



Texas State Board of Examiners of Psychologists Panel Discussion: Board Complaints and Hot Topics

Moderator:

Angela A. Downes, J.D., Board Member

Panel Members:

Donna L. Black, M.A., Board Member

Darrel D. Spinks, Executive Director of TSBEP

Gail Cheramie, Ph.D., Assoc. Professor, Univ. of Houston-Clear Lake

Texas State Board of Examiners of Psychologists

<u>Board Member</u>	<u>Date of Term</u>	<u>Hometown</u>
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Lou Ann Todd Mock, Ph.D.	2008-2019	Bellaire
Leslie D. Rosenstein, Ph.D.	2010-2015	Dallas

Make-Up of the Board

Section 501.051 of the Psychologists' Licensing Act reads in part:

(a) The Texas State Board of Examiners of Psychologists consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four psychologist members who have engaged in independent practice, teaching, or research in psychology for at least five years;

(2) two psychological associate members who have been licensed as psychological associates under this chapter for at least five years; and

(3) three members who represent the public.

(a-1) One of the members appointed under Subsection (a)(1) or (a)(2) must practice as a licensed specialist in school psychology under Section 501.260.

House Bill 646

- Effective 6/14/2013 (signed by Governor Perry)
- Amends Section 501.260 of TX Occupations Code
 - Adds requirement that one of the members appointed to TSBE must practice as a licensed specialist in school psychology
- Changes do not affect currently serving Board members
- As terms expire, the governor shall appoint or reappoint a member who meets the requirement

Complaints



Complaint Statistics

FY2013-Board disposed of 263 complaints and opened 290 new complaints.

Categories of complaints disposed of in FY2013

Administrative Violations – 44

CE Violations – 124

Cease and Desist – 11

Forensic – 42

Of those 42, 27 (64%) were complaints arising out of Custody/Visitation cases

General Therapy – 26

School Psychology – 12 (1 reprimand; 1 admin. penalty; 10 dismissals)

Sexual Misconduct – 1

Misc. – 3

FY2014-Board disposed of 251 complaints and opened 243 new complaints.

Categories of complaints disposed of in FY2014

Administrative Violations – 18

CE Violations – 143

Cease and Desist – 8

Forensic – 23

Of those 23, 16 (70%) were complaints arising out of Custody/Visitation cases

General Therapy – 40

School Psychology – 5 (1 reprimand, 4 dismissals)

Sexual Misconduct – 9

Misc. – 5

Complaint Statistics, cont'd

FY2013	FY2014
<ul style="list-style-type: none">•Board heard 34 cases at informal settlement conferences<ul style="list-style-type: none">-7 were school psychology related•Complaints involving school psychology made up 5% of the complaints disposed of<ul style="list-style-type: none">-21% of the cases heard at informal settlement conferences	<ul style="list-style-type: none">•Board heard 28 cases at informal settlement conferences<ul style="list-style-type: none">- 0 were school psychology related•Complaints involving school psychology made up 2% of the complaints disposed of<ul style="list-style-type: none">-0% of the cases heard at informal settlement conferences

Examples of Complaints Resulting in Disciplinary Action

- FY2013 Complaints
 - LSSP reprimanded for failing to identify any limitations with regard to their opinion, or acknowledge the effects of additional information
 - LSSP was assessed an administrative penalty for providing school psychological services outside of the public school setting
- FY2014 Complaints
 - LSSP reprimanded for failing to timely renew license, and practicing on delinquent status

Conflict between Board Rules and State or Federal Law

- Board rule 461.14 – In the event of conflict among state or federal statutes and Board rules, state or federal statute(s) control.
- Board rule 465.38(6) - In the event of conflict among state or federal statutes and Board rules, state or federal statute(s) control.
- U.S. Const. art. VI, cl. 2, The Supremacy Clause

Areas of Frequent Inquiry

The following areas are some of the more frequently inquired about by LSSPs:

- Informed Consent
- Records and Record Keeping
- Supervision

Informed Consent



Informed Consent

Board rule 465.11, Informed Consent/Describing Psychological Services

- Must be in writing prior to delivery of services
- Must describe the services being provided and any potential limits on confidentiality
- Must be updated with any change in service provided
- Must explain the nature of the relationship between the licensee, patient(s), and any third-party
- See also Board rule 465.18(c), Forensic Services. The sister rule to the Board's informed consent rule

Informed Consent

The Board has published two newsletter articles concerning informed consent in the public schools:

