

Appendix A: Legal Appendix

Laws passed by the Texas Legislature are applicable to the entire state of Texas. These laws are organized in codes, which are organized by topic, such as the Education Code, the Health and Safety Code, and the Family Code. Statutes are published online at <http://www.capitol.state.tx.us> and are updated after each legislative session.

The legislature often passes laws in which authority to perform a certain task or develop a set of rules is given to a state agency or board, such as the Texas Education Agency or the Texas Department of Health. When these agencies adopt rules, the rules are recorded in the Texas Register and then placed in the Texas Administrative Code. The Texas Administrative Code is updated every two weeks, and its rules are *not* included in this appendix. The online version of the Texas Administrative Code is updated regularly and is available at <http://www.sos.state.tx.us/tac>.

This appendix contains the full text of Texas laws not otherwise contained in this manual. The text of federal disability laws that are referred to in the manual are also included. To read the full text of agency rules and state laws not included in this appendix, please consult the section that pertains to that topic or search the websites mentioned above.

How to use this appendix

On the following pages is an index of the laws contained in this appendix. To find a law about a particular topic, search for the topic in the index, and note the legal citation. The appendix is organized alphabetically by code name, and in numeric order within each code. The federal laws follow the state laws.

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Education Code

§ 21.003. Certification Required

- (a) A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B.

- (b) A person may not be employed by a school district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession. A person may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate state agency.

§ 22.051. Immunity From Liability for Professional Employees

- (a) A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

- (b) This section does not apply to the operation, use, or maintenance of any motor vehicle.

- (c) In this section, "professional employee" includes:
 - (1) a superintendent, principal, teacher, supervisor, social worker, counselor, nurse, and teacher's aide;

 - (2) a student in an education preparation program participating in a field experience or internship;

 - (3) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety; and

- (4) any other person whose employment requires certification and the exercise of discretion.

§ 22.052. Administration of Medication by School District Employees or Volunteer Professionals; Immunity From Liability

- (a) On the adoption of policies concerning the administration of medication to students by school district employees, the school district, its board of trustees, and its employees are immune from civil liability from damages or injuries resulting from the administration of medication to a student if:

- (1) the school district has received a written request to administer the medication from the parent, legal guardian, or other person having legal control of the student; and

- (2) when administering prescription medication, the medication appears to be in the original container and to be properly labeled.

- (b) The board of trustees may allow a licensed physician or registered nurse who provides volunteer services to the school district and for whom the district provides liability insurance to administer to a student:

- (1) nonprescription medication; or

- (2) medication currently prescribed for the student by the student's personal physician.

- (c) This section may not be construed as granting immunity from civil liability for injuries resulting from gross negligence.

§ 22.053. School District Volunteers

- (a) A volunteer who is serving as a direct service volunteer of a school district is immune from civil liability to the same extent as a professional employee of a school district under Section 22.051.

- (b) In this section, "volunteer" means a person providing services for or on behalf of a school district, on the premises of the district or at a school-sponsored or school-

related activity on or off school property, who does not receive compensation in excess of reimbursement for expenses.

- (c) This section does not limit the liability of a person for intentional misconduct or gross negligence.

§ 26.002. Definition [of “parent”]

In this chapter, "parent" includes a person standing in parental relation. The term does not include a person as to whom the parent-child relationship has been terminated or a person not entitled to possession of or access to a child under a court order. Except as provided by federal law, all rights of a parent under Title 2 of this code and all educational rights under Section 151.003(a)(10), Family Code, shall be exercised by a student who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

§ 28.004. Local School Health Education Advisory Council and Health Education Instruction

- (a) The board of trustees of each school district shall establish a local school health education advisory council to assist the district in ensuring that local community values are reflected in the district's health education instruction.
- (b) A school district must consider the recommendations of the local school health education advisory council before changing the district's health education curriculum or instruction.
- (c) The local school health education advisory council's duties include recommending:
- (1) the number of hours of instruction to be provided in health education;
 - (2) health education curriculum appropriate for specific grade levels that may include a coordinated health education program designed to prevent obesity, cardiovascular disease, and Type II diabetes through coordination of:

- (A) health education;
- (B) physical education;
- (C) nutritional services;
- (D) parental involvement; and
- (E) instruction to prevent the use of tobacco; and

(3) appropriate grade levels and methods of instruction for human sexuality instruction.

(d) The board of trustees shall appoint members to the local school health education advisory council. A majority of the members must be persons who are parents of students enrolled in the district and who are not employed by the district. The board of trustees also may appoint one or more persons from each of the following groups or a representative from a group other than a group specified under this subsection:

- (1) public school teachers;
- (2) public school administrators;
- (3) district students;
- (4) health care professionals;
- (5) the business community;
- (6) law enforcement;
- (7) senior citizens;
- (8) the clergy; and
- (9) nonprofit health organizations.

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- (e) Any course materials and instruction relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus or acquired immune deficiency syndrome shall be selected by the board of trustees with the advice of the local school health education advisory council and must:
- (1) present abstinence from sexual activity as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age;
 - (2) devote more attention to abstinence from sexual activity than to any other behavior;
 - (3) emphasize that abstinence from sexual activity, if used consistently and correctly, is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with human immunodeficiency virus or acquired immune deficiency syndrome, and the emotional trauma associated with adolescent sexual activity;
 - (4) direct adolescents to a standard of behavior in which abstinence from sexual activity before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with human immunodeficiency virus or acquired immune deficiency syndrome; and
 - (5) teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates, if instruction on contraception and condoms is included in curriculum content.
- (f) A school district may not distribute condoms in connection with instruction relating to human sexuality.
- (g) A school district that provides human sexuality instruction may separate students according to sex for instructional purposes.
- (h) The board of trustees shall determine the specific content of the district's instruction in human sexuality, in accordance with Subsections (e), (f), and (g).

- (i) A school district shall notify a parent of each student enrolled in the district of:
 - (1) the basic content of the district's human sexuality instruction to be provided to the student; and
 - (2) the parent's right to remove the student from any part of the district's human sexuality instruction.
- (j) A school district shall make all curriculum materials used in the district's human sexuality instruction available for reasonable public inspection.

§ 29.001. Statewide Plan

The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to students with disabilities;
- (2) facilitate interagency coordination when other state agencies are involved in the delivery of instructional or related services to students with disabilities;
- (3) periodically assess statewide personnel needs in all areas of specialization related to special education and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives;

- (4) ensure that regional education service centers throughout the state maintain a regional support function, which may include direct service delivery and a component designed to facilitate the placement of students with disabilities who cannot be appropriately served in their resident districts;
- (5) allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Section 42.006, are accurate and complete;
- (6) ensure that appropriately trained personnel are involved in the diagnostic and evaluative procedures operating in all districts and that those personnel routinely serve on district admissions, review, and dismissal committees;
- (7) ensure that an individualized education program for each student with a disability is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs;
- (8) ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes, in addition to participating in regular or special classes;
- (9) ensure that each student with a disability is provided necessary related services; and
- (10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, is required to:

- (A) complete a training program that complies with minimum standards established by agency rule;
- (B) visit the child and the child's school;
- (C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
- (D) review the child's educational records;
- (E) attend meetings of the child's admission, review, and dismissal committee;
- (F) exercise independent judgment in pursuing the child's interests; and
- (G) exercise the child's due process rights under applicable state and federal law.

§ 29.002. Definition [regarding special education]

In this subchapter, "special services" means:

- (1) special education instruction, which may be provided by professional and supported by paraprofessional personnel in the regular classroom or in an instructional arrangement described by Section 42.151; and
- (2) related services, which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the student to benefit from special education instruction and for implementation of a student's individualized education program.

§ 29.003. Eligibility Criteria

- (a) The agency shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. Eligible students with disabilities shall

enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts approved under this subchapter. Instruction shall be supplemented by the provision of related services when appropriate.

(b) A student is eligible to participate in a school district's special education program if the student:

(1) is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in public school without the provision of special services; or

(2) is at least three but not more than 21 years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in public school without the provision of special services:

(A) physical disability;

(B) mental retardation;

(C) emotional disturbance;

(D) learning disability;

(E) autism;

(F) speech disability; or

(G) traumatic brain injury.

§ 29.004. Full Individual And Initial Evaluation

A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed not later than the 60th calendar day following the date on which the referral for evaluation was initiated by school personnel, the student's parent or legal guardian, or another appropriate person. The evaluation shall

be conducted using procedures that are appropriate for the student's most proficient method of communication.

§ 29.005. Individualized Education Program

(a) Before a child is enrolled in a special education program of a school district, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1401(11) to develop the child's individualized education program.

(b) The committee shall develop the individualized education program by agreement of the committee members or, if those persons cannot agree, by an alternate method provided by the agency. Majority vote may not be used to determine the individualized education program.

(c) If the individualized education program is not developed by agreement, the written statement of the program required under 20 U.S.C. Section 1401(11) must include the basis of the disagreement.

(d) If the child's parent is unable to speak English, the district shall:

- (1) provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language; or
- (2) if the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's individualized education program translated into the parent's native language.

§ 29.006. Continuing Advisory Committee

The governor shall appoint a continuing advisory committee, composed of 17 members, under 20 U.S.C. Section 1412(a)(21). The appointments are not subject to confirmation by the senate. Members of the committee are appointed for staggered terms of four years with the terms of eight or nine members expiring on February 1 of each odd-numbered year.

§ 29.007. Shared Services Arrangements

School districts may enter into a written contract to jointly operate their special education programs. The contract must be approved by the commissioner. Funds to which the cooperating districts are entitled may be allocated to the districts jointly as shared services arrangement units or shared services arrangement funds in accordance with the shared services arrangement districts' agreement.

§ 29.008. Contracts for Services; Residential Placement

- (a) A school district, shared services arrangement unit, or regional education service center may contract with a public or private facility, institution, or agency inside or outside of this state for the provision of services to students with disabilities. Each contract for residential placement must be approved by the commissioner. The commissioner may approve a residential placement contract only after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. The commissioner may approve either the whole or a part of a facility or program.
- (b) Except as provided by Subsection (c), costs of an approved contract for residential placement may be paid from a combination of federal, state, and local funds. The local share of the total contract cost for each student is that portion of the local tax effort that exceeds the district's local fund assignment under Section 42.252, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that amount remaining after subtracting the local share. If the contract involves a public facility, the state share is that amount remaining after subtracting the local share from the portion of the contract that involves the costs of instructional and related services. For purposes of this subsection, "local tax effort" means the total amount of money generated by taxes imposed for debt service and maintenance and operation less any amounts paid into a tax increment fund under Chapter 311, Tax Code.
- (c) When a student, including one for whom the state is managing conservator, is placed primarily for care or treatment reasons in a private residential facility that operates its own private education program, none of the costs may be paid from public education funds. If a residential placement primarily for care or treatment reasons involves a private residential facility in which the education program is provided by the school district, the portion of the costs that includes appropriate education services, as

determined by the school district's admission, review, and dismissal committee, shall be paid from state and federal education funds.

- (d) A district that contracts for the provision of education services rather than providing the services itself shall oversee the implementation of the student's individualized education program and shall annually reevaluate the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall periodically report to the district on the services the student has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that the district requires in order to fulfill its obligations under this subchapter.

§ 29.009. Public Notice Concerning Preschool Programs for Students With Disabilities

Each school district shall develop a system to notify the population in the district with children who are at least three years of age but younger than six years of age and who are eligible for enrollment in a special education program of the availability of the program.

§ 29.017. Transfer of Parental Rights at Age of Majority.

- (a) A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability, except that the school district shall provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. All other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student.
- (b) All rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.
- (c) In accordance with 34 C.F.R. Section 300.517, the school district shall notify the student and the parents of the transfer of rights under this section.
- (d) The commissioner shall adopt rules implementing the provisions of 34 C.F.R. Section 300.517(b).

§ 29.301. Definitions [regarding students who are deaf or hard of hearing]

In this subchapter:

- (1) "Admission, review, and dismissal committee" means the committee required by State Board of Education rules to develop the individualized education program required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) for any student needing special education.
- (2) "American Sign Language" means a complete, visual, and manual language with its own grammar and syntax.
- (3) "English" includes writing, reading, speech, speech reading, cued speech, and any English-based manual-visual method of communication.
- (4) "Unique communication mode" or "appropriate language mode" includes English and American Sign Language.

§ 29.302. Findings

- (a) The legislature finds that it is essential for the well-being and growth of students who are deaf or hard of hearing that educational programs recognize the unique nature of deafness and the hard-of-hearing condition and ensure that all students who are deaf or hard of hearing have appropriate, ongoing, and fully accessible educational opportunities. Students who are deaf or hard of hearing may choose to use a variety of language modes and languages, including oral and manual-visual language. Students who are deaf may choose to communicate through the language of the deaf community, American Sign Language, or through any of a number of English-based manual-visual languages. Students who are hard of hearing may choose to use spoken and written English, including speech reading or lip reading, together with amplification instruments, such as hearing aids, cochlear implants, or assistive listening systems, to communicate with the hearing population. Students who are deaf or hard of hearing may choose to use a combination of oral or manual-visual language systems, including cued speech, manual signed systems, and American Sign Language, or may rely exclusively on the oral-aural language of their choice.

Students who are deaf or hard of hearing also may use other technologies to enhance language learning.

- (b) The legislature recognizes that students who are deaf or hard of hearing should have the opportunity to develop proficiency in English, including oral or manual-visual methods of communication, and American Sign Language.

§ 29.303. Unique Communication

Students who are deaf or hard of hearing must have an education in which their unique communication mode is respected, used, and developed to an appropriate level of proficiency.

§ 29.304. Qualifications of Personnel

- (a) A student who is deaf or hard of hearing must have an education in which teachers, psychologists, speech therapists, progress assessors, administrators, and others involved in education understand the unique nature of deafness and the hard-of-hearing condition. A teacher of students who are deaf or hard of hearing either must be proficient in appropriate language modes or use an interpreter certified in appropriate language modes if certification is available.
- (b) Each school district shall employ or provide access to appropriate qualified staff with proficient communications skills, consistent with credentialing requirements, to fulfill the responsibilities of the school district, and shall make positive efforts to employ qualified individuals with disabilities.
- (c) Regular and special personnel who work with students who are deaf or hard of hearing must be adequately prepared to provide educational instruction and services to those students.

§ 29.310. Procedures and Materials for Assessment and Placement

- (a) Procedures and materials for assessment and placement of students who are deaf or hard of hearing shall be selected and administered so as not to be racially, culturally, or sexually discriminatory.
- (b) A single assessment instrument may not be the sole criterion for determining the placement of a student.

- (c) The procedures and materials for the assessment and placement of a student who is deaf or hard of hearing shall be in the student's preferred mode of communication. All other procedures and materials used with any student who is deaf or hard of hearing and who has limited English proficiency shall be in the student's preferred mode of communication.

§ 29.311. Educational Programs

- (a) Educational programs for students who are deaf or hard of hearing must be coordinated with other public and private agencies, including:
- (1) agencies operating early childhood intervention programs;
 - (2) preschools;
 - (3) agencies operating child development programs;
 - (4) nonpublic, nonsectarian schools;
 - (5) agencies operating regional occupational centers and programs; and
 - (6) the Texas School for the Deaf.
- (b) As appropriate, the programs must also be coordinated with postsecondary and adult programs for persons who are deaf or hard of hearing.

§ 29.312. Psychological Counseling Services

Appropriate psychological counseling services for a student who is deaf or hard of hearing shall be made available at the student's school site in the student's primary mode of communication. In the case of a student who is hard of hearing, appropriate auditory systems to enhance oral communication shall be used if required by the student's admission, review, and dismissal committee.

§ 33.086. Certification in Cardiopulmonary Resuscitation and First Aid

- (a) A school district employee who serves as the head coach or chief sponsor for an extracurricular athletic activity, including cheerleading, sponsored or sanctioned by a

school district or the University Interscholastic League must maintain and submit to the district proof of current certification in first aid and cardiopulmonary resuscitation issued by the American Red Cross, the American Heart Association, or another organization that provides equivalent training and certification.

- (b) Each school district shall adopt procedures necessary for administering this section, including procedures for the time and manner in which proof of current certification must be submitted.

§ 38.001. Immunization; Requirements; Exceptions

- (a) Each student shall be fully immunized against diphtheria, rubeola, rubella, mumps, tetanus, and poliomyelitis, except as provided by Subsection (c).

- (b) Subject to Subsection (c), the Texas Board of Health may modify or delete any of the immunizations in Subsection (a) or may require immunizations against additional diseases as a requirement for admission to any elementary or secondary school.

- (c) Immunization is not required for a person's admission to any elementary or secondary school if the person applying for admission:

- (1) submits to the admitting official:

(A) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine in the United States, in which it is stated that, in the physician's opinion, the immunization required would be injurious to the health and well-being of the applicant or any member of the applicant's family or household; or

(B) an affidavit signed by the applicant or, if a minor, by the applicant's parent or guardian stating that the immunization conflicts with the tenets and practice of a recognized church or religious denomination of which the applicant is an adherent or member, except that this exemption does not apply in times of emergency or epidemic declared by the commissioner of public health; or

(2) is a member of the armed forces of the United States and is on active duty.

(d) The Texas Department of Health shall provide the required immunization to children in areas where no local provision exists to provide those services.

(e) A person may be provisionally admitted to an elementary or secondary school if the person has begun the required immunizations and if the person continues to receive the necessary immunizations as rapidly as is medically feasible. The Texas Department of Health shall adopt rules relating to the provisional admission of persons to an elementary or secondary school.

§ 38.002. Immunization Records; Reporting

(a) Each public school shall keep an individual immunization record during the period of attendance for each student admitted. The records shall be open for inspection at all reasonable times by the Texas Education Agency or by representatives of local health departments or the Texas Department of Health.

(b) Each public school shall cooperate in transferring students' immunization records to other schools. Specific approval from students, parents, or guardians is not required before transferring those records.

(c) The Texas Education Agency and the Texas Department of Health shall develop the form for a required annual report of the immunization status of students. The report shall be submitted by all schools at the time and in the manner indicated in the instructions printed on the form.

§ 38.0025. Dissemination of Bacterial Meningitis Information.

(a) The agency shall prescribe procedures by which each school district shall provide information relating to bacterial meningitis to its students and their parents each school year. The procedures must ensure that the information is reasonably likely to come to the attention of the parents of each student. The agency shall prescribe the form and content of the information. The information must cover:

(1) the symptoms of the disease, how it may be diagnosed, and its possible consequences if untreated;

- (2) how the disease is transmitted, how it may be prevented, and the relative risk of contracting the disease for primary and secondary school students;
 - (3) the availability and effectiveness of vaccination against and treatment for the disease, and a brief description of the risks and possible side effects of vaccination; and
 - (4) sources of additional information regarding the disease, including any appropriate office of the school district and the appropriate office of the Texas Department of Health.
- (b) The agency shall consult with the Texas Department of Health in prescribing the content of the information to be provided to students under this section. The agency shall establish an advisory committee to assist the agency in the initial implementation of this section. The advisory committee must include at least two members who are parents of students at public schools in this state.
- (c) A school district, with the written consent of the agency, may provide the information required by this section to its students and their parents by a method different from the method prescribed by the agency under Subsection (a) if the agency determines that method would be effective in bringing the information to the attention of the parents of each student.

§ 38.003. Screening and Treatment for Dyslexia and Related Disorders

- (a) Students enrolling in public schools in this state shall be tested for dyslexia and related disorders at appropriate times in accordance with a program approved by the State Board of Education.
- (b) In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia or a related disorder.
- (c) The State Board of Education shall adopt any rules and standards necessary to administer this section.
- (d) In this section:

- (1) "Dyslexia" means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity.
- (2) "Related disorders" includes disorders similar to or related to dyslexia, such as developmental auditory imperception, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.

§ 38.008. Posting of Steroid Law Notice

Each school in a school district in which there is a grade level of seven or higher shall post in a conspicuous location in the school gymnasium and each other place in a building where physical education classes are conducted the following notice:

Anabolic steroids are for medical use only. State law prohibits possessing, dispensing, delivering, or administering an anabolic steroid in any manner not allowed by state law. State law provides that body building, muscle enhancement, or the increase of muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is not a valid medical purpose. Only a medical doctor may prescribe an anabolic steroid or human growth hormone for a person. A violation of state law concerning anabolic steroids or human growth hormones is a criminal offense punishable by confinement in jail or imprisonment in the institutional division of the Texas Department of Criminal Justice.

