writing that the district is claiming an exemption for the period stated in the notice.

(c) In determining the number of students to enroll in any class, a school district shall consider the subject to be taught, the teaching methodology to be used, and any need for individual instruction.

(d) On application of a school district, the commissioner may except the district from the limit in Subsection (a) if the commissioner finds the limit works an undue hardship on the district. An exception expires at the end of the school year for which it is granted.

(e) A school district seeking an exception under Subsection (d) shall notify the commissioner and apply for the exception not later than the later of:

(1) October 1; or

(2) the 30th day after the first school day the district exceeds the limit in

Subsection (a).

(f) If a school district repeatedly fails to comply with this section, the commissioner may take any appropriate action authorized to be taken by the commissioner under Section 39.131.

(g) Not later than January 1, 2011, the agency shall report to the legislature the number of applications for exceptions under Subsection (d) submitted by each school district and for each application indicate whether the application was granted or denied. This subsection expires February 1, 2011.

## **Excellence Exemption Statute**

**Sec. 39.232. EXCELLENCE EXEMPTIONS.** (a) Except as provided by Subsection (b), a school campus or district that is rated exemplary under Subchapter G is exempt from requirements and prohibitions imposed under this code including rules adopted under this code.

- (b) A school campus or district is not exempt under this section from:
- (1) a prohibition on conduct that constitutes a criminal offense;
  - (2) requirements imposed by federal law or rule, including requirements for special education or bilingual education programs; or
  - (3) a requirement, restriction, or prohibition relating to:
    - (A) curriculum essential knowledge and skills under Section 28.002 or high school graduation requirements under Section 28.025;
    - (B) public school accountability as provided by Subchapters B, C, D, E, and J;
    - (C) extracurricular activities under Section 33.081;
    - (D) health and safety under Chapter 38;
    - (E) purchasing under Subchapter B, Chapter 44;
    - (F) elementary school class size limits, except as provided by Subsection (d) or Section 25.112;
    - (G) removal of a disruptive student from the classroom under Subchapter A, Chapter 37;
    - (H) at risk programs under Subchapter C, Chapter 29;
    - (I) prekindergarten programs under Subchapter E, Chapter 29;
    - (J) rights and benefits of school employees;
    - (K) special education programs under Subchapter A, Chapter 29; or
    - (L) bilingual education programs under Subchapter B, Chapter 29.

(c) The agency shall monitor and evaluate deregulation of a school campus or district under this section and Section 7.056.

(d) The commissioner may exempt an exemplary school campus under Subchapter G from elementary class size limits under this section if the school campus submits to the commissioner a written plan showing steps that will be taken to ensure that the exemption from the class size limits will not be harmful to the academic achievement of the students on the school campus. The commissioner shall review achievement levels annually. The exemption remains in effect until the commissioner determines that achievement levels of the campus have declined.