- Informed Consent in the Public Schools: Analysis of Impact of Federal Education Law on Board Rules Governing Informed Consent
 - <http://www.tsbep.texas.gov/files/newsletters/Summer2013-Vol-26-No-2.pdf>
- Informed Consent in Public Schools
 - [http://www.tsbep.texas.gov/files/newsletters/Spring2014 Newsletter Vol 27 No 2.pdf](http://www.tsbep.texas.gov/files/newsletters/Spring2014%20Newsletter%20Vol%2027%20No%202.pdf)

Informed Consent

In public schools, there are three types of activities requiring informed consent

- Special education evaluation
- Special education services
- General education consultation

Informed Consent: Special Education Evaluation

Special Education: Consent for Evaluation

- The LEA must make reasonable efforts to obtain informed consent for an evaluation which includes:
 - 1) Detailed records of telephone calls made or attempted and the results of those calls;
 - 2) Copies of correspondence sent to the parents and any responses received; and
 - 3) Detailed records of visits made to the parent 's home or place of employment and the results of those visits.

[34 CFR §300.322(d)]

Initial Evaluation:

Student Enrolled or Seeking Enrollment in Public School

Parent Fails to Respond or Refuses Consent

- The LEA may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards, including the mediation or the due process hearing procedures, in order to obtain agreement or a ruling that the evaluation may be conducted; and
- The LEA does not violate its obligation under child find duty and evaluation procedures if it declines to pursue the evaluation.

[34 CFR §300.300(a)(3)]

Initial Evaluation:

Student is Home-Schooled or Private-Schooled

Parent Fails to Respond or Refuses Consent

- The LEA may not pursue the initial evaluation by utilizing the procedural safeguards, including the mediation or due process hearing procedures, in order to obtain agreement or a ruling that the evaluation may be conducted; and
- The LEA is not required to consider the child as eligible for services under the proportionate share funding for parentally-placed private school child and private schools frameworks.

[34 CFR §300.300(d)(4)]

Initial Evaluation:

Student is a Ward of the State (not with parent)

The LEA is not required to obtain informed consent from the parent if:

- Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been substituted by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

[34 CFR §300.300(a)(2)]

Informed Consent: Additional Information

- Parental consent for an initial evaluation does not constitute CONSENT FOR SERVICES. *34 CFR §300.300(a)(1)(ii)*
- A separate consent for a psychological evaluation is not needed. *34 CFR § 300.304(c)(4) & (6)*

Reevaluation: Parent Fails to Respond

No consent is required if the LEA can demonstrate

1. Reasonable efforts were made to obtain parental consent; *and* (despite these efforts)
2. The parent failed to respond

[34 CFR §300.300(c)(2)]

Reevaluation:

Students in Private School or Home Schooled

Parent fails to respond or refuses consent:

- The LEA may not pursue the reevaluation by using the procedural safeguards (including the mediation or due process procedures) in order to obtain agreement or a ruling that the evaluation may be conducted; and [34 CFR §300.300(d)(4)(i)]
- The LEA is not required to consider the child as eligible for services under the proportionate share funding for parentally-placed private school child and private schools frameworks. [34 CFR §300.300(d)(4)(ii)]

Reevaluation: Students Enrolled in Public School

Parent Refuses Consent

- The LEA may, but is not required to, pursue the reevaluation by using the procedural safeguards (including the mediation or due process procedures) in order to obtain agreement or a ruling that the evaluation may be conducted; and [34 CFR §300.300(c)(1)(ii)]
- The LEA does not violate its obligation under child find duty and evaluation procedures if it declines to pursue the reevaluation. [34 CFR §300.300(c)(1)(iii)]

Parent Revokes Consent

Revocation of consent for initial evaluation or reevaluation is not retroactive (i.e., it does not negate actions that occurred after consent was given or before consent was revoked.

34 CFR 300.9(c)(2)

Actions Not Considered an Evaluation (thus, no consent required)

- Screening to determine strategies for curriculum implementation;
- Conducting a *Review of Existing Evaluation Data (REED)* as part of an initial evaluation or a reevaluation; and
- Administering a test or other evaluation that is administered to all children.

34 CFR §300.300(d)(1)(ii)

Informed Consent: Special Education Services

Consent for Services

- The LEA must make reasonable efforts to obtain informed consent for the initial provision of services which includes:
 - 1) Detailed records of telephone calls made or attempted and the results of those calls;
 - 2) Copies of correspondence sent to the parents and any responses received; and
 - 3) Detailed records of visits made to the parent 's home or place of employment and the results of those visits.