§ 38.009. Access to Medical Records

- (a) A school administrator, nurse, or teacher is entitled to access to a student's medical records maintained by the school district for reasons determined by district policy.
- (b) A school administrator, nurse, or teacher who views medical records under this section shall maintain the confidentiality of those medical records.
- (c) This section does not authorize a school administrator, nurse, or teacher to require a student to be tested to determine the student's medical condition or status.

§ 38.0095. Parental Access to Medical Records

- (a) A parent or guardian of a student is entitled to access to the student's medical records maintained by a school district.
- (b) On request of a student's parent or guardian, the school district shall provide a copy of the student's medical records to the parent or guardian. The district may not impose a charge for providing the copy that exceeds the charge authorized by Section 552.261, Government Code, for providing a copy of public information.

§ 38.010. Outside Counselors

- (a) A school district or school district employee may not refer a student to an outside counselor for care or treatment of a chemical dependency or an emotional or psychological condition unless the district:
- (1) obtains prior written consent for the referral from the student's parent;
 - (2) discloses to the student's parent any relationship between the district and the outside counselor;
 - (3) informs the student and the student's parent of any alternative public or private source of care or treatment reasonably available in the area;
 - (4) requires the approval of appropriate school district personnel before a student may be referred for care or treatment or before a referral is suggested as being warranted; and
 - (5) specifically prohibits any disclosure of a student record that violates state or federal law.

- (b) In this section, "parent" includes a managing conservator or guardian.

§ 38.011. Dietary Supplements

- (a) A school district employee may not:
- (1) knowingly sell, market, or distribute a dietary supplement that contains performance enhancing compounds to a primary or secondary education

student with whom the employee has contact as part of the employee's school district duties; or

- (2) knowingly endorse or suggest the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance enhancing compounds by a primary or secondary education student with whom the employee has contact as part of the employee's school district duties.

(b) This section does not prohibit a school district employee from:

- (1) providing or endorsing a dietary supplement that contains performance enhancing compounds to, or suggesting the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance enhancing compounds by, the employee's child; or
- (2) selling, marketing, or distributing a dietary supplement that contains performance enhancing compounds to, or endorsing or suggesting the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance enhancing compounds by, a primary or secondary education student as part of activities that:

(A) do not occur on school property or at a school-related function;

(B) are entirely separate from any aspect of the employee's employment with the school district; and

(C) do not in any way involve information about or contacts with students that the employee has had access to, directly or indirectly, through any aspect of the employee's employment with the school district.

(c) A person who violates this section commits an offense. An offense under this section is a Class C misdemeanor.

(d) In this section:

- (1) "Dietary supplement" has the meaning assigned by 21 U.S.C. Section 321 and its subsequent amendments.
- (2) "Performance enhancing compound" means a manufactured product for oral ingestion, intranasal application, or inhalation that:
 - (A) contains a stimulant, amino acid, hormone precursor, herb or other botanical, or any other substance other than an essential vitamin or mineral; and
 - (B) is intended to increase athletic or intellectual performance, promote muscle growth, or increase an individual's endurance or capacity for exercise.

§ 38.013. Self-administration of Prescription Asthma Medicine by Students.

(a) In this section:

- (1) "Parent" includes a person standing in parental relation.
- (2) "Self-administration of prescription asthma medicine" means a student's discretionary use of prescription asthma medicine.

(b) A student with asthma is entitled to possess and self-administer prescription asthma medicine while on school property or at a school-related event or activity if:

- (1) the prescription asthma medicine has been prescribed for that student as indicated by the prescription label on the medicine;
- (2) the self-administration is done in compliance with the prescription or written instructions from the student's physician or other licensed health care provider; and
- (3) a parent of the student provides to the school:

- (A) a written authorization, signed by the parent, for the student to self-administer prescription asthma medicine while on school property or at a school-related event or activity; and
- (B) a written statement from the student's physician or other licensed health care provider, signed by the physician or provider, that states:
 - (i) that the student has asthma and is capable of self-administering the prescription asthma medicine;
 - (ii) the name and purpose of the medicine;
 - (iii) the prescribed dosage for the medicine;
 - (iv) the times at which or circumstances under which the medicine may be administered; and
 - (v) the period for which the medicine is prescribed.
- (c) The physician's statement must be kept on file in the office of the school nurse of the school the student attends or, if there is not a school nurse, in the office of the principal of the school the student attends.
- (d) This section does not:
 - (1) waive any liability or immunity of a governmental unit or its officers or employees; or
 - (2) create any liability for or a cause of action against a governmental unit or its officers or employees.
- (e) The commissioner may adopt rules and prescribe forms to assist in the implementation of this section.

§ 38.051. Establishment of School-based Health Centers.

- (a) A school district in this state may, if the district identifies the need, design a model in accordance with this subchapter for the delivery of cooperative health care programs for students and their families and may compete for grants awarded under this subchapter. The model may provide for the delivery of conventional health services and disease prevention of emerging health threats that are specific to the district.
- (b) On the recommendation of an advisory council established under Section 38.058, a school district may establish a school-based health center at one or more campuses in the district to meet the health care needs of students and their families.

§ 38.052. Contract for Services.

A district may contract with a person to provide services at a school-based health center.

§ 38.053. Parental Consent Required.

- (a) A school-based health center may provide services to a student only if the district or the provider with whom the district contracts obtains the written consent of the student's parent or guardian or another person having legal control of the student on a consent form developed by the district or provider. The student's parent or guardian or another person having legal control of the student may give consent for a student to receive ongoing services or may limit consent to one or more services provided on a single occasion.
- (b) The consent form must list every service the school-based health center delivers in a format that complies with all applicable state and federal laws and allows a person to consent to one or more categories of services.

§ 38.054. Categories of Services.

The permissible categories of services are:

- (1) family and home support;
- (2) health care, including immunizations;
- (3) dental health care;

- (4) health education; and
- (5) preventive health strategies.

§ 38.055. Use of Grant Funds for Reproductive Services Prohibited

Reproductive services, counseling, or referrals may not be provided through a school-based health center using grant funds awarded under this subchapter.

§ 38.056. Provision of Certain Services by Licensed Health Care Provider

Required.

Any service provided using grant funds awarded under this subchapter must be provided by an appropriate professional who is properly licensed, certified, or otherwise authorized under state law to provide the service.

§ 38.057. Identification of Health-related Concerns.

- (a) The staff of a school-based health center and the person whose consent is obtained under Section 38.053 shall jointly identify any health-related concerns of a student that may be interfering with the student's well-being or ability to succeed in school.
- (b) If it is determined that a student is in need of a referral for mental health services, the staff of the center shall notify the person whose consent is required under Section 38.053 verbally and in writing of the basis for the referral. The referral may not be provided unless the person provides written consent for the type of service to be provided and provides specific written consent for each treatment occasion.

§ 38.058. Health Education and Health Care Advisory Council.

- (a) The board of trustees of a school district may establish and appoint members to a local health education and health care advisory council to make recommendations to the district on the establishment of school-based health centers and to assist the district in ensuring that local community values are reflected in the operation of each center and in the provision of health education.
- (b) A majority of the members of the council must be parents of students enrolled in the district. In addition to the appointees who are parents of students, the board of trustees shall also appoint at least one person from each of the following groups:

- (1) teachers;
- (2) school administrators;
- (3) licensed health care professionals;
- (4) the clergy;
- (5) law enforcement;
- (6) the business community;
- (7) senior citizens; and
- (8) students.

§ 38.059. Assistance of Public Health Agency.

- (a) A school district may seek assistance in establishing and operating a school-based health center from any public health agency in the community. On request, a public health agency shall cooperate with a district and to the extent practicable, considering the resources of the agency, may provide assistance.
- (b) A district and a public health agency may, by agreement, jointly establish, operate, and fund a school-based health center.

§ 38.060. Coordination with Existing Providers in Certain Areas

- (a) This section applies only to a school-based health center serving an area that:
 - (1) is located in a county with a population not greater than 50,000; or
 - (2) has been designated under state or federal law as:
 - (A) a health professional shortage area;
 - (B) a medically underserved area; or

- (C) a medically underserved community by the Center for Rural Health Initiatives.
- (b) If a school-based health center is located in an area described by Subsection (a), the school district and the advisory council established under Section 38.058 shall make a good faith effort to identify and coordinate with existing providers to preserve and protect existing health care systems and medical relationships in the area.
- (c) The council shall keep a record of efforts made to coordinate with existing providers.

§ 38.061. Communication with Primary Care Physician.

- (a) If a person receiving a medical service from a school-based health center has a primary care physician, the staff of the center shall provide notice of the service the person received to the primary care physician in order to allow the physician to maintain a complete medical history of the person.
- (b) The staff of a school-based health center shall, before delivering a medical service to a person with a primary care physician under the state Medicaid program, a state children's health plan program, or a private health insurance or health benefit plan, notify the physician for the purpose of sharing medical information and obtaining authorization for delivering the medical service.

Family Code

§ 32.001. Consent by Non-Parent

- (a) The following persons may consent to medical, dental, psychological, and surgical treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:
 - (1) a grandparent of the child;
 - (2) an adult brother or sister of the child;
 - (3) an adult aunt or uncle of the child;

- (4) an educational institution in which the child is enrolled that has received written authorization to consent from a person having the right to consent;
 - (5) an adult who has actual care, control, and possession of the child and has written authorization to consent from a person having the right to consent;
 - (6) a court having jurisdiction over a suit affecting the parent-child relationship of which the child is the subject;
 - (7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or
 - (8) a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.
- (b) The Texas Youth Commission may consent to the medical, dental, psychological, and surgical treatment of a child committed to it under Title 3 when the person having the right to consent has been contacted and that person has not given actual notice to the contrary.
- (c) This section does not apply to consent for the immunization of a child.
- (d) A person who consents to the medical treatment of a minor under Subsection (a)(7) or (8) is immune from liability for damages resulting from the examination or treatment of the minor, except to the extent of the person's own acts of negligence. A physician or dentist licensed to practice in this state, or a hospital or medical facility at which a minor is treated is immune from liability for damages resulting from the examination or treatment of a minor under this section, except to the extent of the person's own acts of negligence.

§ 32.002. Consent Form

- (a) Consent to medical treatment under this subchapter must be in writing, signed by the person giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment.

(b) The consent must include:

- (1) the name of the child;
- (2) the name of one or both parents, if known, and the name of any managing conservator or guardian of the child;
- (3) the name of the person giving consent and the person's relationship to the child;
- (4) a statement of the nature of the medical treatment to be given; and
- (5) the date the treatment is to begin.

§ 32.003 Consent to Treatment by Child

(a) A child may consent to medical, dental, psychological, and surgical treatment for the child by a licensed physician or dentist if the child:

- (1) is on active duty with the armed services of the United States of America;
- (2) is:
 - (A) 16 years of age or older and resides separate and apart from the child's parents, managing conservator, or guardian, with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of the residence; and
 - (B) managing the child's own financial affairs, regardless of the source of the income;
- (3) consents to the diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or a rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health, including all diseases within the scope of Section 81.041, Health and Safety Code;

- (4) is unmarried and pregnant and consents to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy;
 - (5) consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use; or
 - (6) is unmarried, is the parent of a child, and has actual custody of his or her child and consents to medical, dental, psychological, or surgical treatment for the child.
- (b) Consent by a child to medical, dental, psychological, and surgical treatment under this section is not subject to disaffirmance because of minority.
- (c) Consent of the parents, managing conservator, or guardian of a child is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.
- (d) A licensed physician, dentist, or psychologist may, with or without the consent of a child who is a patient, advise the parents, managing conservator, or guardian of the child of the treatment given to or needed by the child.
- (e) A physician, dentist, psychologist, hospital, or medical facility is not liable for the examination and treatment of a child under this section except for the provider's or the facility's own acts of negligence.
- (f) A physician, dentist, psychologist, hospital, or medical facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's medical treatment.

§ 32.004. Consent to Counseling

- (a) A child may consent to counseling for:
- (1) suicide prevention;
 - (2) chemical addiction or dependency; or

- (3) sexual, physical, or emotional abuse.
- (b) A licensed or certified physician, psychologist, counselor, or social worker having reasonable grounds to believe that a child has been sexually, physically, or emotionally abused, is contemplating suicide, or is suffering from a chemical or drug addiction or dependency may:
- (1) counsel the child without the consent of the child's parents or, if applicable, managing conservator or guardian;
 - (2) with or without the consent of the child who is a client, advise the child's parents or, if applicable, managing conservator or guardian of the treatment given to or needed by the child; and
 - (3) rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's own treatment under this section.
- (c) Unless consent is obtained as otherwise allowed by law, a physician, psychologist, counselor, or social worker may not counsel a child if consent is prohibited by a court order.
- (d) A physician, psychologist, counselor, or social worker counseling a child under this section is not liable for damages except for damages resulting from the person's negligence or willful misconduct.
- (e) A parent, or, if applicable, managing conservator or guardian, who has not consented to counseling treatment of the child is not obligated to compensate a physician, psychologist, counselor, or social worker for counseling services rendered under this section.

§ 32.005. Examination Without Consent of Abuse or Neglect of Child

- (a) Except as provided by Subsection (c), a physician, dentist, or psychologist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of

the child, the child's parents, or other person authorized to consent to treatment under this subchapter.

(b) An examination under this section may include X-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests.

(c) Unless consent is obtained as otherwise allowed by law, a physician, dentist, or psychologist may not examine a child:

(1) 16 years of age or older who refuses to consent; or

(2) for whom consent is prohibited by a court order.

(d) A physician, dentist, or psychologist examining a child under this section is not liable for damages except for damages resulting from the physician's or dentist's negligence.

§ 32.101. Who May Consent to Immunization of Child

(a) In addition to persons authorized to consent to immunization under Chapter 151 and Chapter 153, the following persons may consent to the immunization of a child:

(1) a guardian of the child; and

(2) a person authorized under the law of another state or a court order to consent for the child.

(b) If the persons listed in Subsection (a) are not available and the authority to consent is not denied under Subsection (c), consent to the immunization of a child may be given by:

(1) a grandparent of the child;

(2) an adult brother or sister of the child;

(3) an adult aunt or uncle of the child;

(4) a stepparent of the child;

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- (5) an educational institution in which the child is enrolled that has written authorization to consent for the child from a parent, managing conservator, guardian, or other person who under the law of another state or a court order may consent for the child;
 - (6) another adult who has actual care, control, and possession of the child and has written authorization to consent for the child from a parent, managing conservator, guardian, or other person who, under the law of another state or a court order, may consent for the child;
 - (7) a court having jurisdiction of a suit affecting the parent-child relationship of which the minor is the subject;
 - (8) an adult having actual care, control, and possession of the child under an order of a juvenile court or by commitment by a juvenile court to the care of an agency of the state or county; or
 - (9) an adult having actual care, control, and possession of the child as the child's primary caregiver.
- (c) A person otherwise authorized to consent under Subsection (a) may not consent for the child if the person has actual knowledge that a parent, managing conservator, guardian of the child, or other person who under the law of another state or a court order may consent for the child:
- (1) has expressly refused to give consent to the immunization;
 - (2) has been told not to consent for the child; or
 - (3) has withdrawn a prior written authorization for the person to consent.
- (d) The Texas Youth Commission may consent to the immunization of a child committed to it if a parent, managing conservator, or guardian of the minor or other person who, under the law of another state or court order, may consent for the minor has been contacted and:

- (1) refuses to consent; and
 - (2) does not expressly deny to the Texas Youth Commission the authority to consent for the child.
- (e) A person who consents under this section shall provide the health care provider with sufficient and accurate health history and other information about the minor for whom the consent is given and, if necessary, sufficient and accurate health history and information about the minor's family to enable the person who may consent to the minor's immunization and the health care provider to determine adequately the risks and benefits inherent in the proposed immunization and to determine whether immunization is advisable.
- (f) Consent to immunization must meet the requirements of Section 32.002(a).

§ 32.102. Informed Consent to Immunization

- (a) A person authorized to consent to the immunization of a child has the responsibility to ensure that the consent, if given, is an informed consent. The person authorized to consent is not required to be present when the immunization of the child is requested if a consent form that meets the requirements of Section 32.002 has been given to the health care provider.
- (b) The responsibility of a health care provider to provide information to a person consenting to immunization is the same as the provider's responsibility to a parent.
- (c) As part of the information given in the counseling for informed consent, the health care provider shall provide information to inform the person authorized to consent to immunization of the procedures available under the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. Section 300aa-1 et seq.) to seek possible recovery for unreimbursed expenses for certain injuries arising out of the administration of certain vaccines.

§ 32.103. Limited Liability for Immunization

- (a) In the absence of willful misconduct or gross negligence, a health care provider who accepts the health history and other information given by a person who is delegated

the authority to consent to the immunization of a child during the informed consent counseling is not liable for an adverse reaction to an immunization or for other injuries to the child resulting from factual errors in the health history or information given by the person to the health care provider.

- (b) A person consenting to immunization of a child, a physician, nurse, or other health care provider, or a public health clinic, hospital, or other medical facility is not liable for damages arising from an immunization administered to a child authorized under this subchapter except for injuries resulting from the person's or facility's own acts of negligence.

§ 261.001. Definitions [regarding child abuse or neglect]

In this chapter:

- (1) "Abuse" includes the following acts or omissions by a person:
 - (A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
 - (B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
 - (C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
 - (D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

- (E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
 - (F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;
 - (G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code;
 - (H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;
 - (I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
 - (J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code; or
 - (K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code.
- (2) "Department" means the Department of Protective and Regulatory Services.
- (3) "Designated agency" means the agency designated by the court as responsible for the protection of children.

(4) "Neglect" includes:

(A) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(B) the following acts or omissions by a person:

- (i) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
- (ii) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
- (iii) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or
- (iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child;
or

- (C) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.
- (5) "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:
- (A) a parent, guardian, managing or possessory conservator, or foster parent of the child;
 - (B) a member of the child's family or household as defined by Chapter 71;
 - (C) a person with whom the child's parent cohabits;
 - (D) school personnel or a volunteer at the child's school; or
 - (E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides.
- (6) "Report" means a report that alleged or suspected abuse or neglect of a child has occurred or may occur.
- (7) "Board" means the Board of Protective and Regulatory Services.
- (8) "Born addicted to alcohol or a controlled substance" means a child:
- (A) who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and

(B) who, after birth as a result of the mother's use of the controlled substance or alcohol:

- (i) experiences observable withdrawal from the alcohol or controlled substance;
- (ii) exhibits observable or harmful effects in the child's physical appearance or functioning; or
- (iii) exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids.

§ 261.101. Persons Required to Report; Time to Report

(a) A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(b) If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has cause to believe that the child has been abused as defined by Section 261.001, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

(c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental

health professional, and an employee of a clinic or health care facility that provides reproductive services.

(d) Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only:

(1) as provided by Section 261.201; or

(2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

§ 261.106. Immunities

(a) A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from civil or criminal liability that might otherwise be incurred or imposed.

(b) Immunity from civil and criminal liability extends to an authorized volunteer of the department or a law enforcement officer who participates at the request of the department in an investigation of alleged or suspected abuse or neglect or in an action arising from an investigation if the person was acting in good faith and in the scope of the person's responsibilities.

(c) A person who reports the person's own abuse or neglect of a child or who acts in bad faith or with malicious purpose in reporting alleged child abuse or neglect is not immune from civil or criminal liability.

§ 261.107. False Report; Penalty

(a) A person commits an offense if the person knowingly or intentionally makes a report as provided in this chapter that the person knows is false or lacks factual foundation. An offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a state jail felony.

- (b) A finding by a court in a suit affecting the parent-child relationship that a report made under this chapter before or during the suit was false or lacking factual foundation may be grounds for the court to modify an order providing for possession of or access to the child who was the subject of the report by restricting further access to the child by the person who made the report.
- (c) The appropriate county prosecuting attorney shall be responsible for the prosecution of an offense under this section.

§ 261.109. Failure to Report; Penalty

- (a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect and knowingly fails to report as provided in this chapter.
- (b) An offense under this section is a Class B misdemeanor.

§. 261.110. Employer Retaliation Prohibited.

