

GENERAL COMPLAINT INVESTIGATION PROCEDURES

Complaints Management

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PURPOSE

This manual presents a full explanation of the procedures implemented to conduct an on-site special accreditation investigation (SAI) under Chapter 39 of the Texas Education Code and Rule 157 of the Texas Administrative Code.

PROCEDURES

PART I. PRELIMINARY INQUIRY PHASE

Preliminary Inquiry – Research – Additional Fact Gathering

Relevant information about the district and issues involved are researched, reviewed in light of the complaint, and analyzed in planning for a full desk audit or an on-site investigation.

The preliminary review includes, but is not limited to:

- Reports of data analysis
- Local investigative findings
- Financial and/or accountability data reports
- Audit sampling
- Written findings and referrals from other agencies and divisions
- Telephone interviews with pertinent individuals involved
- Related complaints
- High profile and sensitive nature

Decision Points:

1. Are there sufficient facts to warrant a full investigation?
2. Can the complaint be resolved through a desk audit?
3. Is there information that cannot be obtained or reviewed through a desk audit, requiring an on-site visit?

Decisions and Consequences or Sanctions

Individual Complaint Resolution (Federal Programs and Funds)

- The written resolution and final disposition of the complaint are made by the program division's management.
- Corrective, remedial, and disciplinary actions may be imposed as authorized under applicable state and federal regulations, rules, and established policy. For example, enforcement actions for high-risk grantees under 34 Code of Federal Regulations §80.12, or "Disciplinary Proceedings, Sanctions, and Contested Cases" under TAC Rule 249.
- Accreditation sanctions under TEC Chapter 39 cannot be applied to the District as a result of a complaint investigation unless TEA notifies the District and conducts the investigation under Special Accreditation Investigation provisions TEC §§39.056-058.

Special Accreditation Investigation

Desk Audit and/or On-site provisions under TEC §§39.056-058

- The recommendation for a Special Accreditation Investigation is made through the Associate and Deputy Commissioners to the Commissioner of Education.
- The Commissioner of Education makes the final decision to direct the SAI.
- Accreditation Sanctions under TEC Chapter 39 may be imposed by the Commissioner of Education as a result of the Special Accreditation Investigation.

PART 2. Written Notice of Investigation

A written notice of investigation is required for any investigation of a complaint. The superintendent of schools, complainant, and board of trustee (as appropriate) must be notified of the TEA investigation prior to conducting any formal investigative activities, including arriving on-site to the district.

The written notice will include: statement of purpose and authority

- allegation or matter under investigation
- description of the general investigative process, including whether desk audit or on-site is planned
- specific and focused request for information
- TEA contact information
- copy of the original complaint
- and any special instructions

PART 3. Contact to the Superintendent and Complainant

A member of the investigative team or Office will call the superintendent and complainant prior to sending the written notice to give notice of the impending investigation, generally review the complaint issues, procedures, discuss any on-site activities, and answer any questions.

PART 4. Courtesy Notice to Legislative Representative

If a legislative member was copied on the complaint, a member of the investigative team or Office provide a courtesy copy of the investigation notice and resolution letter to TEA Governmental Relations staff. GR staff notifies the legislative member of the disposition. The purpose is to provide advance notice in the event that questions arise from constituents and the media.

PART 5. INVESTIGATION PLAN AND WORKING PAPERS

An investigative plan is developed to include documentation of a preliminary inquiry or

review.

The purpose of the investigative plan is to ensure the investigation is conducted in accordance to uniform standards, least disruptive to the schools and students, and cost-effective. Typically, the investigation plan is revised as new information is gathered; however, it is intended to ensure that TEA arrives at a thorough and timely resolution. The investigative plan may include desk reviews of records and data, telephonic interviews, on-site activities, communications and coordination with other TEA staff, and legal advice. Typically, a number of activities will occur at TEA prior to or following any on-site visit. Therefore, information may be requested or submitted to TEA at any time prior to the final report.

CONFIDENTIALITY AND OPEN RECORDS REQUESTS

The TEA has the discretion to claim that investigative plan and preliminary inquiry are confidential as audit working papers under Section 552.116 of the Texas Government Code (Public Information Act). If working papers and drafts are requested by the public, the TEA will seek to withhold them from release through the Attorney General's Office.

PART 6. ON-SITE AND OFF-SITE INVESTIGATIVE ACTIVITIES

Interviews and other investigative activities may occur by phone, at district facilities, or at other locations as agreed to by participants. In all on-site cases, the investigative team must conduct an entry meeting with the Superintendent (or designee) upon arriving to the district for the on-site visit. The Superintendent has the discretion to invite other staff members. Additionally, the investigative team must meet with the Superintendent (or designee) to exit the district. These activities are described below.