[34 CFR §300.322(d)]

Consent for Services

- If the parent refuses to respond or refuses to consent to the initial provision of special education and related services, the LEA:
 - May not use the procedural safeguards (including the mediation or the due process procedures) in order to obtain agreement or a ruling that services may be provided to the child;
 - Will not be considered to be in violation of the requirement to make available a free appropriate public education (FAPE) to the child because of the failure to provide the child with the special education and related services for which the LEA requests consent; and
 - Is not required to convene an admission, review and dismissal (ARD) committee meeting or develop an individualized education program (IEP) for the child, as defined in the rule of construction framework.

Consent for Services

- When consent for services is revoked after the initial provision of services [34 CFR §300.300(b)(4)]
 - The revocation must be in writing
 - The LEA
 - May not continue to provide special education and related services to the child
 - Must provide prior written notice before ceasing to provide special education and related service

(continued on next slide...)

Consent for Services

- The LEA (continued)

- May not use the procedural safeguards (including the mediation procedures or the due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child
- Will not be considered to be in violation of the requirement to make a FAPE available to the child because of the failure to provide the child with further special education and related services; and
- Is not required to convene an ARD committee meeting or develop an IEP for further provision of special education and related services for the child, as defined in rule of construction.

Informed Consent: General Education

See Handouts:

1. Informed Consent in the Public Schools: Analysis of Impact of Federal Education Law on Board Rules Governing Informed Consent
2. Informed Consent in the Public Schools

Regulatory Authority of TSBEP

- TSBEP does not regulate school districts; it regulates the use of titles and the “activities” of the individuals licensed by the Board (which includes LSSPs)
- The “activities” performed by LSSPs that are subject to Board regulatory authority are the activities that constitute *psychological services [Board Rule 465.1(10)]*
- Some “activities” performed by LSSPs *may* be considered “educational services” and not “psychological services”

(continued on next slide...)

Educational or Psychological Service?

Questions to help determine the type of activity:

1. Does the activity require the individual to hold a specific license or credential to provide that activity in the public school?
2. Is the activity solely reliant upon specialized education and training in psychology and psychological principles (such as that held by an LSSP)?
3. Is the activity “psychological” in nature (i.e., would it constitute the practice of psychology as defined by TSBEP and the Psychologist’s Licensing Act)?
4. Does the activity involve direct student services (i.e., services that are not under the direct authority of the teacher or another staff member)?

Records and Record Keeping



Records and Record Keeping

465.22, Psychological Records, Test Data and Test Protocols

- (a)(6) – Licensees working in public school settings shall comply with all federal and state laws and regulations relative to the content, maintenance, control, access, retention and destruction of psychological and educational records, test data and test protocols.
- (b)(6) – Records and test data of psychological services rendered by an employee of an agency or organization belong to the employer, unless provided otherwise by law or agreement.

Records and Record Keeping

- 465.22(c), Access to Records and Test Data
 - “Test Data” is defined in 465.1(14) as “testing materials, test booklets, test forms, test protocols and answer sheets used in psychological testing to generate test results and test reports.”
- 465.22(d)(2), Retention of Records
 - In the absence of other applicable law, records must be kept for a minimum of 7 yrs. after termination of services, or until the client turns 21, which ever is longer.

Records and Record Keeping

TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

EXECUTIVE DIRECTOR
Darrel D. Spinks

October 25, 2012

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

Your letter of October 4, 2012 was reviewed by the Texas State Board of Examiners of Psychologists at its meeting on October 25, 2012. You inquired about who should keep the records/protocols after testing is complete in a scenario where a contract LSSP assists a public school with testing. The Board directed that the following response be provided to you.

Pursuant to Board rule 465.22(a)(6), all licensees working in the public school setting must comply with all federal and state laws and regulations relative to the content, maintenance, control, access, retention and destruction of psychological and educational records, test data and test protocols. Federal and state laws and regulations consider test protocols containing identifiable student information as educational records. Therefore, these protocols are the property of the school district and must remain in their possession as part of the student's educational record.

We hope this information is of assistance to you.

Sincerely,



Darrel D. Spinks
Executive Director



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Legal Framework, Applicable Laws

- Under the category of Records, the following “authorities” are listed as governing Records:
- 34 C.F.R. Parts 75, 80, 99 and 300
- 20 U.S.C. §1414, 1415, 1232(g); 26 U.S.C. §152
- 19 T.A.C. Chapter 89, Chapter 101
- Texas Government Code
- Texas Local Government Code
- Texas Education Code
- Texas Family Code

Applicable Laws

- Texas State Library and Archives Commission, Local Schedule SD
- **Retention Schedule for Records of Public School Districts** (42-page document)
 - Part 2: FERPA regulations
 - Part 3: Special Populations and Services
 - Part 7: Discipline and Counseling
- **HANDOUT**

Special Education Records (§3-1)

- Records of each student referred to or receiving special education services, including referral, assessment, and reevaluation reports; enrollment and eligibility forms; admission, review, and dismissal (ARD) and transitional planning committee documentation; individual educational plans (IEP) and individual transitional plans (ITP); parental consent forms for testing and placement; and other records of services required under federal and state regulation.