- (a) In this section, "professional" has the meaning assigned by Section 261.101(b).
- (b) An employer may not suspend or terminate the employment of, or otherwise discriminate against, a person who is a professional and who in good faith:
 - (1) reports child abuse or neglect to:
 - (A) the person's supervisor;
 - (B) an administrator of the facility where the person is employed;
 - (C) a state regulatory agency; or
 - (D) a law enforcement agency; or
 - (2) initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

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- (c) A person whose employment is suspended or terminated or who is otherwise discriminated against in violation of this section may sue for injunctive relief, damages, or both.
- (d) A plaintiff who prevails in a suit under this section may recover:
- (1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;
 - (2) exemplary damages under Chapter 41, Civil Practice and Remedies Code, if the employer is a private employer;
 - (3) court costs; and
 - (4) reasonable attorney's fees.
- (e) In addition to amounts recovered under Subsection (d), a plaintiff who prevails in a suit under this section is entitled to:
- (1) reinstatement to the person's former position or a position that is comparable in terms of compensation, benefits, and other conditions of employment;
 - (2) reinstatement of any fringe benefits and seniority rights lost because of the suspension, termination, or discrimination; and
 - (3) compensation for wages lost during the period of suspension or termination.
- (f) A public employee who alleges a violation of this section may sue the employing state or local governmental entity for the relief provided for by this section. Sovereign immunity is waived and abolished to the extent of liability created by this section. A person having a claim under this section may sue a governmental unit for damages allowed by this section.

(g) In a suit under this section against an employing state or local governmental entity, a plaintiff may not recover compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount that exceeds:

- (1) \$50,000, if the employing state or local governmental entity has fewer than 101 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;
- (2) \$100,000, if the employing state or local governmental entity has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;
- (3) \$200,000, if the employing state or local governmental entity has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year; and
- (4) \$250,000, if the employing state or local governmental entity has more than 500 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year.

(h) If more than one subdivision of Subsection (g) applies to an employing state or local governmental entity, the amount of monetary damages that may be recovered from the entity in a suit brought under this section is governed by the applicable provision that provides the highest damage award.

(i) A plaintiff suing under this section has the burden of proof, except that there is a rebuttable presumption that the plaintiff's employment was suspended or terminated or that the plaintiff was otherwise discriminated against for reporting abuse or neglect if the suspension, termination, or discrimination occurs before the 61st day after the date on which the person made a report in good faith.

(j) A suit under this section may be brought in a district or county court of the county in which:

- (1) the plaintiff was employed by the defendant; or
 - (2) the defendant conducts business.
- (k) It is an affirmative defense to a suit under Subsection (b) that an employer would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee reported child abuse or neglect or initiated or cooperated with an investigation or proceeding relating to an allegation of child abuse or neglect.
- (l) A public employee who has a cause of action under Chapter 554, Government Code, based on conduct described by Subsection (b) may not bring an action based on that conduct under this section.
- (m) This section does not apply to a person who reports the person's own abuse or neglect of a child or who initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of the person's own abuse or neglect of a child.

§ 261.201. Confidentiality and Disclosure of Information

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
 - (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.
- (b) A court may order the disclosure of information that is confidential under this section if:

- (1) a motion has been filed with the court requesting the release of the information;
- (2) a notice of hearing has been served on the investigating agency and all other interested parties; and
- (3) after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

- (i) a child who is the subject of the report of alleged or suspected abuse or neglect;
- (ii) a person who makes a report of alleged or suspected abuse or neglect; or
- (iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child.

(c) In addition to Subsection (b), a court, on its own motion, may order disclosure of information that is confidential under this section if:

- (1) the order is rendered at a hearing for which all parties have been given notice;
- (2) the court finds that disclosure of the information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

- (i) a child who is the subject of the report of alleged or suspected abuse or neglect;
- (ii) a person who makes a report of alleged or suspected abuse or neglect; or
- (iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child; and

(3) the order is reduced to writing or made on the record in open court.

- (d) The adoptive parents of a child who was the subject of an investigation and an adult who was the subject of an investigation as a child are entitled to examine and make copies of any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child. The department may edit the documents to protect the identity of the biological parents and any other person whose identity is confidential.
- (e) Before placing a child who was the subject of an investigation, the department shall notify the prospective adoptive parents of their right to examine any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child.
- (f) The department shall provide prospective adoptive parents an opportunity to examine information under this section as early as practicable before placing a child.
- (g) Notwithstanding Subsection (b), the department, on request and subject to department rule, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.
- (h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

§ 261.202. Privileged Communication

In a proceeding regarding the abuse or neglect of a child, evidence may not be excluded on the ground of privileged communication except in the case of communications between an attorney and client.

§ 261.302. Conduct of Investigation

(a) The investigation may include:

- (1) a visit to the child's home, unless the alleged abuse or neglect can be confirmed or clearly ruled out without a home visit; and
- (2) an interview with and examination of the subject child, which may include a medical, psychological, or psychiatric examination.

(b) The interview with and examination of the child may:

- (1) be conducted at any reasonable time and place, including the child's home or the child's school;
- (2) include the presence of persons the department or designated agency determines are necessary; and
- (3) include transporting the child for purposes relating to the interview or investigation.

(c) The investigation may include an interview with the child's parents and an interview with and medical, psychological, or psychiatric examination of any child in the home.

(d) If, before an investigation is completed, the investigating agency believes that the immediate removal of a child from the child's home is necessary to protect the child from further abuse or neglect, the investigating agency shall file a petition or take other action under Chapter 262 to provide for the temporary care and protection of the child.

(e) An interview with a child alleged to be a victim of physical abuse or sexual abuse shall be audiotaped or videotaped unless the investigating agency determines that

good cause exists for not audiotaping or videotaping the interview in accordance with rules of the agency. Good cause may include, but is not limited to, such considerations as the age of the child and the nature and seriousness of the allegations under investigation. Nothing in this subsection shall be construed as prohibiting the investigating agency from audiotaping or videotaping an interview of a child on any case for which such audiotaping or videotaping is not required under this subsection. The fact that the investigating agency failed to audiotape or videotape an interview is admissible at the trial of the offense that is the subject of the interview.

§ 261.303. Interference With Investigation; Court Order

- (a) A person may not interfere with an investigation of a report of child abuse or neglect conducted by the department or designated agency.

- (b) If admission to the home, school, or any place where the child may be cannot be obtained, then for good cause shown the court having family law jurisdiction shall order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may be to allow entrance for the interview, examination, and investigation.

- (c) If a parent or person responsible for the child's care does not consent to release of the child's prior medical, psychological, or psychiatric records or to a medical, psychological, or psychiatric examination of the child that is requested by the department or designated agency, the court having family law jurisdiction shall, for good cause shown, order the records to be released or the examination to be made at the times and places designated by the court.

- (d) A person, including a medical facility, that makes a report under Subchapter B shall release to the department or designated agency, as part of the required report under Section 261.103, records that directly relate to the suspected abuse or neglect without requiring parental consent or a court order.

§ 261.305. Access to Mental Health Records

- (a) An investigation may include an inquiry into the possibility that a parent or a person responsible for the care of a child who is the subject of a report under Subchapter B has a history of medical or mental illness.

- (b) If the parent or person does not consent to an examination or allow the department or designated agency to have access to medical or mental health records requested by the department or agency, the court having family law jurisdiction, for good cause shown, shall order the examination to be made or that the department or agency be permitted to have access to the records under terms and conditions prescribed by the court.
- (c) If the court determines that the parent or person is indigent, the court shall appoint an attorney to represent the parent or person at the hearing. The fees for the appointed attorney shall be paid as provided by Chapter 107.
- (d) A parent or person responsible for the child's care is entitled to notice and a hearing when the department or designated agency seeks a court order to allow a medical, psychological, or psychiatric examination or access to medical or mental health records.
- (e) This access does not constitute a waiver of confidentiality.

Health and Safety Code

§ 36.003. Definitions [regarding vision, speech, language, and hearing services]

In this chapter:

- (1) "Communication disorder" means an abnormality of functioning related to the ability to express and receive ideas.
- (2) "Other benefit" means a benefit, other than a benefit under this chapter, to which an individual is entitled for payment of the costs of remedial services, and includes:
 - (A) benefits received under a personal insurance contract;
 - (B) payments received from another person for personal injury caused by the other person's negligence or wrongdoing; and
 - (C) payments received from any other source.

- (3) "Preschool" means an educational or child-care institution that admits children who are three years of age or older but younger than five years of age.
- (4) "Professional examination" means a diagnostic evaluation performed by an appropriately licensed professional or, if the professional is not required to be licensed under the laws of this state, by a certified or sanctioned individual whose area of expertise addresses the diagnostic needs of an individual identified as having a possible special senses or communication disorder.
- (5) "Provider" means a person who provides remedial services to individuals who have special senses and communication disorders, and includes a physician, audiologist, speech pathologist, optometrist, psychologist, hospital, clinic, rehabilitation center, university, or medical school.
- (6) "Remedial services" means professional examinations and prescribed remediation, including prosthetic devices, for individuals with special senses or communication disorders.
- (7) "School" means an educational institution that admits children who are five years of age or older but younger than 21 years of age.
- (8) "Screening" means a test or battery of tests administered to rapidly determine the need for a professional examination.
- (9) "Special senses" means the faculties by which the conditions or properties of things are perceived, and includes vision and hearing.

§ 36.004. Screening Program for Special Senses and Communication Disorders

- (a) The board by rule shall require screening of individuals who attend public or private preschools or schools to detect vision and hearing disorders and any other special senses or communication disorders specified by the board. In developing the rules, the board may consider the number of individuals to be screened and the availability of:

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- (1) personnel qualified to administer the required screening;
 - (2) appropriate screening equipment; and
 - (3) state and local funds for screening activities.
- (b) The rules must include procedures necessary to administer screening activities.
- (c) The board shall adopt a schedule for implementing the screening requirements and shall give priority to the age groups that may derive the greatest educational and social benefits from early identification of special senses and communication disorders.
- (d) The rules must provide for acceptance of results of screening conducted by a licensed professional, regardless of whether that professional is under contract with the department, if:
- (1) the professional's legally defined scope of practice includes the area for which the screening is conducted; and
 - (2) the professional uses acceptable procedures for the screening.
- (e) The department may coordinate the special senses and communication disorders screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not fragmented and duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.
- (f) The department may provide screening personnel, equipment, and services only if the screening requirements cannot otherwise be met.
- (g) The department shall monitor the quality of screening activities provided under this chapter.

- (h) This section does not prohibit a volunteer from participating in the department's screening programs.
- (i) A hearing screening performed under this section is in addition to any hearing screening test performed under Chapter 47.

§ 36.005. Compliance With Screening Requirements

- (a) An individual required to be screened shall undergo approved screening for vision and hearing disorders and any other special senses and communication disorders specified by the board. The individual shall comply with the requirements as soon as possible after the individual's admission to a preschool or school and within the period set by the board. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, may substitute professional examinations for the screening.
- (b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, must submit to the admitting officer of the preschool or school on or before the day of admission an affidavit stating the objections to screening.
- (c) The chief administrator of each preschool or school shall ensure that each individual admitted to the preschool or school complies with the screening requirements set by the board or submits an affidavit of exemption.

§ 36.006. Records; Reports

- (a) The chief administrator of each preschool or school shall maintain, on a form prescribed by the department, screening records for each individual in attendance, and the records are open for inspection by the department or the local health department.
- (b) The department may, directly or through local health departments, enter a preschool or school and inspect records maintained by the preschool or school relating to screening for special senses and communication disorders.

- (c) An individual's screening records may be transferred among preschools and schools without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.
- (d) Each preschool or school shall submit to the department an annual report on the screening status of the individuals in attendance during the reporting year and shall include in the report any other information required by the board. The report must be on a form prescribed by the department and must be submitted according to the board's rules.

§ 36.011. Qualifications of Persons Providing Screening and Remedial Services

- (a) The department may require that persons who administer special senses and communication disorders screening complete an approved training program, and the department may train those persons and approve training programs.
- (b) A person who provides speech and language screening services authorized by this chapter must be:
 - (1) appropriately licensed; or
 - (2) trained and monitored by a person who is appropriately licensed.
- (c) A person who is not an appropriately licensed professional may not conduct hearing screening authorized by this chapter other than screening of hearing sensitivity. The person shall refer an individual who is unable to respond reliably to that screening to an appropriately licensed professional.
- (d) A person who provides a professional examination or remedial services authorized by this chapter for speech, language, or hearing disorders must be appropriately licensed.

§ 37.001. Screening Program for Abnormal Spinal Curvature

- (a) The department, in cooperation with the Texas Education Agency, shall establish a program to detect abnormal spinal curvature in children.
- (b) The board, in cooperation with the Texas Education Agency, shall adopt rules for the mandatory spinal screening of children in grades 6 and 9 attending public or private

schools. The department shall coordinate the spinal screening program with any other screening program conducted by the department on those children.

- (c) The board shall adopt substantive and procedural rules necessary to administer screening activities.
- (d) A rule adopted by the board under this chapter may not require any expenditure by a school, other than an incidental expense required for certification training for nonhealth practitioners and for notification requirements under Section 37.003.
- (e) The department may coordinate the spinal screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.
- (f) The department shall monitor the quality of screening activities provided under this chapter.

§ 37.002. Compliance With Screening Requirements

- (a) Each individual required by board rule to be screened shall undergo approved screening for abnormal spinal curvature. The individual's parent, managing conservator, or guardian may substitute professional examinations for the screening.
- (b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual's parent, managing conservator, or guardian must submit to the chief administrator on or before the day of the screening procedure an affidavit stating the objections to screening.
- (c) The chief administrator of each school shall ensure that each individual admitted to the school complies with the screening requirements set by the board or submits an affidavit of exemption.

§ 37.003. Reports

- (a) If the screening performed under this chapter indicates that an individual may have abnormal spinal curvature, the individual performing the screening shall fill out a report on a form prescribed by the department.
- (b) The chief administrator of the school shall retain one copy of the report and shall mail one copy to the parent, managing conservator, or guardian of the individual screened.

§ 37.004. Qualifications of Persons Providing Screening

- (a) The department may train persons who administer the spinal screening procedure and may approve training programs.
- (b) A person who provides screening services authorized by this chapter must be:
 - (1) appropriately licensed or certified as a health practitioner; or
 - (2) certified as having completed an approved training program in screening for abnormal spinal curvature.
- (c) A person who provides a professional examination authorized by this chapter for abnormal spinal curvature must be appropriately licensed or certified as a health practitioner.
- (d) It is the intent of the legislature that the department provide certification training for nonhealth practitioners through Texas Education Agency regional education service centers.

§ 81.042. Persons Required to Report [communicable diseases]

- (a) A report under Subsection (b), (c), or (d) shall be made to the local health authority or, if there is no local health authority, the regional director.
- (b) A dentist or veterinarian licensed to practice in this state or a physician shall report, after the first professional encounter, a patient or animal examined that has or is suspected of having a reportable disease.

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- (c) A local school authority shall report a child attending school who is suspected of having a reportable disease. The board by rule shall establish procedures to determine if a child should be suspected and reported and to exclude the child from school pending appropriate medical diagnosis or recovery.
- (d) A person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease shall report the findings, in accordance with this section and procedures adopted by the board, in the jurisdiction in which:
- (1) the physician's office is located, if the laboratory examination was requested by a physician; or
 - (2) the laboratory is located, if the laboratory examination was not requested by a physician.
- (e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)–(d):
- (1) a professional registered nurse;
 - (2) an administrator or director of a public or private temporary or permanent child-care facility;
 - (3) an administrator or director of a nursing home, personal care home, maternity home, adult respite care center, or adult day-care center;
 - (4) an administrator of a home health agency;
 - (5) an administrator or health official of a public or private institution of higher education;

- (6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;
- (7) a superintendent, manager, or health official of a public or private camp, home, or institution;
- (8) a parent, guardian, or householder;
- (9) a health professional; or
- (10) an administrator or health official of a penal or correctional institution.

§ 81.046. Confidentiality

- (a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.
- (b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).
- (c) Medical or epidemiological information may be released:
 - (1) for statistical purposes if released in a manner that prevents the identification of any person;
 - (2) with the consent of each person identified in the information;
 - (3) to medical personnel, appropriate state agencies, or county and district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions;
 - (4) to appropriate federal agencies, such as the Centers for Disease Control of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the

date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information.

(d) In a case of sexually transmitted disease involving a minor under 13 years of age, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

(e) A state or public health district officer or employee, local health department officer or employee, or health authority may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of, or reports or information about, a person examined or treated for a reportable disease by the public health district, local health department, or health authority without that person's consent.

§ 95.001. Definitions [regarding acanthosis nigricans]

In this chapter:

(1) "Acanthosis nigricans" means a light brown or black velvety, rough, or thickened area on the surface of the skin that may signal high insulin levels indicative of insulin resistance.

(2) "Executive council" means the executive council advising the Texas-Mexico Border Health Coordination Office of The University of Texas-Pan American.

(3) "Office" means the Texas-Mexico Border Health Coordination Office of The University of Texas-Pan American.

(4) "Professional examination" means an evaluation performed by an appropriately licensed professional.

(5) "School" means an educational institution that admits children who are five years of age or older but younger than 21 years of age.

(6) "Screening test" means a rapid analytical procedure used to recommend appropriate measures or to determine the need for further evaluation. The term does not include the removal or partial removal of clothing.

§ 95.002. Acanthosis Nigricans Education and Screening Project.

(a) The office shall administer an acanthosis nigricans screening program in accordance with this chapter.

(b) The executive council by rule shall coordinate screening of individuals who attend public or private schools located in Texas Education Agency Regional Education Service Centers 1, 2, 3, 13, 15, 18, 19, and 20.

(c) The rules must include procedures necessary to administer screening activities.

(d) The office shall require acanthosis nigricans screening to be performed at the same time hearing and vision screening is performed under Chapter 36 or spinal screening is performed under Chapter 37.

(e) The office may coordinate the acanthosis nigricans screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not fragmented and duplicative. The office may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.

(f) The office shall monitor the quality of screening activities provided under this chapter.

§ 95.003. Compliance with Screening Requirements.

(a) Each individual required by rules adopted under this chapter to be screened shall undergo approved screening for acanthosis nigricans. The individual shall comply with the requirements as soon as possible after the individual's admission to a school and as required by rule. The individual or, if the individual is a minor, the minor's

parent, managing conservator, or guardian may substitute a professional examination for the screening.

- (b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual or, if the individual is a minor, the individual's parent, managing conservator, or guardian must submit to the chief administrator of the school on or before the day of the screening procedure an affidavit stating the objections to the screening.
- (c) The chief administrator of each school shall ensure that each individual admitted to the school complies with the screening requirements set by the executive council or submits an affidavit of exemption.

§ 95.004. Records; Reports.

- (a) The chief administrator of each school shall maintain, on a form prescribed by the executive council, screening records for each individual in attendance, and the records are open for inspection by the office or the local health department.
- (b) The office may, directly or through local health departments, enter a school and inspect records maintained by the school relating to screening for acanthosis nigricans.
- (c) An individual's screening records may be transferred among schools without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.
- (d) The person performing the screening shall send a report indicating that an individual may have acanthosis nigricans to the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian. The report must include:
 - (1) an explanation of acanthosis nigricans and related 4-9 conditions;
 - (2) a statement concerning an individual's or family's need for further evaluation of conditions related to acanthosis nigricans; and

- (3) instructions to help the individual or family receive evaluation and intervention by the school district.
- (e) Each school shall submit to the office an annual report on the screening status of the individuals in attendance during the reporting year and shall include in the report any other information required by the office. The report must be on a form prescribed by the executive council and must be submitted according to the executive council's rules.
- (f) Not later than January 15 of each odd-numbered year, the office shall submit to the governor and the legislature a report concerning the effectiveness of the acanthosis nigricans screening program established by this chapter.

§ 166.002. Definitions [regarding advance directives]

In this chapter:

- (1) "Advance directive" means:
 - (A) a directive, as that term is defined by Section 166.031;
 - (B) an out-of-hospital DNR order, as that term is defined by Section 166.081; or
 - (C) a medical power of attorney under Subchapter D.
- (2) "Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).
- (3) "Attending physician" means a physician selected by or assigned to a patient who has primary responsibility for a patient's treatment and care.
- (4) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

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- (5) "Declarant" means a person who has executed or issued a directive under this chapter.
- (6) "Ethics or medical committee" means a committee established under Sections 161.031–161.033.
- (7) "Health care or treatment decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition.
- (8) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.
- (9) "Irreversible condition" means a condition, injury, or illness:
- (A) that may be treated but is never cured or eliminated;
 - (B) that leaves a person unable to care for or make decisions for the person's own self; and
 - (C) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.
- (10) "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

- (11) "Medical power of attorney" means a document delegating to an agent authority to make health care decisions executed or issued under Subchapter D.
- (12) "Physician" means:
- (A) a physician licensed by the Texas State Board of Medical Examiners; or
 - (B) a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.
- (13) "Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care. A patient who has been admitted to a program under which the person receives hospice services provided by a home and community support services agency licensed under Chapter 142 is presumed to have a terminal condition for purposes of this chapter.
- (14) "Witness" means a person who may serve as a witness under Section 166.003.

