

EDUCATION



School Law Legislative Update

BY LONNIE F. HOLLINGSWORTH, JR.

The changes in the Texas statutes relating to school law were driven in large part by the unprecedented shortfall in the state's budget. For the first time in memory, public school funding formulas were cut by about \$4 billion and other school grant programs were cut by an additional billion dollars. The cuts to the funding formulas resulted from reductions in the amount of funding per student and the lack of appropriations for the approximately \$2 billion that it costs to pay for increases in enrollment every two years.

In a session with a budget shortfall so large that even public education funding was on the chopping block, state legislators were required to pass another school finance bill to make the cuts. Unlike every school finance bill in the last two decades in which the Texas Legislature struggled with the politics of distributing additional funding produced by increases in property tax values, this time legislators had to determine how to distribute cuts in funding among districts. The defining issue was whether the cuts should be distributed equally to districts or whether relatively wealthier districts should take greater cuts due to constitutional considerations of equity. Ultimately, the Legislature adopted an approach of equal cuts for districts the first year followed by a more equitable method in year two.¹

The cuts will likely spur another round of school finance litigation over the issues of constitutional equity and adequacy² that were raised and narrowly defeated by the state in 2005,³ as well as whether the current school finance system constitutes an unconstitutional statewide property tax, an issue the state lost in the same case.⁴ Not surprisingly, the Legislature called for another joint interim committee to study the school finance system and to make recommendations to the 83rd Legislature in 2013.

The funding shortfall also spurred the efforts of groups representing school board and central administrators to call for additional “flexibility” with regard to such matters as elementary class size caps and employee rights and benefits. Legislative leaders encouraged the call for “deregulation.” The effort was not as easy as anticipated, as the regular session ended with no deregulation bill having passed. Legislators were given another opportunity when a last-minute filibuster in the regular session killed the school finance bill, prompting Gov. Rick Perry to call a special session. While the class size cap of 22 to 1 for grades kindergarten through four that has been in place since 1984 remained intact, some changes were made to statutory provisions relating to teacher contracts and compensation when a major deregulation bill, Senate Bill 8, finally did pass in the closing days of the special session.⁵

Senate Bill 8

The changes to contractual provisions by S.B. 8 include a shortening of the time limit by which school districts must notify teachers of proposed nonrenewal of term contracts⁶ and release from probationary contracts⁷ from 45 to 10 days before the last day of instruction. Several “flexibility” measures that districts may now deploy are triggered by a declaration of a “financial exigency” for the district. While the determination of a financial exigency has in the past been the sole discretion of local school boards, the Commissioner of Education is now tasked with defining the minimum standards concerning school financial conditions that must exist for a district to declare a financial exigency.⁸ Districts that have declared a financial exigency may use the statutory nonrenewal process for terminations of continuing contract teachers for necessary reduction of personnel⁹ or for mid-contract terminations of

teachers on term¹⁰ or probationary contracts for a reduction in force.¹¹ Another change to the mid-contract termination process changes the determination of good cause by an Independent Hearing Examiner from a finding of fact to a conclusion of law,¹² which can now be changed by local school boards and becomes subject to administrative and judicial review.

For teachers on continuing contracts, which are contracts of indefinite duration that are optional for local school districts and do not apply in most districts or to the majority of teachers, the bill removed the requirement that terminations of teachers from such contracts due to necessary reduction of personnel be based on reverse order of seniority. In a move contrary to the motif of deregulation, the law was changed to require that such terminations be primarily based on evaluations.¹³

Another provision allows districts to amend the terms of the contract of a superintendent employed under a term contract, as some legislators sought to ensure that school administrators would also be subject to cost cutting measures.¹⁴ This provision prompted a statement of legislative intent during floor debate that the contractual changes in the bill are intended to apply prospectively.¹⁵ While the statement of intent applied to substantive rights and not to “procedural things, such as timelines within a contract,” the changes to due process provisions relating to the termination of continuing contracts will almost certainly be the subject of litigation when and if districts attempt to apply them to currently existing continuing contracts.