Under TEC §39.056, in making an on-site accreditation investigation, the investigators shall obtain information from administrators, teachers, and parents of students enrolled in the school district. The investigation may not be closed until information is obtained from each of those sources.

- a. Obtain information from parents and using that information in the investigator's report.
- b. Obtain information from teachers in a manner that prevents a district or campus from screening the information.
- c. The agency shall give written notice to the superintendent and the board of trustees of a school district of any impending investigation of the district's accreditation.
- d. The investigators shall report orally and in writing to the board of trustees of the school district and, as appropriate, to campus administrators and shall make recommendations concerning any necessary improvements or sources of aid such as regional education service centers.

Interviews

Interviews will be conducted with pertinent school staff, students, and other persons with direct and relevant knowledge. Interviews are given voluntarily and orally or in writing.

Campus level Staff Interviews

In addition to pertinent district and campus administrators, selected teachers, teaching assistants, nurses, counselors, librarians, school volunteers, custodial or other staff may have knowledge of certain aspects of the allegation. Often pertinent individuals are identified as the investigation progresses.

To ensure that information is obtained from teachers in a manner that prevents a district or campus from screening the information, the investigation team will request the district administration to distribute an announcement, which may include a questionnaire, offering teachers the opportunity to provide information directly and anonymously to TEA.

Attorney Representation

Any person may request to have his or her attorney present during the interview.

Student and Parent Interviews

TEA investigator may speak with parents in person or by phone. Investigators will select parents whose child may have been subject to the circumstance under investigation.

Every effort will be made to obtain information from other sources before requesting to interview a student. However, to verify and confirm incidents, it is necessary to speak with the student involved. For example, if the student is the complainant or the student's paper or booklet is analyzed to have been tampered with, then TEA staff may find it necessary to validate information by speaking with the student in the presence of the parent or school staff.

PARENT CONSENT REQUIRED

For a minor child, a parent or legal guardian and/or school representative must be present during the interview. In all cases, written consent must be obtained from the parent or legal guardian for the interview and for any tape recording of the interview.

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

Student information, whether obtained from agency resources or from the school district, will be protected and maintained in accordance with state and federal laws governing student records.

Electronic Recordings

In all cases and under all circumstances, TEA staff shall not electronically record any person without documented consent of the person(s) prior to the recording. Any electronic record of the interview shall be maintained as part of TEA records with the proper records retention series. Any person being recorded may also record or request a copy of the recording. TEA staff cannot prohibit non-TEA staff from

recording.

TEA staff may make copies of records or take photos of records or facilities. Photos of individuals are not permitted.

Entering the District, On-site Itinerary, and Interview Schedule

An entry meeting with the superintendent (or designee), may include any other school staff selected at the discretion of the superintendent. The entry meeting is pre-scheduled when the TEA staff and Superintendent work together to develop the on-site visit itinerary and interview schedule by phone. The entry meeting serves to provide an overview of the investigative matter, procedures, and answer any questions for the staff. Typically, the TEA staff will interview the Superintendent following this entry meeting.

Exiting the District

At the conclusion of the visit, the investigative team will meet briefly with the Superintendent (or designee and other invited staff). TEA staff cannot comment on any substance of their observations, findings, or reviews. The district is reminded that the investigation is considered ongoing until the final report is issued by TEA. While a specific timeline for the final report cannot be determined, the Superintendent may at any time contact TEA to ascertain the status or progress of the investigation.

PART 7. INVESTIGATIVE REPORTS

Report Structure and Content

Internal Review of Reports

Program staff obtains internal review of drafts and analyses, as needed, prior to issuing a finalized report.

The investigative reports will generally follow a basic structure as listed below:

- Summary
- Introduction that includes the purpose and authority for the investigation
- Background information and procedural history
- Findings of fact, a discussion of each allegation, and the reason for the finding.
- Conclusions citing violations of Texas Education Code or Texas Administrative Code (Commissioner Rules)
- Matters requiring further investigation
- Actions needed to correct or achieve compliance
- Referral of matters not within TEA's jurisdiction to appropriate offices

The final investigation report is not a formal statement of TEA policy and should not be relied upon, cited, or construed as such. TEA's formal policy statements are approved by a duly authorized TEA official and made available to the public.

The determinations made in the investigation report are not intended and should not be construed to pertain to any other compliance issues and does not prevent or preclude other interventions and actions taken by the TEA.

Preliminary Report for Special Accreditation Investigations

Upon completion of the investigation, TEA will issue a preliminary report under 19 TAC Chapter 97, Subchapter DD. The preliminary report will state the findings of fact and explain why the allegation is or is not substantiated.