§ 166.003. Witnesses

In any circumstance in which this chapter requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed:

- (1) each witness must be a competent adult; and
- (2) at least one of the witnesses must be a person who is not:
 - (A) a person designated by the declarant to make a treatment decision;
 - (B) a person related to the declarant by blood or marriage;

- (C) a person entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;
- (D) the attending physician;
- (E) an employee of the attending physician;
- (F) an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (G) a person who, at the time the written advance directive is executed or, if the directive is a nonwritten directive issued under this chapter, at the time the nonwritten directive is issued, has a claim against any part of the declarant's estate after the declarant's death.

§ 166.081. Definitions [regarding out-of-hospital DNR orders]

In this subchapter:

- (1) "Cardiopulmonary resuscitation" means any medical intervention used to restore circulatory or respiratory function that has ceased.
- (2) "DNR identification device" means an identification device specified by the board under Section 166.101 that is worn for the purpose of identifying a person who has executed or issued an out-of-hospital DNR order or on whose behalf an out-of-hospital DNR order has been executed or issued under this subchapter.
- (3) "Emergency medical services" has the meaning assigned by Section 773.003.

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- (4) "Emergency medical services personnel" has the meaning assigned by Section 773.003.
- (5) "Health care professionals" means physicians, physician assistants, nurses, and emergency medical services personnel and, unless the context requires otherwise, includes hospital emergency personnel.
- (6) "Out-of-hospital DNR order":
- (A) means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by the board under Section 166.083, prepared and signed by the attending physician of a person, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:
- (i) cardiopulmonary resuscitation;
 - (ii) advanced airway management;
 - (iii) artificial ventilation;
 - (iv) defibrillation;
 - (v) transcutaneous cardiac pacing; and
 - (vi) other life-sustaining treatment specified by the board under Section 166.101(a); and
- (B) does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.

- (7) "Out-of-hospital setting" means a location in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transport.
- (8) "Proxy" means a person designated and authorized by a directive executed or issued in accordance with Subchapter B to make a treatment decision for another person in the event the other person becomes incompetent or otherwise mentally or physically incapable of communication.
- (9) "Qualified relatives" means those persons authorized to execute or issue an out-of-hospital DNR order on behalf of a person who is incompetent or otherwise mentally or physically incapable of communication under Section 166.088.
- (10) "Statewide out-of-hospital DNR protocol" means a set of statewide standardized procedures adopted by the board under Section 166.101(a) for withholding cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings.

§ 166.082. Out-Of-Hospital DNR Order; Directive to Physicians

- (a) A competent person may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment designated by the board.
- (b) The declarant must sign the out-of-hospital DNR order in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the order. The attending physician of the declarant must sign the order and shall make the fact of the existence of the order and the reasons for execution of the order a part of the declarant's medical record.
- (c) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B, the physician may rely on the directive

as the person's instructions to issue an out-of-hospital DNR order and shall place a copy of the directive in the person's medical record. The physician shall sign the order in lieu of the person signing under Subsection (b).

- (d) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B designating a proxy, the proxy may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).
- (e) If the person is now incompetent but previously executed or issued a medical power of attorney designating an agent, the agent may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).
- (f) The board, on the recommendation of the department, shall by rule adopt procedures for the disposition and maintenance of records of an original out-of-hospital DNR order and any copies of the order.
- (g) An out-of-hospital DNR order is effective on its execution.

§ 166.083. Form of Out-Of-Hospital DNR Order

- (a) A written out-of-hospital DNR order shall be in the standard form specified by board rule as recommended by the department.
- (b) The standard form of an out-of-hospital DNR order specified by the board must, at a minimum, contain the following:
 - (1) a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;
 - (2) a title that readily identifies the document as an out-of-hospital DNR order;
 - (3) the printed or typed name of the person;

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- (4) a statement that the physician signing the document is the attending physician of the person and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;
 - (5) a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;
 - (6) places for the printed names and signatures of the witnesses and attending physician of the person and the medical license number of the attending physician;
 - (7) a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the person having a medical power of attorney, or the attending physician attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) that includes the following:
 - (A) a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, or the physician directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and
 - (B) places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, or physician;
 - (8) a separate section for execution of the document by at least one qualified relative of the person when the person does not have a legal guardian,

proxy, or agent having a medical power of attorney and is incompetent or otherwise mentally or physically incapable of communication, including:

(A) a statement that the relative of the person is qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment under Section 166.088 and, based on the known desires of the person or a determination of the best interest of the person, directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and qualified relative of the person;

(9) a place for entry of the date of execution of the document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the board determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

(c) The board may, by rule and as recommended by the department, modify the standard form of the out-of-hospital DNR order described by Subsection (b) in order to accomplish the purposes of this subchapter.

(d) A photocopy or other complete facsimile of the original written out-of-hospital DNR order executed under this subchapter may be used for any purpose for which the original written order may be used under this subchapter.

§ 166.085. Execution of Out-Of-Hospital DNR Order on Behalf of a Minor

The following persons may execute an out-of-hospital DNR order on behalf of a minor:

- (1) the minor's parents;
- (2) the minor's legal guardian; or
- (3) the minor's managing conservator.

§ 166.086. Desire of Person Supersedes Out-Of-Hospital DNR Order

The desire of a competent person, including a competent minor, supersedes the effect of an out-of-hospital DNR order executed or issued by or on behalf of the person when the desire is communicated to responding health care professionals as provided by this subchapter.

§ 166.087. Procedure When Declarant is Incompetent or Incapable of Communication

- (a) This section applies when a person 18 years of age or older has executed or issued an out-of-hospital DNR order and subsequently becomes incompetent or otherwise mentally or physically incapable of communication.
- (b) If the adult person has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person shall comply with the out-of-hospital DNR order.
- (c) If the adult person has not designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician shall comply with the out-of-hospital DNR order unless the physician believes that the order does not reflect the person's present desire.

§ 166.089. Compliance With Out-Of-Hospital DNR Order

- (a) When responding to a call for assistance, health care professionals shall honor an out-of-hospital DNR order in accordance with the statewide out-of-hospital DNR protocol and, where applicable, locally adopted out-of-hospital DNR protocols not in conflict with the statewide protocol if:
- (1) the responding health care professionals discover an executed or issued out-of-hospital DNR order form on their arrival at the scene; and
 - (2) the responding health care professionals comply with this section.
- (b) If the person is wearing a DNR identification device, the responding health care professionals must comply with Section 166.090.
- (c) The responding health care professionals must establish the identity of the person as the person who executed or issued the out-of-hospital DNR order or for whom the out-of-hospital DNR order was executed or issued.
- (d) The responding health care professionals must determine that the out-of-hospital DNR order form appears to be valid in that it includes:
- (1) written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing the execution or issuance of, the order;
 - (2) a date in the place designated on the form for the date the order was executed or issued; and
 - (3) the signature of the declarant or persons executing or issuing the order and the attending physician in the appropriate places designated on the form for indicating that the order form has been properly completed.
- (e) If the conditions prescribed by Subsections (a) through (d) are not determined to apply by the responding health care professionals at the scene, the out-of-hospital DNR order may not be honored and life-sustaining procedures otherwise required by law or local emergency medical services protocols shall be initiated or continued.

Health care professionals acting in out-of-hospital settings are not required to accept or interpret an out-of-hospital DNR order that does not meet the requirements of this subchapter.

- (f) The out-of-hospital DNR order form or a copy of the form, when available, must accompany the person during transport.
- (g) A record shall be made and maintained of the circumstances of each emergency medical services response in which an out-of-hospital DNR order or DNR identification device is encountered, in accordance with the statewide out-of-hospital DNR protocol and any applicable local out-of-hospital DNR protocol not in conflict with the statewide protocol.
- (h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:
 - (1) identify themselves as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR order on behalf of the person; and
 - (2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board be initiated or continued.
- (i) If the policies of a health care facility preclude compliance with the out-of-hospital DNR order of a person or an out-of-hospital DNR order issued by an attending physician on behalf of a person who is admitted to or a resident of the facility, or if the facility is unwilling to accept DNR identification devices as evidence of the existence of an out-of-hospital DNR order, that facility shall take all reasonable steps to notify the person or, if the person is incompetent, the person's guardian or the person or persons having authority to make health care treatment decisions on behalf of the person, of the facility's policy and shall take all reasonable steps to effect the transfer of the person to the person's home or to a facility where the provisions of this subchapter can be carried out.

§ 166.090. DNR Identification Device

- (a) A person who has a valid out-of-hospital DNR order under this subchapter may wear a DNR identification device around the neck or on the wrist as prescribed by board rule adopted under Section 166.101.
- (b) The presence of a DNR identification device on the body of a person is conclusive evidence that the person has executed or issued a valid out-of-hospital DNR order or has a valid out-of-hospital DNR order executed or issued on the person's behalf. Responding health care professionals shall honor the DNR identification device as if a valid out-of-hospital DNR order form executed or issued by the person were found in the possession of the person.

§ 166.091. Duration of Out-Of-Hospital DNR Order

An out-of-hospital DNR order is effective until it is revoked as prescribed by Section 166.092.

§ 166.092. Revocation of Out-Of-Hospital DNR Order

- (a) A declarant may revoke an out-of-hospital DNR order at any time without regard to the declarant's mental state or competency. An order may be revoked by:
- (1) the declarant or someone in the declarant's presence and at the declarant's direction destroying the order form and removing the DNR identification device, if any;
 - (2) a person who identifies himself or herself as the legal guardian, as a qualified relative, or as the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order or another person in the person's presence and at the person's direction destroying the order form and removing the DNR identification device, if any;
 - (3) the declarant communicating the declarant's intent to revoke the order; or
 - (4) a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order orally stating the person's intent to revoke the order.

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the board and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

(c) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

§ 166.094. Limitation on Liability for Withholding Cardiopulmonary Resuscitation and Certain Other Life-Sustaining Procedures

(a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board to be withheld from a person in accordance with this subchapter is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action.

- (d) A health care professional or health care facility or entity that in good faith causes or participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter and rules adopted under this subchapter is not in violation of any other licensing or regulatory laws or rules of this state and is not subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

§ 166.095. Limitation on Liability for Failure to Effectuate Out-Of-Hospital DNR Order

- (a) A health care professional or health care facility or entity that has no actual knowledge of an out-of-hospital DNR order is not civilly or criminally liable for failing to act in accordance with the order.
- (b) A health care professional or health care facility or entity is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate an out-of-hospital DNR order. This subsection does not limit remedies available under other laws of this state.
- (c) If an attending physician refuses to execute or comply with an out-of-hospital DNR order, the physician shall inform the person, the legal guardian or qualified relatives of the person, or the agent of the person having a medical power of attorney and, if the person or another authorized to act on behalf of the person so directs, shall make a reasonable effort to transfer the person to another physician who is willing to execute or comply with an out-of-hospital DNR order.

§ 166.096. Honoring Out-Of-Hospital DNR Order Does Not Constitute Offense of Aiding Suicide

A person does not commit an offense under Section 22.08, Penal Code, by withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter.

§ 166.097. Criminal Penalty; Prosecution

- (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's out-of-hospital DNR order or DNR

identification device without that person's consent or the consent of the person or persons authorized to execute or issue an out-of-hospital DNR order on behalf of the person under this subchapter. An offense under this subsection is a Class A misdemeanor.

- (b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board to be withheld from another person contrary to the other person's desires, falsifies or forges an out-of-hospital DNR order or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes cardiopulmonary resuscitation and certain other life-sustaining treatment designated by the board to be withheld from the other person with the result that the other person's death is hastened.

§ 166.098. Pregnant Persons

A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board under this subchapter from a person known by the responding health care professionals to be pregnant.

§ 166.099. Mercy Killing Not Condoned

This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

§ 166.100. Legal Right or Responsibility Not Affected

This subchapter does not impair or supersede any legal right or responsibility a person may have under a constitution, other statute, regulation, or court decision to effect the withholding of cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board.

§ 779.001. Definition [regarding automated external defibrillators]

In this chapter, "automated external defibrillator" means a heart monitor and defibrillator that:

- (1) has received approval from the United States Food and Drug Administration of its premarket notification filed under 21 U.S.C. Section 360(k), as amended;
- (2) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and
- (3) on determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

§ 779.002. Training

(a) A person or entity that acquires an automated external defibrillator shall ensure that:

- (1) each user of the automated external defibrillator receives training given or approved by the Texas Department of Health in:
 - (A) cardiopulmonary resuscitation; and
 - (B) use of the automated external defibrillator; and
- (2) a licensed physician is involved in the training program to ensure compliance with the requirements of this chapter.

(b) The Texas Department of Health shall adopt rules establishing the minimum requirements for the training required by this section. In adopting rules under this section, the Texas Department of Health shall consider the guidelines for automated external defibrillator training approved by the American Heart Association, the American Red Cross, or another nationally recognized association.

§ 779.003. Maintenance of Automated External Defibrillator

A person or entity that owns or leases an automated external defibrillator shall maintain and test the automated external defibrillator according to the manufacturer's guidelines.

§ 779.004. Using an Automated External Defibrillator

A person or entity that provides emergency care to a person in cardiac arrest by using an automated external defibrillator shall promptly notify the local emergency medical services provider.

§ 779.005. Notifying Local Emergency Medical Services Provider.

When a person or entity acquires an automated external defibrillator, the person or entity shall notify the local emergency medical services provider of the existence, location, and type of automated external defibrillator.

§ 779.006. Liability Exemption

The prescribing physician who authorizes the acquisition of an automated external defibrillator in accordance with this chapter, a person or entity that provides approved training in the use of an automated external defibrillator in accordance with this chapter, and the person or entity that acquires the automated external defibrillator and meets the requirements of this chapter are not liable for civil damages for such prescription, training, or acquisition unless the conduct is willfully or wantonly negligent. Any person or entity that acquires an automated external defibrillator and negligently fails to comply with the requirements of this chapter is liable for civil damages caused by such negligence.

§ 779.007. Possession of Automated External Defibrillators

Each person or entity, other than a licensed practitioner, that acquires an automated external defibrillator shall ensure that:

- (1) the automated external defibrillator has been delivered to that person or entity by a licensed practitioner in the course of his professional practice or upon a prescription or other order lawfully issued in the course of his professional practice; or
- (2) if the automated external defibrillator is acquired for the purpose of sale or lease, the person or entity shall be in conformance with the applicable requirements found in Section 483.041, Health and Safety Code.

§ 791.001. Definitions [regarding fire escapes]

In this chapter:

- (1) "Owner" includes an individual, firm, association, or private corporation.
- (2) "Story" has its usual architectural meaning and includes:
 - (A) a basement that extends five feet or more above the grade line on one or more sides of a building;
 - (B) a balcony or mezzanine floor of a building;
 - (C) a roof garden; or
 - (D) an attic used for any purpose.

§ 791.002. Fire Escape Required

(a) The owner of a building shall equip the building with at least one fire escape and with additional fire escapes as required by Subchapters C and D if the building has at least:

- (1) three stories and is used as a facility subject to Subchapter C; or
- (2) two stories and is used as a school.

(b) A fire escape required by this chapter must meet the specifications provided by this chapter for an exterior stairway fire escape, an exterior chute fire escape, a combination of those exterior fire escapes, or an interior fire escape.

§ 791.003. Compliance

A building constructed after September 1, 1925, and subject to this chapter shall be equipped with fire escapes and must meet all other requirements of this chapter before the building is wholly or partially occupied or used.

§ 791.004. Exemptions

(a) This chapter does not apply to the construction of a structure in a municipality that has in effect a nationally recognized model building code governing the construction

if the building code requires at least one one-hour fire-resistive means of escape with a total width equal to or greater than the total exit width required under this chapter for a structure of three or more stories.

(b) This chapter does not apply to a grain elevator constructed of:

(1) steel;

(2) steel and concrete; or

(3) wood if fewer than five persons are employed at the grain elevator.

§ 791.011. General Requirements

(a) A fire escape shall be constructed and arranged in a manner that:

(1) permits exit on the fire escape from each floor of the building above the first floor; and

(2) provides an uninterrupted exit from the building to the grade.

(b) The materials, construction, erection, and test of a fire escape must comply with the minimum specifications established under this subchapter for that type of fire escape.

§ 791.012. Minimum Specifications for Exterior Stairway Fire Escapes

(a) An exterior stairway fire escape is a structure that:

(1) is located on the exterior of a building;

(2) is constructed of iron, steel, or reinforced concrete; and

(3) consists of balconies and stairways.

(b) An exterior stairway fire escape may be constructed in:

(1) superimposed form;

(2) straight run form;

- (3) superimposed form with intermediate balconies; or
 - (4) a combination of those forms.
- (c) The balconies for a superimposed form stairway fire escape attached to the building at two or more floors must equal in length the horizontal length of the stair runs plus an amount at each end equal to the width of the stairs. Each balcony must be as long as the width of the exit opening in the building wall and must be at least 50 inches wide inside the balcony railings.
- (d) The balconies for a superimposed form stairway fire escape with intermediate balconies attached to the building at two or more floors must be at least equal in width to the combined width of the stairways connected by the balconies leading both up and down. The landings at the head and foot of the stairs must be as deep as the width of the stairs and as long as the width of the exit opening in the building wall.
- (e) The balconies for a straight run form stairway fire escape must be at least equal in width to the width of the stairs and as long as the width of the exit opening in the building wall.
- (f) The floor of an iron or steel balcony must be either solid or slatted. If solid, the floor must have a scored surface to prevent slipping and, to provide drainage, must be pitched at a slope of not less than one-half inch in 10 feet. If slatted, the slats may not be placed more than three-quarters inch apart and must be secured with rivets or bolts. Material used in the floor must be at least three-sixteenths inch thick.
- (g) The railing enclosures of a balcony must be at least two feet nine inches high. If of vertical and horizontal slat or grill construction, a space between slats or within the grill may not have a horizontal width of more than eight inches. If of truss construction, the span of a panel may not exceed three feet. An opening in the railing enclosures on any type of construction may not exceed two square feet. A railing enclosure must be free throughout its length from obstructions that tend to break handholds, and the passage space must be smooth and free from obstructions or projections. A railing enclosure must be designed to withstand a horizontal pressure of 200 pounds per running foot of railing without serious deflection.

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- (h) A balcony must be anchored to the building with bolts at least one inch in diameter, extending through the wall of the building and provided with a wall bearing plate on the interior that is at least five inches square and three-eighths inch thick, or must be anchored by such bolts set in concrete or masonry or made integral in new buildings. A balcony may not be placed above or more than one foot below the top of the sill of the exit opening in the building wall and preferably should be level with the sill.
- (i) A concrete balcony must meet the requirements of this section and must be made of reinforced concrete composed of one part cement, two parts sand, and four parts stone or gravel. The railing enclosure of a concrete balcony must meet the specifications of this section or be made of reinforced concrete, with balusters spaced not more than one foot apart.
- (j) The pitch of a fire escape stairway may not exceed 45 degrees.
- (k) The stairway treads must be at least eight inches wide, excluding nosings, and at least 24 inches long. Treads must be placed so that the rise, either open or closed, does not exceed eight inches. If solid, treads must have a scored surface. If slatted, the slats must be placed not more than three-quarters inch apart and be well secured by bolts or rivets. Material used in the treads must be at least three-sixteenths inch thick.
- (l) Railings must be provided on both sides of stairs. The railings must be at least two feet nine inches high, measured vertically from the center of the stair treads, and must be supported by balusters spaced not more than one foot apart. If an intermediate rail is provided, it shall be provided halfway between the top rail and the stair stringers and the balusters must be placed not more than five feet apart. Stair railings must permit at least 24 inches of unobstructed passageway and must be designed to withstand a horizontal pressure of 200 pounds per running foot of railing without serious deflection.
- (m) Concrete stairs must comply with the requirements of this section and must be made of reinforced concrete composed in the same mix as provided by Subsection (i). Railing enclosures for concrete stairs must be either as provided by Subsection (g) or of reinforced concrete balustrade with balusters spaced not more than one foot apart.