Bilingual Records (§3-2)

- Records of each student referred to or receiving bilingual or special language services, including recommendations from parents or teachers for bilingual instruction, student interview documentation, notifications to parents, parental consents or denials, language proficiency assessment committee (LPAC) reports, exit reports, follow-up study reports, and other records of services required by state regulation or pertinent to the identification of students for bilingual education or special language programs

504 Records (§3-4)

- Records of each student referred to or receiving services under Section 504, including referral, pre-placement, and reevaluation reports, parental notices; group and impartial hearing deliberations; and other records of services required under Section 504 regulations

Dyslexia Records (§3-5)

- Records of each student referred to or receiving dyslexia program services, including referral and assessment reports; group deliberations; parental notices; and other records of services required under state regulations

Retention of Records

- For the special education, 504 and special program records noted on previous slides:
Retention: Cessation of services +5 years
- Prior to destruction, eligible student or parents must be notified

Part 7: Discipline & Counseling Records

- Records relating to removal to a Disciplinary Alternative Education Program, suspension, or expulsion = 5 years
- Individual student counseling files maintained by school counselors, including parental conference reports. AV (as long as administratively valuable)
- **Retention Note:** It is an exception to the retention period for this record group that guidance and counseling files programmatically associated with participation in special programs as described in Part 3 of this schedule must be retained for the same period as the student records for the special program. In addition, records of counseling in any federally funded special guidance or counseling project or program must be retained for 5 years beyond cessation of counseling services to the student.

19 Texas Administrative Code § 89.1075

- **General Program Requirements and Local District Procedures.**

(a) Each school district shall maintain an eligibility folder for each student receiving special education services, in addition to the student's cumulative record. *The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs).*

34 Code of Federal Regulations § 300.501

- **Opportunity to examine records; parent participation in meetings.**
 - (a) Opportunity to examine records
The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to *inspect and review* all education records with respect to —
 - (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.

34 C.F.R. § 99.20 and 300.618

- **Amendment of the student's education records?**

If a parent or eligible student believes the education records relating to the student contain information that is *inaccurate, misleading, or in violation of the student's rights of privacy or other rights*, he or she may ask the educational agency or institution that maintains the information to amend the record/information.

34 CFR § 99.20 and 300.618

- (c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 300.619.

Key Concepts for LSSPs

- Accuracy
- Comprehensiveness
- Documentation of Progress, Measurable
- Inspect and Review
- Be very careful about destruction – you should know your district's policy about this.
- Review Legal Framework!

Supervision



Supervision

465.2, Supervision

- Board rules governing supervision are very broad, and the nature and amount of supervision necessary is left to the discretion of the supervisor based upon a totality of the circumstances
 - Generally, 465.2 requires that the level of supervision provided be adequate based upon accepted professional standards given the experience, skill and training of the supervisee and the type of psychological services provided
- 465.38(4) and (5) addresses supervision requirements unique to LSSPs

Supervision

The Board is in the process of conducting a review and revision to its rules governing the supervision of those acquiring the supervised experience necessary for licensure, as well as the supervision required for practice by provisionally licensed psychologists, psychological associates, and specialists in school psychology.

This process began in October 2012, and is expected to be completed in fiscal year 2015. The objective is to further clarify the legal requirements for the delivery of psychological services under supervision, and increase the measure of protection afforded the public.

To aid in this process, the Board has engaged the use of an ad hoc advisory committee made up of stakeholders pursuant to Tex. Gov't Code Ann. §2001.031.

How Do I Keep Up-to-Date With Board Rule Changes?

- The Texas Register may be found at

<http://www.sos.state.tx.us/texreg/index.shtml>

The screenshot displays the website for the Texas Secretary of State, Nandita Berry. The page is titled "State Rules and Open Meetings" and provides information about the Texas Register, a weekly publication of state agency rulemaking. The page includes a navigation menu with links to various sections, a search bar, and a sidebar with links to the Texas Register section, Texas Register, Texas Administrative Code, Open Meetings, Subscription Services, Agency Review Plans, Rule Transfers and Agency Name Changes, Liaison General Info, Liaison Login, Other Resources, Frequently Asked Questions (FAQs), and Contact Us. The main content area contains text about the Texas Register, including a description of its purpose and how to access it. A "Points of Interest" sidebar on the right provides additional information, including links to the current issue (September 5, 2014) and previous issues, as well as search and index options.

