

Districts of Innovation: Possible Evidence of a Higher Power?



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It was around this time many years ago that the Hebrew slaves had just left Egypt, and they were starving in the desert. The slaves had endured years of suffering under a government that did not feel all people had to be treated equally, and that it was permissible to have strict and even harsh rules for some to live by, while others lived and grew fat off the hard work of the Hebrews. In the desert, they cried out to Moses for food. “So the Lord said to Moses, Behold! I am going to rain down for you bread from heaven, and the people shall go out and gather what is needed for the day,

so that I can test them, whether or not they will follow My teaching.” Exodus 16:4. This bread from heaven was called manna.

In public education, we refer to this manna as Districts of Innovation. It is an opportunity the Legislature has given school districts to throw off the shackles of strict laws and show what they can do as free, independent school districts.

There are a wide variety of exemptions and affirmative steps districts can take to utilize the opportunities of Chapter 12A of the Texas Education Code, which provides for these Districts of Innovation. This article will focus

only on areas that affect personnel matters and Human Resources Departments. For those of you that are not familiar with how to become a District of Innovation or how to amend your current plan, see the magnificent article by Tyler Ezell published on www.TexasISD.com. <https://bit.ly/3nPjfn4>

Texas Education Code 12A.004 lists the statutes districts may not exempt from, meaning unless the statute is named there (or in the Texas Administrative Code, §102.1309), schools have complete freedom to include the laws from which they wish to toss away their shackles and free themselves.¹ Those include:²

¹ Most of these laws are found in Texas Education Code section 21.001, et seq.

² Please do not take this as legal advice suggesting one should exempt their district from all these constrictors. This article is telling you what you could do, not what you should do.

Teachers Must Be Certified.³ If districts want to eliminate that requirement, they can open the door to noncertified teachers in most subjects (special education, bilingual, ESL and PreK excepted). Perhaps your district wants to teach auto mechanics, and you cannot find a certified teacher. This gives you the power to say that particular subject or teacher does not have to be taught by a certified teacher.

Reporting Noncertified Teachers to Parents.⁴ Nobody likes to send the letter to parents notifying them that their child is being taught by a noncertified teacher. You could exempt yourself completely or change “shall provide the notice” to say you “may notify parents,” leaving yourself the option to not do so.

Military Extensions.⁵ One could choose to deny active military personnel extensions for continuing education requirements, etc., especially if you wish to be branded as unpatriotic. Let’s skip to the next one. Plus, it doesn’t help you.

All Contract Rules.⁶ Here is where the fun begins. You could just get rid of all teacher contracts or place them all on employment agreements. This may hurt your competitiveness in obtaining teachers. So let us take this by contract type:

- a. **Probationary Contracts.**⁷ Why not exempt out of the rule that teachers can only receive a probationary contract for one year if they have worked 5 of the last 8 years in public education? Why not permit everyone to be probationary for up to 5 years? Up to 10 years? This enables you to keep the marginal teacher for longer and providing them more time to prove themselves worthy of a term contract, rather than letting them go after one year. Why not exempt yourself from the process due under the law so that you can terminate them without a hearing by giving them 30 days’ severance?⁸ Why not get rid of the pesky requirements for returning someone to probationary status and permit yourself the

right to do so without restriction or the board taking action, etc.?⁹

- b. **Continuing Contracts.**¹⁰ It is hard to say whether a school who still has some people on continuing contracts can actually exempt out of the statute and let continuing contract teachers go. An argument can (and will) be made that schools cannot unilaterally vitiate the contract’s rights, especially when they have been baked in since these contracts began (before anyone reading this article remembers).
- c. **Term Contracts.**¹¹ Want to exempt out of the rules for reviewing appraisals before nonrenewing, give teachers contracts for more than five years, and/or get rid of the nonrenewal process? Those may not be your cup of tea, but why not give yourselves 60 days to hold a nonrenewal hearing rather than 15, and maybe the teacher will find another job and resign? Why should small districts not have the same right to designate an attorney to hear a nonrenewal as districts with 5,000 or more students?¹² Do we want to say that all board decisions for nonrenewals are final and unappealable to the Commissioner?¹³
- d. **Suspensions without Pay.**¹⁴ The Commissioner has interpreted the law to mean schools cannot suspend without pay pending a termination hearing or anytime without due process (which costs the same as terminating). Why not permit yourself to place someone on suspension without pay for a certain amount of time during an investigation, or pending the outcome of a proposed termination, or until the person has been either convicted or charges have been dismissed for an arrest? This is an area of the law that we should have fixed long ago, and here is your chance.

³ Tex. Educ. Code § 21.003.

⁴ Tex. Educ. Code § 21.057.

⁵ Tex. Educ. Code § 21.059.

⁶ Tex. Educ. Code §§ 21.101 – 21.307.

⁷ Tex. Educ. Code § 21.102(b).