- (n) Stairways must be built stationary to grade where possible and must be built stationary to grade for buildings such as schools or hospitals.
- (o) If a fire escape terminates over a street, alley, private driveway, or other similar situation and terminates in a hinged and counterbalanced section of stairway, the construction of that section of stairs must conform to the stationary parts of the stairway and must be balanced so that the weight of one person on the third or fourth tread will lower the stairway to the landing. Bearings for counterbalanced stairs must be either bronze bushings or have sufficient clearance to prevent sticking caused by corrosion. A latch or lock may not be attached to the counterbalanced stairs in the up position, but a latch must be provided to hold the stairs in the down position when they have been swung to the ground. The connection between stair railings on the stationary part of the stairway and the counterbalanced part of the stairway must be designed to prevent the probability of injury to persons who use the fire escape. If necessary, a suitable opening must be provided in any awning, roof, or other intervening obstruction to admit the counterbalanced stairs and permit the passage of persons on the stairs.
- (p) The fire escape must be connected to the roof of the building to which it is attached. If the roof of the building is designed in such a way that escape by way of the roof may be necessary, the fire escape must extend to the roof. If the connection is only for use by the fire department, it must be made with a gooseneck-type ladder with stringers made of material at least three-eighths inch thick, and rungs at least three-quarters inch in diameter, 16 inches long, and not more than 14 inches apart. The ladder must be anchored to the wall.
- (q) The minimum unobstructed width of an exterior passageway in the fire escape, whether parallel to the building or at right angles to it, is 24 inches.
- (r) The clearance at all points on balconies and stairs, as measured vertically, must be at least six feet six inches.

§ 791.013. Minimum Specifications for Exterior Chute Fire Escapes

- (a) An exterior chute fire escape is a structure that is located on the exterior of a building and constructed of iron or steel and that consists of balconies and a straight or spiral gravity chute.

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- (b) An exterior straight chute fire escape may be in:
- (1) superimposed form parallel to or at right angles to the building;
 - (2) straight run form parallel to or at right angles to the building; or
 - (3) a combination of those two forms.
- (c) An exterior spiral chute fire escape must be constructed in a spiral form around a central column and must rest on and be anchored to a concrete base at least 18 inches thick.
- (d) The chute and any intervening balconies must be constructed in a manner that provides a continuous gravity slide from the top floor to the grade and must be accessible from all floors of the building. An exterior straight chute must be placed at an angle that does not exceed 45 degrees.
- (e) The balconies must meet the specifications imposed under Section 791.012 for the balconies of exterior stairway fire escapes.
- (f) A straight chute must be composed of material equal to at least 14-gauge iron or steel. A spiral chute must be composed of material equal to at least 16-gauge iron or steel. The material used must be blue annealed or of equal type and must be capable of taking a smooth or polished surface.
- (g) The interior of a straight chute must be 20 inches wide and 18 inches deep, and in cross section must have a concave bottom and straight sides. The interior of a spiral chute must be at least 30 inches wide. The interior of either form of chute must be free from obstructions or sharp edges.
- (h) The top edges of a straight chute must be stiffened and protected throughout the length of the chute with iron or steel angles free from sharp edges. The angles must be of the size necessary to carry the maximum possible load. The chute must be reinforced crosswise underneath with iron or steel angles.

- (i) The slideway of a spiral chute must be banked at the outer edge to prevent a passenger from being thrown against a guardrail or enclosure and must be enclosed by either a continuous wall or guardrail at least 30 inches high constructed of at least 18-gauge iron or steel. A spiral chute may not terminate more than two feet above the grade and must be constructed and arranged so that a normal landing is in a standing position.
- (j) A landing composed of the same material as the chute must be provided at the lower end of a straight chute and must be of sufficient length in proportion to the length of the chute and the concavity of its surface to check the momentum attained through gravity and to provide a safe stop. The landing must be six inches wider than the chute on each side if wall construction does not interfere and must be without sharp edges or ragged projections. The landing must rest on and be anchored to a concrete base at least six inches thick.
- (k) All rivets exposed inside a chute and on the top side of a landing of a straight chute must be countersunk and ground smooth.

§ 791.014. Minimum Specifications for Interior Fire Escapes

- (a) An interior fire escape may be:
 - (1) a stairway composed of iron, steel, or concrete; or
 - (2) a straight or spiral chute composed of iron or steel.
- (b) The fire escape must be enclosed with a noncombustible material. All door and window openings in the enclosure must be protected with self-closing fireproof shutters.
- (c) Balconies or landings used with an interior fire escape must meet the construction requirements imposed under Section 791.012, except that a balcony used with an interior fire escape must permit at least 40 inches of unobstructed passageway, and the balconies or landings must be located on a level with the floors of the building.
- (d) The stairs of an interior stairway fire escape must meet the requirements imposed under Section 791.012, except that the stairs must permit at least 40 inches of

unobstructed passageway in all parts. An interior stairway fire escape may not use stairs of the types known as "spirals" or "winders".

- (e) An interior stairway fire escape must be continuous, starting at the ground floor, and may not descend to any basement. It must extend through the roof of the building and must terminate in a penthouse constructed of noncombustible material equipped with a self-closing fire door as specified in this section.
- (f) An interior chute fire escape must meet the requirements of Section 791.013.
- (g) An interior fire escape must be accessible from all parts of the building it is designed to serve. Each lobby, hall, or passageway that leads to a fire escape and is used in connection with it must be at least 36 inches wide and at least six feet six inches high and must be level with the floor on which the fire escape opens and which it serves. The fire escape must be constructed at the lower end in a manner that permits direct exit to the outside of the building at the grade.
- (h) The enclosing walls of an interior fire escape may be constructed of:
 - (1) brick;
 - (2) plain solid concrete;
 - (3) reinforced stone or gravel concrete;
 - (4) reinforced cinder concrete;
 - (5) hollow terra-cotta blocks;
 - (6) hollow concrete blocks composed of stone or cinder concrete mortar;
 - (7) gypsum blocks; or
 - (8) metal lath on steel studding.

- (i) If the enclosing walls are of brick or plain solid concrete, they must be at least eight inches thick for the top 30 feet, increasing four inches in thickness for each lower section of 30 feet or fraction of 30 feet, or at least eight inches thick for the entire height if the walls are wholly supported at intervals not to exceed 30 feet. If the enclosing walls are of reinforced stone or gravel concrete, they must be at least five inches thick for the top 30 feet, increasing two inches in thickness for each lower section of 30 feet or fraction of 30 feet, or at least three inches thick for the entire height if supported at vertical intervals not to exceed 20 feet and if braced as necessary with lateral supports or suitable steel uprights. If the enclosing walls are of reinforced cinder concrete, the concrete must be at least five inches thick for the entire height of the enclosing walls, and the walls must be supported at vertical intervals not to exceed 15 feet and must be braced as necessary with lateral supports or suitable steel uprights.
- (j) If the enclosing walls are composed of hollow terra-cotta blocks, the blocks must be laid in cement mortar, and the walls must be at least five inches thick overall. If the enclosing walls are composed of hollow concrete blocks of either stone or cinder concrete mortar, the enclosing walls must be at least five inches thick overall. If the walls are constructed of gypsum blocks, the blocks may be either solid or hollow but must contain not more than 25 percent by weight of cinders, asbestos fiber, wood chips, or vegetable fiber. The gypsum blocks must be laid in gypsum plaster or cement mortar tempered with lime, and the enclosing walls must be at least five inches thick overall. If the walls are constructed of metal lath on steel studding, they must be covered with portland cement mortar or gypsum plaster of a finished thickness of at least two inches in the case of solid partitions or of at least three inches in the case of hollow partitions. Each opening in a wall or partition must have substantial steel framing, the vertical members of which must be securely attached to the floor construction above and below.
- (k) Each door opening in an interior fire escape must be protected by the use of an automatic or self-closing fire door of standard manufacture, bearing the Underwriters Laboratory label. If an automatic fire door is used, it must be enclosed in a recessed partition. All doors must be arranged and equipped to remain in closed positions at all times and under all conditions except during actual use.

- (l) Each window opening must be equipped with a metal sash bearing the Underwriters Laboratory label and with wire glass.

- (m) Each interior fire escape must be provided at each landing with at least one light equal in power to a 10-watt electric globe. The lighting must be on a separate circuit from that of the rest of the building and must be designed to operate if the regular lighting system of the building is disabled.

§ 791.015. Exit Lights; Guide Signs

- (a) At least one red light must be installed and maintained in good condition at each exit to a fire escape in a building subject to Section 791.002. An exit light must be painted with the words "fire escape exit."

- (b) One guide sign must be installed and maintained in good condition at each hallway intersection. An additional guide sign must be provided for every 25 lineal feet of hallway leading to a fire escape. A guide sign must be painted with the words "fire escape" and with an arrow or hand pointing to the nearest fire escape exit.

§ 791.016. Painting and Maintenance Requirements

- (a) A fire escape constructed of iron or steel must be painted with at least two coats of good metallic paint when erected. The fire escape must be repainted at least every two years or more frequently if necessary to preserve the fire escape from rust or climatic influences.

- (b) The slideway of a straight or spiral chute fire escape must be thoroughly cleaned and painted at least once each year.

§ 791.031. Definitions [regarding fire escapes in school buildings]

- (a) In this subchapter, "story" means the space between two successive floor levels of a building, and a basement is a story if the floor level immediately above the basement is at least 10 feet above the grade line on at least one side of the building.

- (b) In this subchapter, types of construction are classified as "fireproof," "semifireproof," or "ordinary," as those terms are defined in the most recent edition of the building code published by the successor organization to the National Board of Fire Underwriters.

§ 791.032. Application

This subchapter applies to a building in which a school of any kind is conducted and that is:

- (1) at least two stories high; and
- (2) owned by a school district.

§ 791.035. Fire Escape Requirement

- (a) A school building of at least three stories and of fireproof construction, semifireproof construction, or ordinary construction shall have one fire escape for each group of 250 pupils, or each major fraction of that number, who are housed in the building at a level above the first floor.
- (b) A school building of two stories and of ordinary construction shall have one fire escape for each group of 250 pupils, or each major fraction of that number, who are housed in the building at a level above the first floor.
- (c) A school building of two stories that is of fireproof or semifireproof construction or that has stairways and hallways of that type of construction is not required to have a fire escape.

§ 791.036. Required Types of Fire Escapes; Specifications

- (a) A fire escape for a school building constructed before March 17, 1950, may be either an interior fire escape or an exterior fire escape.
- (b) A school building constructed on or after March 17, 1950, that consists of at least three stories of fireproof construction or at least two stories of ordinary construction shall have interior fire escapes.
- (c) An exterior fire escape for a school building constructed before March 17, 1950, may be:
 - (1) an iron, steel, or concrete stairway;

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- (2) an iron or steel straight chute;
 - (3) an iron or steel spiral chute; or
 - (4) a fire escape that is a combination of those types.
- (d) Exterior fire escapes used in school buildings must meet the construction requirements of this section or similar construction requirements approved by the successor organization to the National Board of Fire Underwriters. Except as otherwise provided by this section, exterior fire escapes must be:
- (1) constructed throughout of noncombustible materials;
 - (2) designed for a live load of 100 pounds per square foot; and
 - (3) supported by vertical steel columns.
- (e) If it is impossible to use vertical steel columns in the construction of an exterior fire escape, the use of steel brackets with bolts extending through the entire thickness of the wall may be approved.
- (f) The landings and treads of exterior fire escapes must be of solid hatched steel plate or of steel gratings with interstices that do not exceed three-fourths inch and must be designed so that any accumulation of ice and snow is reduced to a minimum.
- (g) The guardrails of exterior fire escapes must be at least three feet six inches high and must be substantially constructed. The guardrails must be faced either with heavy wire mesh or by steel balusters or rails not more than 9 1/2 inches o.c.
- (h) The fire escape must have handrails on each side of the stairs that must be securely attached to the guardrails or to the building walls. Handrails must be two feet four inches to two feet six inches above the nosings.
- (i) The calculated live load of an exterior fire escape must be clearly stated on the plans submitted for approval.

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- (j) Exterior fire escapes must be:
- (1) free from obstruction;
 - (2) constructed in a manner that provides a safe exit for children;
 - (3) conveniently accessible from each floor above the first floor; and
 - (4) of sufficient width and strength so that each step and landing may accommodate two adults at the same time.
- (k) If the Texas Education Agency approves that construction as providing a convenient and safe passage, doorways may be used as exits from each floor. The base of a doorway must be at the same level as the corresponding floor of the building and the landing of the fire escape to which the doorway leads. A doorway must be at least three feet wide and six feet six inches high and must be fitted with panic hardware approved by the successor organization to the National Board of Fire Underwriters. If there are two or more rooms or hallways adjacent and convenient to the landing of a fire escape, each room or hallway must have a doorway leading to that landing.
- (l) The design of an interior fire escape used in a school building must meet the specifications required under Section 791.014, and must have:
- (1) stairs and landings at least three feet six inches long and at least three feet wide;
 - (2) treads at least nine inches wide with a one inch nosing; and
 - (3) risers of not more than 7 1/4 inches.
- (m) A rise in a single run may not exceed nine feet six inches. A longer run must be interrupted by landings at least as deep as the width of the stairs.
- (n) Stairs must extend continuously to the ground. Counterbalanced or swinging sections may not be approved.

§ 791.037. Exterior Fire Escape Exits

- (a) An exit door leading to an exterior fire escape must open on a landing that is at least the width of the doors. The door must swing outward and be:
- (1) at least three feet by six feet six inches;
 - (2) glazed with wire glass; and
 - (3) level at the bottom with the floors of the rooms or hallways and landings that it serves.
- (b) An exit door may be secured only by panic hardware approved by the successor organization to the National Board of Fire Underwriters. Hooks, latches, bolts, locks, and similar devices are prohibited.
- (c) A window may not be used as a means of access to an exterior fire escape.

§ 791.038. Windows

A window located beneath or within 10 feet of a fire escape must be glazed with wire glass.

Occupations Code**§ 157.001. General Authority of Physician to Delegate**

- (a) A physician may delegate to a qualified and properly trained person acting under the physician's supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician:
- (1) the act:
 - (A) can be properly and safely performed by the person to whom the medical act is delegated;
 - (B) is performed in its customary manner; and

(C) is not in violation of any other statute; and

(2) the person to whom the delegation is made does not represent to the public that the person is authorized to practice medicine.

(b) The delegating physician remains responsible for the medical acts of the person performing the delegated medical acts.

(c) The board may determine whether:

(1) an act constitutes the practice of medicine, not inconsistent with this chapter; and

(2) a medical act may be properly or safely delegated by physicians.

§ 157.002. General Delegation of Administration and Provision of Dangerous Drugs

(a) In this section:

(1) "Administering" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(2) "Provision" means the supply of one or more unit doses of a drug, medicine, or dangerous drug.

(b) A physician may delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs in the physician's office, as ordered by the physician, that are used or required to meet the immediate needs of the physician's patients. The administration or provision of the dangerous drugs must be performed in compliance with laws relating to the practice of medicine and state and federal laws relating to those dangerous drugs.

(c) A physician may also delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs through a facility licensed by the Texas State Board of Pharmacy, as ordered by the physician, that are used or required to meet the immediate needs of the physician's patients. The administration of those dangerous drugs must be in compliance with

laws relating to the practice of medicine, professional nursing, and pharmacy and state and federal drug laws. The provision of those dangerous drugs must be in compliance with:

- (1) laws relating to the practice of medicine, professional nursing, and pharmacy;
 - (2) state and federal drug laws; and
 - (3) rules adopted by the Texas State Board of Pharmacy.
- (d) In the provision of services and the administration of therapy by public health departments, as officially prescribed by the Texas Department of Health for the prevention or treatment of specific communicable diseases or health conditions for which the Texas Department of Health is responsible for control under state law, a physician may delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs, as ordered by the physician, that are used or required to meet the needs of the patients. The provision of those dangerous drugs must be in compliance with laws relating to the practice of medicine, professional nursing, and pharmacy. An order for the prevention or treatment of a specific communicable disease or health condition for which the Texas Department of Health is responsible for control under state law may not be inconsistent with this chapter and may not be used to perform an act or duty that requires the exercise of independent medical judgment.
- (e) The administration or provision of the drugs may be delegated through a physician's order, a standing medical order, a standing delegation order, or another order defined by the board.
- (f) Subsections (b) and (c) do not authorize a physician or a person acting under the supervision of a physician to keep a pharmacy, advertised or otherwise, for the retail sale of dangerous drugs, other than as authorized under Section 158.003, without complying with the applicable laws relating to the dangerous drugs.

(g) A drug or medicine provided under Subsection (b) or (c) must be supplied in a suitable container labeled in compliance with applicable drug laws. A qualified and trained person, acting under the supervision of a physician, may specify at the time of the provision of the drug the inclusion on the container of the date of the provision and the patient's name and address.

§ 157.005. Performance of Delegated Act Not Practicing Without Medical License

A person to whom a physician delegates the performance of a medical act is not considered to be practicing medicine without a license by performing the medical act unless the person acts with knowledge that the delegation and the action taken under the delegation is a violation of this subtitle.

§ 157.051. Definitions [regarding delegation to advanced practice nurses and physician assistants]

In this subchapter:

- (1) "Advanced practice nurse" has the meaning assigned to that term by Section 301.152. The term includes an advanced nurse practitioner.
- (2) "Carrying out or signing a prescription drug order" means completing a prescription drug order presigned by the delegating physician, or the signing of a prescription by a registered nurse or physician assistant after that person has been designated to the board by the delegating physician as a person delegated to sign a prescription.
- (3) "Physician assistant" means a person who holds a license issued under Chapter 204.

§ 157.055. Orders and Protocols

A protocol or other order shall be defined in a manner that promotes the exercise of professional judgment by the advanced practice nurse and physician assistant commensurate with the education and experience of that person. Under this section, an order or protocol used by a reasonable and prudent physician exercising sound medical judgment:

- (1) is not required to describe the exact steps that an advanced practice nurse or a physician assistant must take with respect to each specific condition, disease, or symptom; and
- (2) may state the types or categories of medications that may be prescribed or the types or categories of medications that may not be prescribed.

§ 157.060. Physician Liability for Delegated Act

Unless the physician has reason to believe the physician assistant or advanced practice nurse lacked the competency to perform the act, a physician is not liable for an act of a physician assistant or advanced practice nurse solely because the physician signed a standing medical order, a standing delegation order, or another order or protocol authorizing the physician assistant or advanced practice nurse to administer, provide, carry out, or sign a prescription drug order.

Chapter 301. Registered Nurses.

Subchapter A. General Provisions

§ 301.001. Short Title

This chapter may be cited as the Nursing Practice Act.

§ 301.002. Definitions

In this chapter:

- (1) "Board" means the Board of Nurse Examiners.
- (2) "Professional nursing" means the performance for compensation of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or prescription of therapeutic or corrective measures. Professional nursing involves:
 - (A) the observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a person

who is ill, injured, infirm, or experiencing a change in normal health processes;

- (B) the maintenance of health or prevention of illness;
- (C) the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist;
- (D) the supervision or teaching of nursing;
- (E) the administration, supervision, and evaluation of nursing practices, policies, and procedures;
- (F) the requesting, receiving, signing for, and distribution of prescription drug samples to patients at sites in which a registered nurse is authorized to sign prescription drug orders as provided by Subchapter B, Chapter 157; and
- (G) the performance of an act delegated by a physician under Section 157.052, 157.053, 157.054, 157.0541, 157.0542, 157.058, or 157.059.

§ 301.003. Application of Sunset Act

The Board of Nurse Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2005.

§ 301.004. Application of Chapter

(a) This chapter does not apply to:

- (1) gratuitous nursing care of the sick that is provided by a friend;
- (2) nursing care by a licensed vocational nurse licensed under Chapter 302;
- (3) nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if

the person providing the care does not hold the person out as a registered or professional nurse unless the person is licensed in another state;

- (4) nursing care in which treatment is solely by prayer or spiritual means;
- (5) an act performed by a person under the control or supervision or at the instruction of a person licensed by the Texas State Board of Medical Examiners;
- (6) an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed;
- (7) the practice of nursing that is incidental to a program of study by a student enrolled in a board-accredited nursing education program leading to an initial license as a professional nurse; or
- (8) the practice of nursing by a registered nurse licensed in another state who is in this state on a nonroutine basis for a period not to exceed 72 hours to:
 - (A) provide care to a patient being transported into, out of, or through this state;
 - (B) provide professional nursing consulting services; or
 - (C) attend or present a continuing nursing education program.

