

September 12, 2017

**TO THE ADMINISTRATOR ADDRESSED:**

**Subject: Reduction of Minimum Days of Service**

We have received inquiries regarding the legality of paying teachers and other contract personnel for days that a district is closed due to Hurricane Harvey for both evacuation and recovery purposes. This letter is intended to assist the local decisions of districts in that regard. Local school boards, acting in concert with local counsel, must resolve the questions based on their own unique circumstances.

Several provisions that may impact a local decision include:

- The specific terms of the teachers' contracts;
- The constitutional prohibitions against allocating public funds for private purposes (Tex. Const., Art. III, Secs. 51 and 52) (requiring a finding that the expenditure serves a public purpose, that sufficient controls are in place to ensure that the public purpose is carried out and that ensures that the district receives a return benefit [see Op. Atty. Gen. No. GA- 0076, 2003]); and
- Section 21.401 of the Texas Education Code which requires a minimum of 187 days of service but allows the commissioner to reduce the number of days of service in the event of floods or extreme weather without reducing the educator's salary.

Following a review of the applicable law and contractual provisions, and the needs of the district regarding days of service, a district that wishes to reduce the number of days of required service without reducing educators' pay may request that the commissioner authorize such a reduction pursuant to Section 21.401(c) of the Texas Education Code. Previously granted waivers of missed school days is not an automatic waiver of the number of days of service. However, a district that requests a shorter contract term commensurate with the number of days closed from the start of school for the 2017-2018 school year through the end of October, 2017 will be granted. Further requests for waiver will be considered on a case-by-case basis.

Districts and charter schools requesting this waiver will need to apply by selecting the 'Other' waiver type using the TEAL waiver application that is currently used to apply for state waivers. Questions related to waivers should be directed to Leah Martin and Ron Rowell, at (512) 463-5899 or at [Leah.Martin@tea.texas.gov](mailto:Leah.Martin@tea.texas.gov) or [Ronald.Rowell@tea.texas.gov](mailto:Ronald.Rowell@tea.texas.gov).

Again, we extend our thanks to you for making every effort to provide the greatest amount of stability for students and staff while taking the steps necessary to ensure their safety. We have every confidence that you will continue to make choices that best serve your students and employees.

Sincerely,

Mike Morath  
Commissioner