⁸ It is unclear what, if any, due process rights the teacher would be entitled to receive, although you could write the contract in such a way that they are not entitled to a hearing.

⁹ Tex. Educ. Code § 21.106.

¹⁰ Tex. Educ. Code § 21.151 – 160.

¹¹ Tex. Educ. Code § 21.201 – 213.

¹² Tex. Educ. Code § 21.207(b-1).

¹³ This may work against us, permitting them to try and go to court right away and meaning the Commissioner and the Attorney General would not be on our side if they appeal a decision by the Commissioner in our favor.

¹⁴ Tex. Educ. Code §§ 21.104, 156, 211.

e. **Termination Hearings.**¹⁵ Tired of spending \$10,000 on Independent Hearing Examiners (IHE), \$10,000 or more on court reporters, and waiting 90 days to even get a decision on your proposal? The cost of the termination process often exceeds what remains in the teacher's contract. Why not exempt out and permit your board to hear terminations like the good old days? Or permit the board to hire a lawyer to sit as a hearing officer and hold the hearing for your board? There are lots of possibilities if you wish to entertain getting rid of the IHE system. While you could exempt out of the appeal to the Commissioner, why not instead let the Commissioner hear appeals in a manner similar to a nonrenewal appeal?

f. **Who is a "teacher" entitled to a contract?**

¹⁶ Would you prefer to not give nurses and librarians term contracts? What about others who are required to hold certificates? Athletic Directors who do not teach? Here is your chance to give them employment agreements instead.

Appraisals.¹⁷ Are the appraisal regulations oppressive? Appraisals for teachers but not administrators? You can take yourself completely out of the appraisal business, or at least the system as we know it, and formulate your own system.

Confidentiality of Appraisals.¹⁸ Want to make teacher appraisals public records? Sounds like a strange idea, but it is an option.

Changing contracts from 10 months, minimum 187 days.¹⁹ You could get rid of the ten-month rule, or even the 187 day minimum schedule. I know many districts have opted to lower the minimum number of days.

Minimum Salary Schedule.²⁰ Thinking of reducing your budget? You could pay teachers minimum wage. It certainly won't help in retention or recruitment, but the minimum schedules could be tossed out the window.

Duty Free Lunch & Planning Periods.²¹ Here is one I think we all should look at. Maybe you like the duty free lunch, maybe you do not. But planning periods are something that cause us problems all the time. Ever since the Commissioner's decision in *Bledsoe v. Huntington ISD*, Docket No. 033-R10-1103 (Comm'r Dec. 2014), schools have had issues with planning periods. Toss the rules (and Bledsoe along with the rules); you can still permit planning periods, but also allow teachers to receive a stipend for giving up a planning period to teach. It saves you money on an extra teacher and gives the teacher more spending money; a rare win-win exemption.

Teacher Rights.²² Although you could exempt yourself from retaliation prohibitions for religious observances, coercing teachers from joining organizations, and prohibit temporary leave and incentive payments, these seem to be laws from which you should not exempt your district.

Staff Development.²³ You could exempt out of all staff development requirements and incentive pay that goes along with the trainings.

Salary Deductions for Professional Dues.²⁴ If you would like to make a teacher organization more active, consider exempting yourself from automatic professional dues deductions.

Minimum Personal Leave and Health Care.²⁵ You could get rid of personal leave and health care, but then you would also be getting rid of it for yourself. Not sure this is a good idea.

Early Retirement Incentives, Coercing Charity.²⁶ There is a prohibition on incentives for early retirement which we seem to get around anyway. Not sure it is worth looking at, but neither is the idea that forced charity is a good idea. Maybe leave these alone.

There are a few more provisions involving cafeteria plans, unlawful inquiry into religious affiliation, and instruction on how to use a defibrillator, but I would be shocked if these are something you would change. I have left out some potential exemptions that would also be prohibited by federal law (like Title IX, the First Amendment, etc.).

Finally, we recommend you consult with your local counsel about the impact of any DOI changes before you make them.

¹⁵ Tex. Educ. Code §§ 21.251 – 307.

¹⁶ Tex. Educ. Code §§ 21.101.21.151, 21.201.

¹⁷ Tex. Educ. Code §§ 21.351 – 21.3541.

¹⁸ Tex. Educ. Code § 21.355.

¹⁹ Tex. Educ. Code §§ 21.401.

²⁰ Tex. Educ. Code §§ 21.402 – 21.4032.

²¹ Tex. Educ. Code §§ 21.404 – 21.405.

²² Tex. Educ. Code §§ 21.406 - 415.

²³ Tex. Educ. Code §§ 21.451 - .465.

²⁴ Tex. Educ. Code § 22.001.

²⁵ Tex. Educ. Code § 22.003 - .005.

²⁶ Tex. Educ. Code § 22.007 - .011