(b) This chapter does not authorize the practice of medicine as defined by Chapter 151.

Subchapter B. Board Of Nurse Examiners

§ 301.051. Board Membership

- (a) The Board of Nurse Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:
 - (1) six registered nurse members, including:

- (A) a nurse faculty member of a school of nursing offering the baccalaureate degree program;
- (B) a nurse faculty member of a school of nursing offering the associate degree program; and
- (C) a nurse faculty member of a graduate school of nursing preparing advanced practice nurses; and

(2) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

§ 301.052. Member Eligibility

(a) A person is not eligible for appointment as a registered nurse member of the board unless the person has engaged in the nursing profession for at least three of the five years preceding the date of appointment.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that:

(A) provides health care services; or

(B) sells, manufactures, or distributes health care supplies or equipment;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:

(A) provides health care services; or

(B) sells, manufactures, or distributes health care supplies or equipment; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

§ 301.053. Membership and Employee Restrictions

- (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- (b) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.
- (c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.
- (d) A person may not serve as a board member or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the board's operation.

§ 301.054. Terms

Members of the board serve staggered six-year terms, with the terms of one member who is a practicing registered nurse, one member who is a registered nurse engaged in nurse

education, and one member who is a representative of the public expiring on January 31 of each odd-numbered year.

§ 301.055. Grounds for Removal

(a) It is a ground for removal from the board that a member:

- (1) does not have at the time of appointment the qualifications required by Section 301.051(a);
- (2) does not maintain during service on the board the qualifications required by Section 301.051(a);
- (3) violates a prohibition established by Section 301.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

§ 301.056. Per Diem; Reimbursement

(a) Each board member is entitled to receive a per diem as set by the General Appropriations Act for each day the member engages in the business of the board.

(b) A board member is not entitled to reimbursement for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is

entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

§ 301.057. Officers

- (a) The governor shall designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.
- (b) The board shall elect other officers from its members.

§ 301.058. Meetings

The presiding officer shall call a special board meeting on the written request of at least two board members.

§ 301.059. Training

- (a) Before a board member may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of a training program established by the board under this section.
- (b) The training program shall provide information to a participant regarding:
 - (1) this chapter;
 - (2) the programs operated by the board;
 - (3) the role and functions of the board;
 - (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
 - (5) the current budget for the board;
 - (6) the results of the most recent formal audit of the board;
 - (7) the requirements of Chapters 551, 552, 2001, and 2002, Government Code;

- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
 - (9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.
- (c) In developing the training program, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.
- (d) If another state agency or entity is given the authority to establish the training requirements for board members, the board shall allow that training instead of developing its own program.

Subchapter C. Executive Director And Personnel

§ 301.101. Executive Director

- (a) The board shall employ an executive director. The executive director may not be a member of the board.
- (b) Under the direction of the board, the executive director shall perform the duties required by this chapter or designated by the board.

§ 301.102. Surety Bond

- (a) The executive director shall execute on employment a \$1,000 bond payable to the governor.
- (b) The bond must be:
- (1) conditioned on the executive director's faithful performance of the duties of the office, including the duty to account for funds that come into the executive director's possession in the capacity of executive director;
 - (2) signed by two or more sufficient sureties or by a surety company authorized to do business in this state; and
 - (3) approved by the board's presiding officer.

§ 301.103. Public Records; Registry

(a) The executive director shall keep:

(1) a record of each meeting of the board; and

(2) a registry of the name of each nurse registered under this chapter.

(b) Information maintained under this section is open to public inspection at all times.

§ 301.104. Personnel; Employment Practices

The board shall employ persons as necessary to carry on the work of the board.

§ 301.105. Division of Responsibilities

(a) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

(b) The board shall determine the salaries and compensation to be paid to employees and persons retained by the board.

§ 301.106. Qualifications and Standards of Conduct Information

The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

§ 301.107. Career Ladder Program; Performance Evaluations

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

§ 301.108. Equal Employment Opportunity Policy; Report

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;
- (2) a comprehensive analysis of the board workforce that meets federal and state guidelines;
- (3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

- (1) cover an annual period;
- (2) be updated annually;
- (3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and
- (4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

Subchapter D. General Powers And Duties Of Board**§ 301.151. General Rulemaking Authority**

The board may adopt and enforce rules consistent with this chapter and necessary to:

- (1) perform its duties and conduct proceedings before the board;
- (2) regulate the practice of professional nursing;
- (3) establish standards of professional conduct for license holders under this chapter; and
- (4) determine whether an act constitutes the practice of professional nursing.

§ 301.152. Rules Regarding Specialized Training

(a) In this section, "advanced practice nurse" means a registered nurse approved by the board to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."

(b) The board shall adopt rules to:

- (1) establish:
 - (A) any specialized education or training, including pharmacology, that a registered nurse must have to carry out a prescription drug order under Section 157.052; and
 - (B) a system for assigning an identification number to a registered nurse who provides the board with evidence of completing the specialized education and training requirement under Subdivision (1)(A);
- (2) approve a registered nurse as an advanced practice nurse; and

- (3) initially approve and biennially renew an advanced practice nurse's authority to carry out or sign a prescription drug order under Chapter 157.

(c) At a minimum, the rules adopted under Subsection (b)(3) must:

- (1) require completion of pharmacology and related pathology education for initial approval;
- (2) require continuing education in clinical pharmacology and related pathology in addition to any continuing education otherwise required under Section 301.303; and
- (3) provide for the issuance of a prescription authorization number to an advanced practice nurse approved under this section.

(d) The signature of an advanced practice nurse attesting to the provision of a legally authorized service by the advanced practice nurse satisfies any documentation requirement for that service established by a state agency.

§ 301.153. Rules Regarding Advertising and Competitive Bidding

- (a) The board may not adopt rules restricting advertising or competitive bidding by a person except to prohibit false, misleading, or deceptive practices by the person.
- (b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:
 - (1) restricts the person's use of any medium for advertising;
 - (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
 - (3) relates to the size or duration of an advertisement by the person; or
 - (4) restricts the use of a trade name in advertising by the person.

§ 301.154. Rules Regarding Delegation of Certain Medical Acts

- (a) The board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to the delegation by physicians of medical acts to registered nurses licensed by the board. In making a recommendation, the board may distinguish between nurses on the basis of special training and education.
- (b) A recommendation under Subsection (a) shall be treated in the same manner as a petition for the adoption of a rule by an interested party under Chapter 2001, Government Code.
- (c) The board in recommending a rule and the Texas State Board of Medical Examiners in acting on a recommended rule shall, to the extent allowable under state and federal statutes, rules, and regulations, act to enable the state to obtain its fair share of the federal funds available for the delivery of health care in this state.

§ 301.155. Fees

- (a) The board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering this chapter. The board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.
- (b) The board may adopt a fee in an amount necessary for a periodic newsletter to produce and disseminate to license holders the information required under Section 301.158.

§ 301.156. Gifts and Grants

The board may receive gifts, grants, or other funds or assets.

§ 301.157. Programs of Study and Accreditation

- (a) The board shall prescribe three programs of study to prepare registered nurses as follows:
 - (1) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing;

- (2) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and
- (3) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

(b) The board shall:

- (1) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares professional nurses;
- (2) prescribe other rules as necessary to conduct accredited schools of nursing and educational programs for the preparation of professional nurses;
- (3) accredit schools of nursing and educational programs that meet the board's requirements; and
- (4) deny or withdraw accreditation from a school of nursing or educational program that fails to meet the prescribed course of study or other standard.

(c) The board may not require a program that is composed of less than two academic years or more than four calendar years.

(d) A person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of an accredited school of nursing or educational program.

(e) The board shall give each person, including an organization, affected by an order or decision of the board under this section reasonable notice of not less than 20 days and an opportunity to appear and be heard regarding the order or decision. The board shall hear each protest or complaint from a person affected by a rule or decision regarding:

- (1) the inadequacy or unreasonableness of any rule or order the board adopts;
- or

(2) the injustice of any order or decision of the board.

(f) Not later than the 30th day after the date an order is entered and approved by the board, a person is entitled to bring an action against the board in a district court of Travis County to have the rule or order vacated or modified, if that person:

(1) is affected by the order or decision;

(2) is dissatisfied with any rule or order of the board; and

(3) sets forth in a petition the principal grounds of objection to the rule or order.

(g) An appeal under this section shall be tried de novo as if it were an appeal from a justice court to a county court.

§ 301.158. Dissemination of Information

The board shall disseminate, at least twice a year and at other times the board determines necessary, information that is of significant interest to professional nurses and employers of professional nurses in this state, including summaries of final disciplinary action taken against registered nurses by the board since its last dissemination of information.

§ 301.159. Board Duties Regarding Complaints

(a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

§ 301.160. Pilot Programs

(a) In this section:

- (1) "Proactive nursing peer review" means peer review that is not initiated to determine culpability with respect to a particular incident.
- (2) "Targeted continuing nursing education" means continuing education focusing on a skill that would likely benefit a significant proportion of registered nurses in a particular practice area.

(b) The board may develop pilot programs to evaluate the effectiveness of mechanisms, including proactive nursing peer review and targeted continuing nursing education, for maintenance of the clinical competency of a registered nurse in the nurse's area of practice and the understanding by registered nurses of the laws, including regulations, governing the practice of professional nursing.

(c) A pilot program under Subsection (b) must be designed to test the effectiveness of a variety of mechanisms in a variety of practice settings.

(d) The board may approve a pilot program under Subsection (b) that is to be conducted by a person other than the board.

(e) The board may spend funds to develop or fund a pilot program and may contract with, make grants to, or make other arrangements with an agency, professional association, institution, individual, or other person to implement this section.

(f) In developing, administering, approving, and funding a pilot program, the board shall consult with:

- (1) the Competency Advisory Committee on matters relating to ensuring the maintenance of continued competency of registered nurses; and
- (2) the Laws and Regulations Advisory Committee on matters relating to ensuring that registered nurses understand the laws, including regulations, governing the practice of professional nursing.

(g) The Competency Advisory Committee is appointed by the board and consists of the following members:

- (1) a representative from the Texas Nurses Association;
- (2) a representative from the Texas Nurses Foundation;
- (3) a representative from the Texas Organization of Nurse Executives;
- (4) a registered nurse representative from the Texas Hospital Association;
- (5) a registered nurse representative from the Texas Health Care Association;
- (6) a registered nurse representative from the Texas Association of Homes and Services for the Aging;
- (7) a registered nurse representative from the Texas Association for Home Care;
- (8) a professional nursing educator;
- (9) a representative from the Consumers Union;
- (10) a representative from the Texas Department of Mental Health and Mental Retardation; and
- (11) any other person appointed by the board.

(h) The Laws and Regulations Advisory Committee is appointed by the board and consists of the following members:

- (1) a representative of the Texas Nurses Association;
- (2) a representative of the Texas League for Nursing;

- (3) a representative of the Texas Chapter of the American Association of Nurse Attorneys;
 - (4) a representative of the Texas Organization of Baccalaureate and Graduate Nursing Educators;
 - (5) a representative of the Texas Organization for Associate Degree Nursing;
 - (6) a representative of the Texas Organization of Nurse Executives;
 - (7) a representative of the American Association of Retired Persons;
 - (8) a registered nurse researcher; and
 - (9) any other person appointed by the board.
- (i) Except as provided by this subsection, in developing or approving a pilot program under this section the board may exempt the program from rules adopted under this chapter. Subchapter I and Chapter 303 apply to pilot programs, except that Sections 303.002(e), 303.003, and 303.008(b) do not apply to a pilot program using proactive peer review. The board may establish alternative criteria for nursing peer review committees conducting proactive peer review.
- (j) The board shall issue an annual report regarding any pilot programs developed or approved and a status report on those programs, including preliminary or final findings concerning their effectiveness. The board shall mail the report to statewide associations of registered nurses, registered nurse educators, and employers of registered nurses that request a copy. The board shall issue a final report not later than September 1, 2000.

§ 301.161. Enforcement

- (a) The board shall aid in the enforcement of this chapter.
- (b) The board may:
- (1) issue a subpoena;

- (2) compel the attendance of a witness;
- (3) administer an oath to a person giving testimony at hearings; and
- (4) cause the prosecution of each person violating this chapter.

(c) The attorney general shall provide legal assistance necessary to enforce this chapter. This subsection does not relieve a local prosecuting officer of any duty under the law.

§ 301.162. Legal Counsel

The board may retain legal counsel to represent the board if first:

- (1) the board requests the attorney general to represent the board; and
- (2) the attorney general certifies to the board that the attorney general cannot provide those services.

§ 301.163. Record of Proceedings; Report

The board shall keep a record of its proceedings under this chapter and make an annual report to the governor.

§ 301.164. Assistance of Prosecutor

A board member may present to a prosecuting officer a complaint relating to a violation of this chapter. The board, through its members, officers, counsel, or agents, shall assist in the trial of a case involving an alleged violation of this chapter, subject to the control of the prosecuting officers.

§ 301.165. Annual Report

- (a) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year.
- (b) The report must be in the form and reported in the time provided by the General Appropriations Act.

Subchapter E. Public Interest Information And Complaint Procedures**§ 301.201. Public Interest Information**

- (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.
- (b) The board shall make the information available to the public and appropriate state agencies.

§ 301.202. Complaints

- (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:
 - (1) on each registration form, application, or written contract for services of a person regulated by the board;
 - (2) on a sign prominently displayed in the place of business of each person regulated by the board; or
 - (3) in a bill for service provided by a person regulated by the board.
- (b) The board shall enter into a memorandum of understanding with each state agency that licenses health care facilities or agencies to coordinate the notification requirement under Subsection (a) with notification requirements that may be imposed on the health care facility or agency by that state agency.
- (c) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

§ 301.203. Records of Complaints

- (a) The board shall keep an information file about each complaint filed with the board. The information file must be kept current and must contain a record for each complaint of:

- (1) each person contacted in relation to the complaint;
 - (2) a summary of findings made at each step of the complaint process;
 - (3) an explanation of the legal basis and reason for a complaint that is dismissed;
 - (4) the schedule required under Section 301.204 and a notation of any change in the schedule; and
 - (5) other relevant information.
- (b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

§ 301.204. General Rules Regarding Complaint Investigation and Disposition

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection must:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall:

(1) dispose of all complaints in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The board shall notify the parties of the projected time requirements for pursuing the complaint.

(d) The board shall notify the parties to the complaint of any change in the schedule not later than the seventh day after the date the change is made.

(e) The executive director of the board shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

§ 301.205. Public Participation

(a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

Subchapter F. License Requirements

§ 301.251. License Required

(a) A person may not practice or offer to practice professional nursing in this state unless the person is licensed as provided by this chapter.

(b) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:

(1) the title "Registered Nurse," "Professional Nurse," or "Graduate Nurse";

(2) the abbreviation "R.N."; or

(3) any other designation tending to imply that the person is a licensed registered nurse.

(c) This section does not apply to a person entitled to practice professional nursing in this state under Chapter 304.

§ 301.252. License Application

Each applicant for a registered nurse license must submit to the board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant has:

(1) good professional character; and

(2) successfully completed an accredited program of professional nursing education.

§ 301.253. Examination

(a) Except as provided by Section 301.452, an applicant is entitled to take the examination prescribed by the board if:

(1) the board determines that the applicant meets the qualifications required by Section 301.252; and

(2) the applicant pays the fees required by the board.

(b) The board shall give the examination in various cities throughout the state.

(c) The examination shall be designed to determine the fitness of the applicant to practice professional nursing.

(d) The board shall determine the criteria that determine a passing score on the examination. The criteria may not exceed those required by the majority of the states.

- (e) A written examination prepared, approved, or offered by the board, including a standardized national examination, must be validated by an independent testing professional.

§ 301.254. Examination Results

- (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.
- (b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.
- (c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

§ 301.255. Reexamination

The board by rule shall establish conditions under which an applicant who fails an examination may retake the examination. For an applicant who fails the examination two or more times, the board may:

- (1) require the applicant to fulfill additional educational requirements; or
- (2) deny the applicant the opportunity to retake the examination.

§ 301.256. Issuance of License

If the results of an examination taken under Section 301.253 or 301.255 satisfy the criteria established by the board under that section, the board shall issue to the applicant a license to practice professional nursing in this state. The license must be signed by the board's presiding officer and the executive director and attested by the board's seal.

§ 301.257. Declaratory Order of License Eligibility

- (a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person:

-
- (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse; and
 - (2) has reason to believe that the person is ineligible for the license.
- (b) The petition must state the basis for the person's potential ineligibility.
 - (c) The board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.
 - (d) The petitioner or the board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.
 - (e) If the board determines that a ground for ineligibility does not exist, instead of issuing an order, the board shall notify the petitioner in writing of the board's determination on each ground of potential ineligibility. If the board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.
 - (f) The board's order must set out each basis for potential ineligibility and the board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the board at the time the order is issued, the board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.
 - (g) The board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse to submit information to the board to permit the board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse on graduation and of the person's right to petition the board for a declaratory order under this section. Instead of requiring the person to submit the information, the board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

- (h) The information required under Subsection (g) must be submitted in a form approved by the board.
- (i) If, as a result of information provided under Subsection (g), the board determines that a person may not be eligible for a license on graduation, the board shall notify the educational program of its determination.

§ 301.258. Temporary Permit

- (a) Pending the results of a licensing examination, the board may issue to an applicant who is a graduate of an approved educational program a permit to practice professional nursing under the direct supervision of a registered nurse.
- (b) The board may not issue a permit under this section to an applicant who has previously failed an examination administered by the board or another state.
- (c) A permit issued under Subsection (a) expires on the date of receipt of:
 - (1) a permanent license; or
 - (2) a notice from the board that the permit holder has failed the examination.
- (d) The board may issue a temporary permit to practice professional nursing for the limited purpose of allowing a nurse to satisfy a requirement imposed by the board necessary for:
 - (1) renewal of an expired license;
 - (2) reactivation of an inactive license; or
 - (3) reissuance of a suspended, revoked, or surrendered license.
- (e) A permit issued under Subsection (d) expires on the earlier of:
 - (1) the date of receipt of a permanent license; or
 - (2) six months after the date the permit is issued.

- (f) A person who holds a temporary permit issued under this section is considered to be a licensed registered nurse for all purposes except to the extent of any stipulation or limitation on practice imposed by the board as a condition of issuing the permit.

§ 301.259. Reciprocal License by Endorsement for Certain Foreign Applicants

On payment of a fee established by the board, the board may issue a license to practice as a registered nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse issued by a territory or possession of the United States or a foreign country if the board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

§ 301.260. Temporary License by Endorsement

- (a) An applicant for a license under this chapter who is licensed as a registered nurse by another state may qualify for a temporary license by endorsement to practice as a registered nurse by submitting to the board:

- (1) an endorsement fee as determined by the board and a completed sworn application in the form prescribed by the board;
- (2) evidence that the person possessed, at the time of initial licensing as a registered nurse, the other qualifications necessary at that time to have been eligible for licensing in this state; and
- (3) proof of initial licensing by examination and proof that the license and any other license issued to the applicant by another state have not been suspended, revoked, canceled, surrendered, or otherwise restricted.

- (b) A holder of a temporary license under this section is entitled to receive a permanent license if the applicant:

- (1) verifies the applicant's academic and professional credentials; and
- (2) satisfies any other requirement established by statute.

- (c) The board shall grant or deny an application for a permanent license not later than the 180th day after the date the board receives all required forms or information. The board may extend that deadline to allow for the receipt and tabulation of examination results.

§ 301.261. Inactive Status

- (a) The board may place on inactive status the license of a person under this chapter who is not actively engaged in the practice of professional nursing if the person submits a written request to the board in the form and manner determined by the board. The inactive status begins on the expiration date of the person's license.
- (b) The board shall maintain a list of each person whose license is on inactive status.
- (c) A person whose license is on inactive status may not perform any professional nursing service or work.
- (d) The board shall remove a person's license from inactive status if the person:
- (1) requests that the board remove the person's license from inactive status;
 - (2) pays each appropriate fee; and
 - (3) meets the requirements determined by the board.
- (e) The board by rule shall permit a person whose license is on inactive status and who is 65 years or older to use the title "Registered Nurse Retired" or "R.N. Retired."
(V.A.C.S. Art. 4526b.)

Subchapter G. License Renewal

§ 301.301. License Renewal

- (a) The board by rule may adopt a system under which licenses expire on various dates during the year.
- (b) A person may renew an unexpired license issued under this chapter on payment of the required renewal fee and compliance with any other renewal requirements adopted by the board.