Although S.B. 8 initially called for a complete repeal of the state’s minimum salary schedule, the version that passed repealed only a subsection of the Education Code that prohibited school districts from reducing salaries for current teachers and other employees subject to the state minimum salary schedule below the salary paid to the employee for the 2010-2011 school year. A provision was put in place that any district implementing a widespread salary reduction in salaries for teachers must also reduce the salaries of administrators and other professional staff by a commensurate percentage.¹⁶ Districts were also given the authority to implement an unpaid furlough program of up to six non-instructional days. Such a furlough plan must include all contractual personnel for an equal number of days.¹⁷

Corporal Punishment

The Legislature also made changes to student discipline, the most notable of which relates to corporal punishment. While Texas statutes had largely been silent on the issue of corporal punishment, leaving the issue up to local school districts, the new law requires districts wishing to authorize corporal punishment to adopt a policy allowing corporal punishment. A district adopting such a policy may use corporal punishment, now defined in statute, as a discipline management technique unless the student’s parent or guardian provides, on an annual basis, a signed written statement prohibiting the use of corporal punishment on the student.¹⁸

The same bill decriminalizes classroom and transportation disruptions and specified types of disorderly conduct for students in the sixth grade or lower, thus eliminating the ability of school district police departments to issue tickets to these younger students as a disciplinary management technique.¹⁹ Another change makes it more difficult for districts to expel students by the creation of a definition of serious misbehavior for students already in a school district Disciplinary Alternative Education Program, which is a basis for expulsion in smaller districts or removal to county-run Juvenile Justice Alternative Education Programs in larger counties.²⁰

Although not technically a change to school law, a provision of the Code of Criminal Procedure relating to notification to schools and school employees of students who have been arrested or adjudicated for any felony and certain serious misdemeanors was amended to require that school employees be provided additional information.²¹ The notice must now include all pertinent details of the alleged or adjudicated offense, including details of assaultive or violent behavior and weapons used or possessed.²² The bill also adds an enforcement mechanism by requiring the reporting to appropriate authorities of any law enforcement official, superintendent, principal of a private school, and parole or probation office with a responsibility to provide the required notification who fails to provide timely notification as required by the statute.²³

Instructional Materials

Of particular historical interest is the passage of a bill that eliminates the term “textbook” from the Education Code, marking the end of an era in which the state purchased textbooks, stored them in central depositories, and shipped them to schools.²⁴ The bill replaced the term with “instructional materials” and created an instructional materials allotment (IMA) that can be used by school districts to purchase instructional materials (including software, online services, and other technology). The allotment can also be used to pay for training employees in the appropriate use of instructional materials and for the purchase of technological equipment necessary to support the use of instructional materials.²⁵

This article has been a short summary of some of the most notable changes to school law. The fact that so many changes were made during what most observers consider to be among the most difficult and grueling sessions in recent memory will no doubt provide the basis for further revisions in sessions to come, considerable rule-making, and the likelihood of litigation as these new provisions are interpreted and implemented.

Notes

1. S.B. 1, Texas 82nd Leg., 1st C.S. 2011.
2. Tex. Const. art. VII, §1.
3. *Neely v. West Orange-Cove Consol. Ind. School Dist.*, 176 S.W.3d 746, 799 (Tex. 2005).
4. *Id.* at 754.
5. S.B. 8, Texas 82nd Leg. — 1st C.S. 2011.
6. Tex. Educ. Code §21.206.
7. Tex. Educ. Code §21.103.
8. Tex. Educ. Code §44.011.
9. Tex. Educ. Code §21.159.
10. *Id.*
11. Tex. Educ. Code §21.1041.
12. Tex. Educ. Code §21.257.
13. Tex. Educ. Code §21.157.
14. Tex. Educ. Code §21.212(f).
15. H.J. of Tex., 82nd Leg., 1st C.S. 571 (June 27, 2011).
16. Tex. Educ. Code §21.4032.
17. Tex. Educ. Code §21.4021.
18. H.B. 359, 82nd Leg., R.S. 2011.
19. Tex. Educ. Code §37.124, §37.126; Tex. Penal Code §42.01(f).
20. H.B. 968, 82nd Leg., R.S. 2011.
21. H.B. 1907, 82nd Leg., R.S. 2011.
22. Tex. Crim. Pro., Art. 15.27(k).
23. Tex. Crim. Pro., Art. 15.27(l)(m)(n) and (o).
24. S.B. 6, Texas 82nd Leg., 1st C.S. 2011.
25. Tex. Educ. Code §31.0211.

LONNIE F. HOLLINGSWORTH, JR.

is director of Legal Services/Governmental Relations for the Texas Classroom Teachers Association. He served as chair of the State Bar School Law Section in 2005.

Stockbroker Fraud

Experienced, quality representation for
individuals victimized by unscrupulous stockbrokers.

Claims handled in Texas
and throughout the United States.



Chris Bell



Annette Henry

**FRAUD
UNSUITABLE INVESTMENTS
CHURNING**

BELL & HENRY, P.C.

1314 Texas Ave., Ste. 400, Houston, TX 77002
713.236.1818 • 866.674.4487
InvestorsHaveRights.com