

POSSIBLE DOI OPT-OUTS

TEXAS EDUCATION CODE, CHAPTER 26A

Texas Education Code Chapter 26A changes the school district grievance process by requiring school districts to implement certain grievance procedures. However, a District of Innovation ("DOI") could opt out of any or all of portions of Texas Education Code Chapter 26A grievance requirements.

TOTAL OPT-OUT

A DOI that wants to exempt itself from the grievance requirements could opt out of all of Chapter 26A grievance requirements. Alternatively, a DOI that wants to adopt some but not all the requirements, like only adopting Chapter 26A changes for parent/student grievances but not for employee grievances, might opt-out of Chapter 26A, but incorporate Chapter 26A changes into just its parent/student grievance policy.

A total opt out might not be desirable because Texas Education Code § 26A.001 (d) allows a school board to delegate the authority to hear a grievance to three board members. Without this provision, a grievance must be heard at a board meeting. Therefore, a district may decide to opt out of all the new 26A grievance requirements but adopt the requirement that allows the Board to delegate the authority to hear grievances to a committee.

SELECTIVE OPT-OUT

Below are other partial opt-outs from Chapter 26A that a school district may wish to consider:

MANDATORY RECORD REQUIREMENT. Texas Education Code § 26A.001(e)(4)(A) requires a school district to create a grievance record that includes an explanation of the basis for the decision and includes an indication of how each document presented in the grievance supports the decision. Currently, a school board decision on a grievance does not require an indication of what grievance documents support the decision. This new requirement will require more time to respond to grievances.

MANDATE TO ALLOW GRIEVANT TO SUPPLEMENT THE RECORD AND ADD ADDITIONAL CLAIMS. Texas Education Code § 26A.001(e)(5) provides that a school district must allow a grievant to supplement the record with additional documents and add additional claims. There are no limitations to the authorization of a grievant to supplement. Hence, it could be construed that during the board hearing, a grievant can add new claims that had not been considered at the earlier levels in the grievance or could add new evidence even though the hearing before

the school board is not an evidentiary hearing. A school district could opt-out of this section and only allow new evidence and claims as permitted by the hearing officer, which is the current rule in most local grievance policies.

ELIMINATION OF PROCEDURAL REQUIREMENTS.

Texas Education Code § 26A.001(e)

(g) requires a school district to issue a decision on the merits of a grievance notwithstanding procedural errors or the type of relief requested. This means that a school district cannot decline to issue a decision on the merits because the grievant did not follow the procedures for filing grievances or attending a grievance hearing. For example, under the new requirements, a school district would have to rule on a grievance that was filed two years late! It also means that if relief is asked for that the district cannot grant, such as the destruction of public records, the school board still must reach the merits even though there is no relief it could grant.

MANDATE TO ALLOW GRIEVANT TO DEMAND AN OPEN HEARING.

Texas Education

Code § 26A.001(e)(10) provides that, unless otherwise required by law, a grievant determines whether a hearing is open or closed. This could put a school district in a difficult position. It only allows a closed session if required by law, not if a closed session is allowed by law. For example, if a hearing is likely to result in accusations about employees and the grievant demands an open hearing, the hearing would be open because Texas Government Code sections 551.074 and 551.084 only permit a school district to hold a closed session on personnel matters. As a closed hearing is not required by law, the grievant determines whether the hearing is open or closed.

EXPANDED TIMELINES.

Texas Education Code § 26A.002 sets out timelines for the grievance process. These timelines generally increase the time for a grievant to file, and they set timelines for district action at each level of the grievance. These timelines may be difficult to meet if a district does not opt-out of Texas Education Code § 26A.001(e)(5), which requires a district to allow a grievant to supplement evidence and claims.

NEW REPORTING DUTIES FOR THE SUPERINTENDENT.

Texas Education Code § 26A.004

requires a superintendent to appear before the State Board of Education if the Commissioner finds against a school district in Texas Education Code section 7.057 case in a school year. While it is at least very unlikely that a school board would lose five cases in one year before the Commissioner, the Board of Education has no authority to sanction the district, which poses the question as to the intent behind the new requirements.

POSSIBLE DOI OPT-OUTS

TEXAS EDUCATION CODE, CHAPTER 26A

AUTOMATICALLY MOVING GRIEVANCE TO NEXT LEVEL. Texas Education Code § 26.001(e) (2) and (3) require recusal and taking the grievance to the next higher level if the administrator is the subject of the grievance. If the administrator is the superintendent, this means that the grievance goes straight to the school board. This also means that the school board will be tasked with both hearing the evidence and deciding the grievance.