- (c) A person whose license has been expired for 90 days or less may renew the license by paying to the board the required renewal fee and a fee that is equal to one-half the amount charged for examination for the license. If a license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the amount charged for examination for the license.
- (d) The board by rule shall set a length of time beyond which an expired license may not be renewed. The board by rule may establish additional requirements that apply to the renewal of a license that has been expired for more than one year but less than the time limit set by the board beyond which a license may not be renewed. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.
- (e) At least 30 days before the expiration of the person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the board.
- (f) A registered nurse who practices professional nursing after the expiration of the nurse's license is an illegal practitioner whose license may be revoked or suspended.

§ 301.302. Renewal of Expired License by Out-Of-State Practitioner

- (a) The board may renew without examination the expired license of a person who was licensed to practice professional nursing in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application.
- (b) The person must pay to the board a fee that is equal to the amount of the initial fee for the license and the renewal fee.

§ 301.303. Continuing Education

- (a) The board may recognize, prepare, or implement continuing education programs for license holders under this chapter and may require participation in continuing education programs as a condition of renewal of a license.

(b) The board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period and may not require that more than 10 hours of the continuing education consist of classroom instruction in approved programs. The remaining hours of continuing education may consist of any combination of:

- (1) classroom instruction;
- (2) institutional-based instruction; or
- (3) individualized study.

(c) If the board requires participation in continuing education programs as a condition of license renewal, the board by rule shall establish a system for the approval of programs and providers of continuing education.

(d) In adopting rules under Subsection (c), the board shall consider, but is not obligated to approve:

- (1) a program or provider approved or accredited through the Board of Accreditation of the American Nurses' Association or the National Federation of Specialty Nursing Organizations; and
- (2) a nurse in-service program offered by a hospital that is:
 - (A) accredited by the Joint Commission on Accreditation of Healthcare Organizations;
 - (B) certified by Medicare; or
 - (C) maintained or operated by the federal government or the state.

(e) The board may adopt other rules as necessary to implement this section.

(f) The board may assess each program and provider under this section a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.

Subchapter H. Practice By License Holder**§ 301.351. Designations**

(a) A person who holds a license under this chapter:

(1) is referred to as a registered nurse; and

(2) may use the abbreviation "R.N."

(b) While on duty providing direct care to a patient, each licensed registered nurse shall wear an insignia identifying the nurse as a registered nurse.

§ 301.352. Protection for Refusal to Engage in Certain Conduct

(a) A person may not suspend, terminate, or otherwise discipline or discriminate against a registered nurse who refuses to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board under Subchapter I if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission:

(1) constitutes grounds for reporting the nurse to the board; or

(2) is a violation of this chapter or a rule of the board.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if a nursing peer review committee under Chapter 303 determines:

(1) that the act or omission the nurse refused to engage in was not conduct reportable to the board under Section 301.403; or

(2) that:

(A) the act or omission in which the nurse refused to engage was conduct reportable to the board; and

(B) the person:

- (i) rescinds any disciplinary or discriminatory action taken against the nurse;
 - (ii) compensates the nurse for lost wages; and
 - (iii) restores to the nurse any lost benefits.
- (c) A registered nurse's rights under this section may not be nullified by a contract.
- (d) An appropriate licensing agency may take action against a person who violates this section.

Subchapter I. Duty To Report Violation

§ 301.401. Grounds for Reporting Registered Nurse

The following are grounds for reporting a registered nurse under Section 301.402, 301.403, 301.405, or 301.407:

- (1) unnecessary or likely exposure by the registered nurse of a patient or other person to a risk of harm;
- (2) unprofessional conduct by the registered nurse;
- (3) failure by the registered nurse to adequately care for a patient;
- (4) failure by the registered nurse to conform to the minimum standards of acceptable professional nursing practice; or
- (5) impairment or likely impairment of the registered nurse's practice by chemical dependency.

§ 301.402. Duty of Registered Nurse to Report

(a) In this section:

- (1) "Professional nursing educational program" means a board-accredited educational program leading to initial licensure as a registered nurse.

- (2) "Professional nursing student" means an individual who is enrolled in a professional nursing educational program.
- (b) A registered nurse shall report to the board in the manner prescribed under Subsection (d) if the nurse has reasonable cause to suspect that:
- (1) another registered nurse is subject to a ground for reporting under Section 301.401; or
 - (2) the ability of a professional nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency.
- (c) In a written, signed report to the appropriate licensing board, a registered nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to the minimum standards of acceptable and prevailing professional practice.
- (d) A report by a registered nurse under Subsection (b) must:
- (1) be written and signed; and
 - (2) include the identity of the registered nurse or student and any additional information required by the board.
- (e) A registered nurse may make a report required under Subsection (b)(2) to the professional nursing educational program in which the student is enrolled instead of reporting to the board.

§ 301.403. Duty of Peer Review Committee to Report

A professional nursing peer review committee operating under Chapter 303 that has a ground for reporting a registered nurse under Section 301.401 shall file with the board a written, signed report that includes:

- (1) the identity of the nurse;

- (2) a description of any corrective action taken against the nurse;
- (3) a statement whether the professional nursing peer review committee recommends that the board take formal disciplinary action against the nurse; and
- (4) any additional information the board requires.

§ 301.404. Duty of Nursing Educational Program to Report

- (a) In this section, "professional nursing educational program" and "professional nursing student" have the meanings assigned by Section 301.402(a).
- (b) A professional nursing educational program that has reasonable cause to suspect that the ability of a professional nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency shall file with the board a written, signed report that includes the identity of the student and any additional information the board requires.

§ 301.405. Duty of Person Employing Registered Nurse to Report

- (a) This section applies only to a person who employs, hires, or contracts for the services of a registered nurse, including:
 - (1) a health care facility, including a hospital, health science center, nursing home, or home health agency;
 - (2) a state agency;
 - (3) a political subdivision;
 - (4) a school of professional nursing; and
 - (5) a temporary nursing service.
- (b) A person that terminates, suspends for more than seven days, or takes other substantive disciplinary action, as defined by the board, against a registered nurse

because a ground under Section 301.401 exists to report the nurse shall report in writing to the board the identity of the nurse and any additional information the board requires.

- (c) Each person subject to this section that regularly employs, hires, or otherwise contracts for the services of 10 or more registered nurses shall develop a written plan for identifying and reporting a registered nurse in its service against whom a ground under Section 301.401 exists. The plan must include an appropriate process for the review by a professional nursing peer review committee established and operated under Chapter 303 of any incident reportable under this section and for the affected nurse to submit rebuttal information to that committee. Review by the committee is only advisory.
- (d) The review by the peer review committee must include a determination as to whether a ground under Section 301.401 exists to report the registered nurse undergoing review. The peer review committee's determination must be included in the report made to the board under Subsection (b).
- (e) The requirement that a report to the board be reviewed by a professional nursing peer review committee:
 - (1) applies only to a required report; and
 - (2) does not subject a person's administrative decision to discipline a registered nurse to the peer review process or prevent a person from taking disciplinary action before review by the peer review committee is conducted.
- (f) The board shall enter into memoranda of understanding with each state agency that licenses, registers, or certifies a health care facility or agency or surveys that facility or agency with respect to professional nursing care as to how that state agency can promote compliance with Subsection (c).

§ 301.406. Duty of Certain Professional Associations and Organizations to Report

A professional association of registered nurses or an organization that conducts a certification or accreditation program for registered nurses and that expels,

decertifies, or takes any other substantive disciplinary action, as defined by the board, against a registered nurse as a result of the nurse's failure to conform to the minimum standards of acceptable professional nursing practice shall report in writing to the board the identity of the nurse and any additional information the board requires.

§ 301.407. Duty of State Agency to Report

(a) This section applies only to a state agency that:

(1) licenses, registers, or certifies:

(A) a hospital;

(B) a nursing home;

(C) a health science center;

(D) a home health agency; or

(E) another health care facility or agency; or

(2) surveys a facility or agency listed in Subdivision (1) regarding the quality of professional nursing care provided by the facility or agency.

(b) Unless expressly prohibited by state or federal law, a state agency that has reason to believe a ground for reporting a registered nurse exists under Section 301.401 shall report in writing to the board the identity of that registered nurse.

§ 301.408. Duty of Professional Liability Insurer to Report

(a) Each insurer that provides to a registered nurse professional liability insurance that covers claims arising from providing or failing to provide professional nursing care shall submit to the board the report or data required by this section at the time prescribed.

(b) The report or data must be provided for:

-
- (1) a complaint filed in court against a registered nurse that seeks damages related to the nurse's conduct in providing or failing to provide professional nursing care; and
 - (2) a settlement of a claim or lawsuit made on behalf of a nurse.
- (c) Not later than the 30th day after the date the insurer receives a complaint subject to Subsection (b), the insurer shall provide to the board:
- (1) the name of the registered nurse against whom the claim is filed;
 - (2) the policy number;
 - (3) the policy limits;
 - (4) a copy of the petition;
 - (5) a copy of the answer; and
 - (6) other relevant information known by the insurer, as required by the board.
- (d) Not later than the 30th day after the date of a judgment, dismissal, or settlement of a suit involving an insured registered nurse or settlement of a claim on behalf of the nurse without the filing of a lawsuit, the insurer shall provide to the board information regarding the date of the judgment, dismissal, or settlement and, if appropriate:
- (1) whether an appeal has been taken from the judgment and by which party;
 - (2) the amount of the settlement or judgment against the nurse; and
 - (3) other relevant information known by the insurer, as required by the board.
- (e) A registered nurse shall report the information required to be reported under this section if the nurse is named as a defendant in a claim arising from providing or failing to provide professional nursing care and the nurse:

(1) does not carry or is not covered by professional liability insurance; or

(2) is insured by a nonadmitted carrier.

§ 301.409. Duty of Prosecuting Attorney to Report

(a) The attorney representing the state shall cause the clerk of the court of record in which the conviction, adjudication, or finding is entered to prepare and forward to the board a certified true and correct abstract of the court record of the case not later than the 30th day after the date:

(1) a person known to be a registered nurse who is licensed, otherwise lawfully practicing in this state, or applying to be licensed to practice is convicted of:

(A) a felony;

(B) a misdemeanor involving moral turpitude;

(C) a violation of a state or federal narcotics or controlled substance law; or

(D) an offense involving fraud or abuse under the Medicare or Medicaid program; or

(2) a court finds that a registered nurse is mentally ill or mentally incompetent.

(b) A prosecuting attorney shall comply with Subsection (a) even if the conviction, adjudication, or finding is entered, withheld, or appealed under the laws of this state.

(c) The abstract required under Subsection (a) must include:

(1) the name and address of the nurse or applicant;

(2) a description of the nature of the offense committed, if any;

(3) the sentence, if any; and

(4) the judgment of the court.

(d) The board shall prepare the form of the abstract and distribute a copy to each district attorney and county attorney in this state with appropriate instructions for preparation and filing.

§ 301.410. Report Regarding Impairment by Chemical Dependency or Mental Illness

A person who is required to report a registered nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or mental illness may report to a peer assistance program approved by the board under Chapter 467, Health and Safety Code, instead of reporting to the board or requesting review by a professional nursing peer review committee.

§ 301.411. Effect of Failure to Report

(a) A person is not liable in a civil action for failure to file a report required by this subchapter.

(b) The appropriate state licensing agency may take action against a person regulated by the agency for a failure to report as required by this subchapter.

§ 301.412. Reporting Immunity

A person who, without malice, makes a report required or authorized, or reasonably believed to be required or authorized, under this subchapter:

(1) is immune from civil liability; and

(2) may not be subjected to other retaliatory action as a result of making the report.

§ 301.413. Retaliatory Action

(a) A person named as a defendant in a civil action or subjected to other retaliatory action as a result of filing a report required, authorized, or reasonably believed to be required or authorized under this subchapter may file a counterclaim in the pending action or

prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

(b) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who reports, without malice, under this subchapter.

(c) A person who reports under this subchapter has a cause of action against a person who violates Subsection (b), and may recover:

(1) the greater of:

(A) actual damages, including damages for mental anguish even if no other injury is shown; or

(B) \$1,000;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amount recovered under Subsection (c), a person whose employment is suspended or terminated in violation of this section is entitled to:

(1) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most recent salary; and

(2) compensation for wages lost during the period of suspension or termination.

(e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person's employment was suspended or terminated for reporting under this subchapter if:

- (1) the person was suspended or terminated within 60 days after the date the report was made; and
 - (2) the board or a court determines that the report that is the subject of the cause of action was:
 - (A) authorized or required under Section 301.402, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or 301.410; and
 - (B) made without malice.
- (f) An action under this section may be brought in a district court of the county in which:
- (1) the plaintiff resides;
 - (2) the plaintiff was employed by the defendant; or
 - (3) the defendant conducts business.

§ 301.414. Notice and Review of Report

- (a) The board shall notify each registered nurse who is reported to the board under Section 301.402, 301.403, 301.405, 301.406, 301.407, 301.408, or 301.409 of the filing of the report unless the notification would jeopardize an active investigation.
- (b) The registered nurse or the nurse's authorized representative is entitled on request to review any report submitted to the board under a section specified under Subsection (a) unless doing so would jeopardize an active investigation. The board may not reveal the identity of the person making or signing the report.

§ 301.415. Rebuttal Statement

- (a) A registered nurse who is entitled to receive notice under Section 301.414 or the authorized representative of the nurse may file with the board a statement of reasonable length containing the nurse's rebuttal of any information in the report to the board.

(b) The statement made under Subsection (a) must accompany the part of the report being rebutted.

(c) In investigating the report, the board shall:

(1) review the statement made under Subsection (a); and

(2) evaluate each reason asserted by the nurse to justify the nurse's conduct.

§ 301.416. Investigation

(a) Except as provided by Subsections (b) and (c), a report under this subchapter shall be treated as a complaint under Section 301.457.

(b) If the board determines that the reported conduct does not indicate that the continued practice of professional nursing by the nurse poses a risk of harm to a client or other person, the board, with the written consent of the nurse and the person making the report, may elect not to proceed with an investigation or to file formal charges. The board shall:

(1) maintain a record of the report; and

(2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.

(c) The board is not required to investigate a report filed by an insurer under Section 301.408, but shall:

(1) maintain a record of the report; and

(2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.

§ 301.417. Confidentiality Requirements; Disclosure of Information

(a) A report required or authorized under this subchapter and the identity of the person making the report are confidential and may not be disclosed except as provided by this section and Section 301.414.

(b) The board may use the information in connection with an investigation or disciplinary action against a license holder or in the subsequent trial or appeal of a board action or order. The board may disclose the information to:

- (1) a licensing or disciplinary authority of another jurisdiction;
- (2) a peer assistance program approved by the board under Chapter 467, Health and Safety Code; or
- (3) a person engaged in bona fide research or another educational purpose if all information identifying any specific individual is first deleted.

(c) On the request of a person required to report under Section 301.405, the board shall provide to the person information about:

- (1) each allegation contained in the report;
- (2) the determination of a peer review committee; and
- (3) the status of the board's investigation.

(d) In addition to the other authorizations of this section, the information may be disclosed in:

- (1) a civil action in which a reporting person is named as a defendant as a result of making the report; or
- (2) the prosecution of a cause of action based on a claim that the reporting person was subject to retaliatory action as a result of making the report.

§ 301.418. Disclosure of Charges or Disciplinary Action

(a) This subchapter does not prevent disclosure under Section 301.466 of formal charges filed by the board or a final disciplinary action taken by the board as a result, in whole or in part, of submission of a report under this subchapter.

(b) A report or information submitted as required or authorized by this subchapter arising out of the provision or failure to provide professional nursing services may not be made available in a liability action for:

- (1) discovery;
- (2) court subpoena; or
- (3) introduction into evidence.

(c) A person is not prevented from taking disciplinary action against a registered nurse by:

- (1) the filing of a report under this subchapter with the board;
- (2) an investigation by the board; or
- (3) the disposition of a matter by the board.

§ 301.419. General Provisions Regarding Duty to Report; Minor Incidents

(a) In this section, "minor incident" means conduct that does not indicate that the continuing practice of professional nursing by an affected nurse poses a risk of harm to a client or other person.

(b) The board shall adopt rules governing reporting required under this subchapter to minimize:

- (1) unnecessary duplicative reporting; and
- (2) the reporting of a minor incident.

(c) If the board determines that a report submitted under this subchapter is without merit, the board shall expunge the report from the registered nurse's file.

- (d) The board shall inform, in the manner the board determines appropriate, registered nurses, facilities, agencies, and other persons of their duty to report under this subchapter.
- (e) The reporting required under this subchapter does not constitute state action on behalf of the person reporting.
- (f) The duty to report or any other requirement of this subchapter may not be nullified by a contract.

Subchapter J. Prohibited Practices And Disciplinary Actions

§ 301.451. Certain Prohibited Practices

A person may not:

- (1) sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record;
- (2) assist another person in selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, renewal license, or record;
- (3) practice professional nursing under a diploma, license, or record that was:
 - (A) obtained unlawfully or fraudulently; or
 - (B) signed or issued unlawfully or under false representation; or
- (4) practice professional nursing in a period in which the person's license is suspended or revoked.

§ 301.452. Grounds for Disciplinary Action

- (a) In this section, "intemperate use" includes practicing professional nursing or being on duty or on call while under the influence of alcohol or drugs.
- (b) A person is subject to denial of a license or to disciplinary action under this subchapter for:

- (1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;
- (2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing;
- (3) a conviction for a felony or for a misdemeanor involving moral turpitude;
- (4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;
- (5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;
- (6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;
- (7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of professional nursing;
- (8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction;
- (9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;
- (10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;
- (11) adjudication of mental incompetency;
- (12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or

(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable professional nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

(c) The board may refuse to admit a person to a licensing examination for a ground described under Subsection (b).

§ 301.453. Disciplinary Authority of Board; Methods of Discipline

(a) If the board determines that a person has committed an act listed in Section 301.452(b), the board shall enter an order imposing one or more of the following:

- (1) denial of the person's application for a license, license renewal, or temporary permit;
- (2) issuance of a written warning;
- (3) administration of a public reprimand;
- (4) limitation or restriction of the person's license, including:
 - (A) limiting to or excluding from the person's practice one or more specified activities of professional nursing; or
 - (B) stipulating periodic board review;
- (5) suspension of the person's license for a period not to exceed five years;
- (6) revocation of the person's license; or
- (7) assessment of a fine.

(b) In addition to or instead of an action under Subsection (a), the board, by order, may require the person to:

- (1) submit to care, counseling, or treatment by a health provider designated by the board as a condition for the issuance or renewal of a license;
 - (2) participate in a program of education or counseling prescribed by the board;
 - (3) practice for a specified period under the direction of a registered nurse designated by the board; or
 - (4) perform public service the board considers appropriate.
- (c) The board may probate any penalty imposed on a registered nurse and may accept the voluntary surrender of a license. The board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.
- (d) If the board suspends, revokes, or accepts surrender of a license, the board may impose conditions for reinstatement that the person must satisfy before the board may issue an unrestricted license.

§ 301.454. Notice and Hearing

- (a) Except in the case of a temporary suspension authorized under Section 301.455 or an action taken in accordance with an agreement between the board and a license holder, the board may not initiate a disciplinary action relating to a license unless:
- (1) the board has served notice to the license holder of the facts or conduct alleged to warrant the intended action; and
 - (2) the license holder has been given an opportunity, in writing or through an informal meeting, to show compliance with all requirements of law for the retention of the license.
- (b) If an informal meeting is held, a board member, staff member, or board representative who attends the meeting is considered to have participated in the hearing of the case for the purposes of ex parte communications under Section 2001.061, Government Code.

(c) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if the board proposes to:

- (1) refuse to admit the person to examination;
- (2) refuse to issue a license or temporary permit;
- (3) refuse to renew a license; or
- (4) suspend or revoke the person's license or permit.

(d) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the board for any sanction imposed as the result of a hearing conducted by that office.

(e) Notwithstanding Subsection (a), a person is not entitled to a hearing on a refusal to renew a license if the person:

- (1) fails to submit a renewal application; or
- (2) submits an application that:
 - (A) is incomplete;
 - (B) shows on its face that the person does not meet the renewal requirements; or
 - (C) is not accompanied by the correct fee.