The report will discuss the nature of the allegations, explain the applicable standards, and present the pertinent facts in order to support the conclusions. The report will present a balanced accounting of evidence that would tend to support a contrary conclusion if such evidence exists, and explain why such evidence was not accorded greater weight. The preliminary report is reviewed internally for accuracy and quality assurance.

Standard of Review

TEA applies a preponderance-of-the evidence standard to determine whether evidence is sufficient to support a particular conclusion. Specifically, TEA examines the evidence in support of a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

The preliminary report will include recommendations to the Commissioner of Education of any corrective or disciplinary action or interventions for the district and/or a specifically identified educator's license.

Informal Review for Special Accreditation Investigations

When the district receives the preliminary report, the report will include information for requesting an informal review of the findings. If the preliminary report finds no violation of law or rules, then the TEA may issue this report as its final report without the need for informal reviews.

An opportunity is provided to each individual who has been found in the preliminary report to violate a school law, rule, or policy to request an informal review of the findings by the Commissioner of Education or Commissioner's designee. Individuals must request an informal review within 10 calendar days from the date the preliminary report is mailed. TEA may grant a request for an informal review to be conducted in person at TEA in Austin, TX. This informal review is not a formal hearing nor is it an appeal to the Commissioner of Education. The informal review is to provide a single opportunity for individuals found to be in violation of a school law, rule, or policy to present information that may result in the revision, amendment, or modification of the findings before the Final Report is issued. Once completed, the district is not entitled to another informal review.

Final Report

Once all informal reviews have been concluded, the TEA will make its findings final. The final report will be issued to the district. The Commissioner of Education will make the final determinations regarding any sanctions, if such actions are appropriate. Additional informal reviews, commissioner hearings, or administrative appeal processes are not available after the final report is issued.

PART 8. REFERRING MATTERS

Suspected Criminal Conduct (including falsification of government records)

The TEA is required to report any suspicion of criminal conduct to appropriate law enforcement authorities, including the county district attorney. Typically, suspicion of fraudulent activities involving federal program funds is referred to the US Department of Education's Office of Inspector General.

Texas Government Code, Chapter 321, requires state agencies to report suspected fraud or unlawful conduct to the Investigative Unit of the State Auditor's Office (SAO).

The Complaints Management Office refers investigative findings to other agency investigative arms.

Alleged Educator Misconduct

If the final investigative report finds one or more educators to have violated a federal or state law, the case may be referred to Educator Investigations Division for further review and determinations.

Under Rule 249.14 of the Texas Administrative Code, the Superintendent is required to report to TEA an educator who has been found to have violated a federal or state law. Educator Investigations will review the Division's report and determine any investigative and disciplinary actions concerning the educator's certification. Prior to filing a formal complaint with State Board for Educator Certification, the educator is entitled to an opportunity to show compliance with all requirements of law for the retention of his or her certificate(s). The formal notice and opportunity to show compliance is required under Section 2001.054 of the Texas Government Code (referred to as the "054" Conference).

Alleged Violations of Test Security

If an investigation finds that an educator's conduct violated a serious testing requirement under statewide test administration, the Division of Student Assessment refers the local district's investigation report and the Division's preliminary data analyses report to Legal Services for further determinations.

PART 9. LOCAL LEVEL COMPLAINTS

Educational Program and Services

Program staff will issue its final written decision, typically referred to as Letter of Findings or Resolution Letters, to the district and complainant. Some examples, are provided below:

- Special Education implements a dispute resolution program that includes mediation, complaint investigation, and due process hearings under 34 CFR Part 300. Special education matters may be filed directly with the TEA. Individuals do not have to exhaust the local level complaint process.
- General Education (Title I) parent complaints must be addressed by the district. After the local level complaint process has been completed, the individual may file a complaint with the TEA for further review and determinations.
- Educator complaints must be prioritized and reviewed under Rule 249 of the Texas Administrative Code. The TEA does not investigate Educator Code of Ethics.

Allegations concerning Educator Code of Ethics must be addressed by the district. Divisions and other entities may refer their investigative findings that conclude that an educator has or is violating a federal or state law to TEA for further review and determinations.

PART 10. RELEASE OF INFORMATION

Texas Public Information Act (Open Records)

Under Texas law, each person is entitled to complete information about the affairs of government and the official acts of public officials and employees at any time, unless otherwise expressly prohibited by law. To obtain information from TEA, a written request can be made to TEA Public Information Office by mail: 1701 N. Congress Ave., Austin, Texas 78701-1494 or e-mail PIR@tea.state.tx.us.

Communication to the Media

Inquires received from the media shall be directed to the TEA Office of Communications at (512) 463-9000 or Media-PIR@tea.state.tx.us. Since the investigation is ongoing until the TEA issues its final report, the investigative team does not give substantive interviews to the media; however, will provide information regarding the investigative process.