§ 301.455. Temporary License Suspension

(a) The license of a registered nurse shall be temporarily suspended on a determination by a majority of the board or a three-member committee of board members designated by the board that, from the evidence or information presented, the continued practice of the registered nurse would constitute a continuing and imminent threat to the public welfare.

(b) A license may be temporarily suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension; and

(2) a hearing is held as soon as possible under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine whether probable cause exists that a continuing and imminent threat to the public welfare exists.

(d) A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

§ 301.456. Evidence.

A certified copy of the order of the denial, suspension, or revocation or other action under Section 301.452(b)(8) is conclusive evidence of that action.

§ 301.457. Complaint and Investigation

(a) The board or any person may initiate a proceeding under this subchapter by filing with the board a complaint against a registered nurse. The complaint must be in writing and signed by the complainant.

(b) Except as otherwise provided by this section, the board or a person authorized by the board shall conduct each investigation. Each complaint against a registered nurse that requires a determination of professional nursing competency shall be reviewed by a board member, consultant, or employee with a professional nursing background the board considers sufficient.

(c) On the filing of a complaint, the board:

- (1) may conduct a preliminary investigation into the identity of the registered nurse named or described in the complaint;
 - (2) shall make a timely and appropriate preliminary investigation of the complaint; and
 - (3) may issue a warning or reprimand to the registered nurse.
- (d) After any preliminary investigation to determine the identity of the subject of the complaint, unless it would jeopardize an investigation, the board shall notify the registered nurse that a complaint has been filed and the nature of the complaint. If the investigation reveals probable cause to take further disciplinary action, the board shall either attempt an informal disposition of the complaint or file a formal charge against the registered nurse stating the provision of this chapter or board rule that is alleged to have been violated and a brief description of each act or omission that constitutes the violation.
- (e) The board shall conduct an investigation of the complaint to determine:
- (1) whether the registered nurse's continued practice of professional nursing poses a risk of harm to clients or other persons; and
 - (2) whether probable cause exists that a registered nurse committed an act listed in Section 301.452(b) or that violates other law.

§ 301.458. Initiation of Formal Charges; Discovery

- (a) Unless there is an agreed disposition of the complaint under Section 301.463, and if probable cause is found under Section 301.457(e)(2), the board or the board's authorized representative shall initiate proceedings by filing formal charges against the registered nurse.
- (b) A formal charge must:
- (1) be written;

- (2) be specific enough to enable a person of common understanding to know what is meant by the formal charge; and
 - (3) contain a degree of certainty that gives the person who is the subject of the formal charge notice of each particular act alleged to violate a specific statute, board rule, or board order.
- (c) A copy of the formal charge shall be served on the registered nurse or the nurse's counsel of record.
- (d) The board shall adopt reasonable rules to promote discovery by each party to a contested case.

§ 301.459. Formal Hearing

- (a) The board by rule shall adopt procedures under Chapter 2001, Government Code, governing formal disposition of a contested case. The State Office of Administrative Hearings shall conduct a formal hearing.
- (b) In any hearing under this section, a registered nurse is entitled to appear in person or by counsel.

§ 301.460. Access to Information

- (a) Except for good cause shown for delay and subject to any other privilege or restriction set forth by statute, rule, or legal precedent, the board shall, not later than the 30th day after the date the board receives a written request from a license holder who is the subject of a formal charge filed under Section 301.458 or from the license holder's counsel of record, provide the license holder with access to:
- (1) all known exculpatory information in the board's possession; and
 - (2) information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint.
- (b) The board is not required to provide:

- (1) board investigative reports or investigative memoranda;
- (2) the identity of nontestifying complainants;
- (3) attorney-client communications;
- (4) attorney work product; or
- (5) other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) The provision of information under Subsection (a) does not constitute a waiver of privilege or confidentiality under this chapter or other applicable law.

§ 301.461. Assessment of Costs

The board may assess a person who is found to have violated this chapter the administrative costs of conducting a hearing to determine the violation.

§ 301.462. Voluntary Surrender of License

The board may revoke a registered nurse's license without formal charges, notice, or opportunity of hearing if the nurse voluntarily surrenders the nurse's license to the board and executes a sworn statement that the nurse does not desire to be licensed.

§ 301.463. Agreed Disposition

(a) Unless precluded by this chapter or other law, the board may dispose of a complaint by:

- (1) stipulation;
- (2) agreed settlement;
- (3) agreed order; or
- (4) dismissal.

- (b) An agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under this chapter and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of professional nursing.
- (c) An agreed order is a public record.
- (d) In civil or criminal litigation an agreed disposition is a settlement agreement under Rule 408, Texas Rules of Evidence.

§ 301.464. Informal Proceedings

- (a) The board by rule shall adopt procedures governing:
 - (1) informal disposition of a contested case under Section 2001.056, Government Code; and
 - (2) an informal proceeding held in compliance with Section 2001.054, Government Code.
- (b) Rules adopted under this section must:
 - (1) provide the complainant and the license holder an opportunity to be heard; and
 - (2) require the presence of a representative of the board's legal staff or of the attorney general to advise the board or the board's employees.

§ 301.465. Subpoenas; Request for Information

- (a) The board may request issuance of a subpoena to be served in any manner authorized by law, including personal service by a board investigator and service by certified mail.
- (b) Each person shall respond promptly and fully to a request for information by the board or to a subpoena issued by the board. A request or subpoena may not be refused, denied, or resisted unless the request or subpoena calls for information within the attorney-client privilege. No other privilege applies to a board proceeding.

- (c) The board may pay a reasonable fee for photocopies subpoenaed at the board's request. The amount paid may not exceed the amount the board charges for copies of its records.
- (d) The board shall protect, to the extent possible, the identity of each patient named in information received by the board.

§ 301.466. Confidentiality

(a) A complaint and investigation concerning a registered nurse under this subchapter and all information and material compiled by the board in connection with the complaint and investigation are:

- (1) confidential and not subject to disclosure under Chapter 552, Government Code; and
- (2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or a board employee or agent involved in license holder discipline.

(b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:

- (1) a person involved with the board in a disciplinary action against the nurse;
- (2) a professional nursing licensing or disciplinary board in another jurisdiction;
- (3) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;
- (4) a law enforcement agency; or
- (5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

- (c) The filing of formal charges against a registered nurse by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

§ 301.467. Reinstatement

- (a) On application, the board may reinstate a license to practice professional nursing to a person whose license has been revoked, suspended, or surrendered.

- (b) An application to reinstate a revoked license:

(1) may not be made before the first anniversary of the date of the revocation;
and

(2) must be made in the manner and form the board requires.

- (c) If the board denies an application for reinstatement, it may set a reasonable waiting period before the applicant may reapply for reinstatement.

§ 301.468. Probation

- (a) The board may determine that an order denying a license application or suspending a license be probated. A person subject to a probation order shall conform to each condition the board sets as the terms of probation, including a condition:

(1) limiting the practice of the person to, or excluding, one or more specified activities of professional nursing; or

(2) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the board.

- (b) At the time the probation is granted, the board shall establish the term of the probationary period.

- (c) At any time while the person remains subject to the probation order, the board may hold a hearing and rescind the probation and enforce the board's original action in denying or suspending the license. The hearing shall be called by the presiding officer

of the board, who shall issue a notice to be served on the person or the person's counsel not later than the 20th day before the date scheduled for the hearing that:

- (1) sets the time and place for the hearing; and
- (2) contains the charges or complaints against the probationer.

(d) Notice under Subsection (c) is sufficient if sent by registered or certified mail to the affected person at the person's most recent address as shown in the board's records.

§ 301.469. Notice of Final Action

If the board takes a final disciplinary action, including a warning or reprimand, against a registered nurse under this subchapter, the board shall immediately send a copy of the board's final order to the nurse and to the last known employer of the nurse.

Subchapter K. Administrative Penalty

§ 301.501. Imposition of Penalty

The board may impose an administrative penalty on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

§ 301.502. Amount of Penalty

(a) The amount of the administrative penalty may not exceed \$2,500 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

- (1) the seriousness of the violation, including:
 - (A) the nature, circumstances, extent, and gravity of any prohibited acts; and
 - (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the economic harm to property or the environment caused by the violation;

- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts made to correct the violation; and
- (6) any other matter that justice may require.

§ 301.503. Report and Notice of Violation and Penalty

- (a) If the executive director determines that a violation has occurred, the executive director may issue to the board a report stating:
- (1) the facts on which the determination is based; and
 - (2) the director's recommendation on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.
- (b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:
- (1) include a brief summary of the alleged violation;
 - (2) state the amount of the recommended penalty; and
 - (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

§ 301.504. Penalty to be Paid or Hearing Requested

- (a) Not later than the 20th day after the date the person receives the notice, the person may:
- (1) accept the executive director's determination and recommended administrative penalty in writing; or

(2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the executive director's determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

§ 301.505. Hearing

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

§ 301.506. Decision by Board

(a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may:

(1) find that a violation occurred and impose an administrative penalty; or

(2) find that a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

§ 301.507. Options Following Decision: Pay or Appeal

(a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account;
or

(B) giving to the court a supersedeas bond that is approved by the court and that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged

facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

§ 301.508. Collection of Penalty

If the person does not pay the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

§ 301.509. Determination by Court

- (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.
- (b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

§ 301.510. Remittance of Penalty and Interest

- (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:
 - (1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or
 - (2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.
- (b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

§ 301.511. Administrative Procedure

A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Subchapter L. Other Penalties And Enforcement Provisions**§ 301.551. Injunction**

(a) In addition to any other action authorized by law, the board may institute an action in its name to enjoin a violation of this chapter or a board rule.

(b) To obtain an injunction under this section, it is not necessary to allege or prove that:

(1) an adequate remedy at law does not exist; or

(2) substantial or irreparable damage would result from the continued violation.

(c) Notwithstanding Subsection (b), in a proceeding for an injunction under Subsection (a), the defendant may assert and prove as a complete defense to the action that the board's actions or proceedings were:

(1) arbitrary or capricious;

(2) contrary to legal requirements; or

(3) conducted without due process of law.

(d) Either party to an action under Subsection (a) may appeal. The board is not required to give an appeal bond in a cause arising under this section.

§ 301.552. Monitoring of License Holder

The board by rule shall develop a system for monitoring the compliance of license holders with the requirements of this chapter. Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor each license holder who represents a risk to the public.

§ 301.553. Civil Penalty

- (a) A person who violates Section 301.451 or Section 301.251 is liable to the state for a civil penalty not to exceed \$1,000 a day.
- (b) The civil penalty may be collected in a suit initiated by the board.

§ 301.554. Criminal Penalty

- (a) A person commits an offense if the person violates Section 301.451 or Section 301.251.
- (b) An offense under Subsection (a) is a Class A misdemeanor, except that if it is shown on the trial of the offense that the defendant has been previously convicted under Subsection (a), the offense is a felony of the third degree.
- (c) Each day of violation constitutes a separate offense.
- (d) On final conviction of an offense under Subsection (a), the defendant forfeits all rights and privileges conferred by a license issued under this chapter.

§ 301.555. Appeal

- (a) A person against whom the board has taken adverse action under this chapter may appeal to a district court in the county of the person's residence or in Travis County.
- (b) The board's decision may not be enjoined or stayed except on application to the district court after notice to the board.

Federal laws**34 Code of Federal Regulations § 300.7. Child with a disability**

- (a) General.
 - (1) As used in this part, the term child with a disability means a child evaluated in accordance with Secs. 300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a

specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)

(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under Secs. 300.530-300.536, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with Sec. 300.26(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged 3 through 9 experiencing developmental delays. The term child with a disability for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with Sec. 300.313, include a child--

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) Definitions of disability terms. The terms used in this definition are defined as follows:

(1)

(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual

responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.

(ii) A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) Emotional disturbance is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

- (D) A general pervasive mood of unhappiness or depression.
 - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.
- (5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.
- (6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.
- (7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.
- (8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
- (9) Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--

- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and
- (ii) Adversely affects a child's educational performance.

(10) Specific learning disability is defined as follows:

- (i) General. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- (ii) Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial

behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

- (13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Individuals with Disabilities Education Act

20 U.S.C. § 1400 et seq.

§ 1401. Definitions

Except as otherwise provided, as used in this chapter:

- (1) Assistive technology device

The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

- (2) Assistive technology service

The term "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes –

- (A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;
- (B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;
- (C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
- (D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (E) training or technical assistance for such child, or, where appropriate, the family of such child; and

- (F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

(3) Child with a disability

(A) In general

The term "child with a disability" means a child –

- (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9

The term "child with a disability" for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child –

- (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
- (ii) who, by reason thereof, needs special education and related services.

(4) Educational service agency

The term "educational service agency" –

- (A) means a regional public multiservice agency -

- (i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and
- (ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(5) Elementary school

The term "elementary school" means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

(6) Equipment

The term "equipment" includes -

- (A) machinery, utilities, and built-in equipment and any necessary enclosures or structures to house such machinery, utilities, or equipment; and
- (B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(7) Excess costs

The term "excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting -

(A) amounts received -

- (i) under subchapter II of this chapter;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.); or

(iii) under part A of title VII of that Act (20 U.S.C. 7401 et seq.); and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

(8) Free appropriate public education

The term "free appropriate public education" means special education and related services that –

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

(9) Indian

The term "Indian" means an individual who is a member of an Indian tribe.

(10) Indian tribe

The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

(11) Individualized education program

The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title.

(12) Individualized family service plan

The term "individualized family service plan" has the meaning given such term in section 1436 of this title.

(13) Infant or toddler with a disability

The term "infant or toddler with a disability" has the meaning given such term in section 1432 of this title.

(14) Institution of higher education

The term "institution of higher education" –

(A) has the meaning given that term in section 1141(a) of this title; and

(15) Local educational agency

(A) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) The term includes –

(i) an educational service agency, as defined in paragraph (4);
and

(ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(16) Native language

The term "native language", when used with reference to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

(17) Nonprofit

The term "nonprofit", as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(18) Outlying area

The term "outlying area" means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(19) Parent

The term "parent" –

(A) includes a legal guardian; and

(B) except as used in sections 1415(b)(2) and 1439(a)(5) of this title, includes an individual assigned under either of those sections to be a surrogate parent.

(20) Parent organization

The term "parent organization" has the meaning given that term in section 1482(g) of this title.

(21) Parent training and information center

The term "parent training and information center" means a center assisted under section 1482 or 1483 of this title.

(22) Related services

The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language

pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(23) Secondary school

The term "secondary school" means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(24) Secretary

The term "Secretary" means the Secretary of Education.

(25) Special education

The term "special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including –

- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- (B) instruction in physical education.

(26) Specific learning disability

(A) In general

The term "specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) Disorders included

Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(C) Disorders not included

Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(27) State

The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(28) State educational agency

The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(29) Supplementary aids and services

The term "supplementary aids and services" means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 1412(a)(5) of this title.

(30) Transition services

The term "transition services" means a coordinated set of activities for a student with a disability that –

- (A) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (B) is based upon the individual student's needs, taking into account the student's preferences and interests; and
- (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living

objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

§ 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements

(a) Evaluations and reevaluations

(1) Initial evaluations

(A) In general

A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b) of this section, before the initial provision of special education and related services to a child with a disability under this subchapter.

(B) Procedures

Such initial evaluation shall consist of procedures –

- (i) to determine whether a child is a child with a disability (as defined in section 1401(3) of this title); and (ii) to determine the educational needs of such child.

(C) Parental consent

(i) In general

The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401(3)(A) or 1401(3)(B) of this title shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(ii) Refusal

If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 1415 of this title, except to the extent inconsistent with State law relating to parental consent.

(2) Reevaluations

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted –

(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and

(B) in accordance with subsections (b) and (c) of this section.

(b) Evaluation procedures

(1) Notice

The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.

(2) Conduct of evaluation

In conducting the evaluation, the local educational agency shall –

(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;

(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Additional requirements

Each local educational agency shall ensure that –

(A) tests and other evaluation materials used to assess a child under this section –

(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and (ii) are provided and administered in the child's native language or other mode of

communication, unless it is clearly not feasible to do so;
and

(B) any standardized tests that are given to the child –

(i) have been validated for the specific purpose for which they are used;

(ii) are administered by trained and knowledgeable personnel; and

(iii) are administered in accordance with any instructions provided by the producer of such tests;

(C) the child is assessed in all areas of suspected disability; and

(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(4) Determination of eligibility

Upon completion of administration of tests and other evaluation materials –

(A) the determination of whether the child is a child with a disability as defined in section 1401(3) of this title shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

(5) Special rule for eligibility determination

In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

(c) Additional requirements for evaluation and reevaluations

(1) Review of existing evaluation data

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) of this section and other qualified professionals, as appropriate, shall –

- (A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and
- (B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine –
 - (i) whether the child has a particular category of disability, as described in section 1401(3) of this title, or, in case of a reevaluation of a child, whether the child continues to have such a disability;
 - (ii) the present levels of performance and educational needs of the child;
 - (iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

(2) Source of data

The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) Parental consent

Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C) of this section, prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

(4) Requirements if additional data are not needed

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency—

(A) shall notify the child's parents of -

(i) that determination and the reasons for it; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

(5) Evaluations before change in eligibility

A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(c) Individualized education programs

(1) Definitions

As used in this chapter:

(A) Individualized education program

The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes -

(i) a statement of the child's present levels of educational performance, including -

(I) how the child's disability affects the child's involvement and progress in the general curriculum; or

(II) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to -

(I) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

(II) meeting each of the child's other educational needs that result from the child's disability;

- (iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child -
 - (I) to advance appropriately toward attaining the annual goals;
 - (II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and (III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;
- (iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause
- (v)
 - (I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and
 - (II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of -
 - (aa) why that assessment is not appropriate for the child; and
 - (bb) how the child will be assessed;
- (vi) the projected date for the beginning of the services and modifications described in clause (iii), and the anticipated frequency, location, and duration of those services and modifications;
- (vii)
 - (I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP

that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program);

(II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and

(III) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title; and

(viii) a statement of -

(I) how the child's progress toward the annual goals described in clause (ii) will be measured; and

(II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of -

(aa) their child's progress toward the annual goals described in clause (ii); and

(bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(B) Individualized education program team

The term "individualized education program team" or "IEP Team" means a group of individuals composed of -

(i) the parents of a child with a disability;

(ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

- (iii) at least one special education teacher, or where appropriate, at least one special education provider of such child;
- (iv) a representative of the local educational agency who -
 - (I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (II) is knowledgeable about the general curriculum; and
 - (III) is knowledgeable about the availability of resources of the local educational agency;
- (v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);
- (vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (vii) whenever appropriate, the child with a disability.

(2) Requirement that program be in effect

(A) In general

At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

(B) Program for child aged 3 through 5

In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 1436 of this title, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is -

- (i) consistent with State policy; and

(ii) agreed to by the agency and the child's parents.

(3) Development of IEP

(A) In general

In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider –

- (i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and
- (ii) the results of the initial evaluation or most recent evaluation of the child.

(B) Consideration of special factors

The IEP Team shall -

- (i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
- (ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;
- (iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
- (iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

- (v) consider whether the child requires assistive technology devices and services.

(C) Requirement with respect to regular education teacher

The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii).

(4) Review and revision of IEP

(A) In general

The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team –

- (i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and
- (ii) revises the IEP as appropriate to address -
 - (I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
 - (II) the results of any reevaluation conducted under this section;
 - (III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B) of this section;
 - (IV) the child's anticipated needs; or
 - (V) other matters.

(B) Requirement with respect to regular education teacher

The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the review and revision of the IEP of the child.

(5) Failure to meet transition objectives

If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(vii), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

(6) Children with disabilities in adult prisons

(A) In general

The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

- (i) The requirements contained in section 1412(a)(17) of this title and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments).
- (ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this subchapter will end, because of their age, before they will be released from prison.

(B) Additional requirement

If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of section 1412(a)(5)(A) of this title and subsection (d)(1)(A) of this section if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(e) Construction

Nothing in this section shall be construed to require the IEP Team to include information under one component of a child's IEP that is already contained under another component of such IEP.

(f) Educational placements

Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

Section 504 of the Rehabilitation Act of 1973

29 U.S.C. § 791 et seq.

§ 794. Nondiscrimination under Federal grants and programs; promulgation of rules and regulations

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in Section 706 (20) of this title, shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978. Copies of any proposed regulations shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date of which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of –

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 8801 of Title 20), system of vocational education, or other school system;

- (3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship --
 - (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
 - (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) any other entity which is established by two or more of the entities described in paragraph (1), (2) or (3); any part of which is extended Federal financial assistance.