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??Questions??



“Ask me no questions, and I’ll tell you no lies.” –
Oliver Goldsmith

Overview of the Complaint Process

§501.204 of the Psychologists' Licensing Act,
General Rules Regarding Complaint Investigation
and Disposition:

- Ensure that a complaint is not dismissed without appropriate consideration
- Advise Board and Complainant of dismissal
 - While Board Staff could dismiss complaints under statute, Staff do not. Dismissal occurs by full Board only, following recommendation by Staff or ISC Panel.

Overview of the Complaint Process, cont'd

- Allow each Complainant an opportunity to explain his/her allegations
- Dispose of complaints in a timely manner
- Board to prioritize complaints
 - Priority 1 cases: imminent physical harm to the public
 - Priority 2 cases: sexual misconduct by a licensee
 - Priority 3 cases: violations by applicants
 - Priority 4 cases: all other violations

Overview of the Complaint Process, cont'd

Title 22, Pt. 21, Ch. 469, Complaints and Enforcement, of the TAC

- Rules governing procedure of complaint process
- 469.1, Limitations:
 - General Rule-5 yrs following termination of services or receipt of notice of disciplinary action from other jurisdiction
 - Sexual Misconduct and Records Violation-7 yrs following termination of services or 3 yrs following age of majority, whichever is greater

Overview of the Complaint Process, cont'd

- 469.5, Complaint Disposition:
 - Complaints that do not state a violation on their face, are recommended for dismissal without notice ever being sent to licensee
 - Complaints that if taken as true, state a violation, must be investigated
 - Following investigation, if P.C. exists, the Enforcement Manager and G.C. set the complaint for a hearing at the Board's I.S.C.

Overview of the Complaint Process, cont'd

Title 22, Pt. 21, Ch. 470, Administrative Procedure, of the TAC

- 470.8, Informal Disposition of Complaints:
 - An informal disposition may be made of any complaint by stipulation, agreed settlement, consent order, default, or dismissal in accordance with Tex. Gov't Code Ann. §2001.056.
 - I.S.C. Panel made up of three Board members, the E.D., G.C. Enforcement Manager, and Investigator
 - Complainant and licensee may present evidence and witnesses, separately from one another, at the I.S.C.
- 470.12, Contested Cases Referred to the State Office of Administrative Hearings:
 - In the event a complaint is not disposed of informally, the complaint is referred to the State Office of Administrative Hearings per Board rule 470.12.

Overview of the Complaint Process, cont'd

Summary of Complaint Process:

1. Complaint received by the Board
2. Investigator reviews to determine whether a violation has been stated on face of complaint
 - If not, complaint is referred to SDM and ultimately full Board for dismissal
 - If so, complaint is sent to Investigations
3. Licensee is sent NOV and investigation ensues
 - If no P.C. found, complaint is referred to SDM and ultimately full Board for dismissal
 - If P.C. found, licensee is either sent a proposed agreed order or invited to I.S.C.
4. Informal Settlement Conference
 - If panel recommends sanction, proposed agreed order sent
 - If panel recommends dismissal, complaint is referred to full Board for dismissal
5. Informal vs. Formal Disposition of Complaints
 - Complaints resolved informally following ISC are referred to full Board for final disposition
 - Contested complaints are referred to SOAH for a contested hearing
6. Full Board disposes of complaints resolved informally or following a contested hearing at SOAH
7. Appeal of Board's decision in contested case through the state court system

Overview of the Complaint Process, cont'd

- Types of disciplinary action taken by the Board:
 - Revocation
 - Suspension
 - Probated Suspension(either in whole or in part)
 - Reprimand
 - Administrative Penalty
- Board may also impose other reasonable terms and conditions upon a licensee who receives a sanction.
- §501.158 of the Act, Competency Requirements
 - Board may require, upon reasonable belief, a licensee to submit to a physical or mental exam to determine their fitness to practice.
 - Failure to abide by a Board directive to submit to the examination would constitute a violation of Board rules 461.15 and 465.35(c).

Overview of the Complaint Process, cont'd

The Board's website contains a general discussion of the complaint process at:
<http://tsbep.texas.gov/how-to-file-a-complaint-enforcement>

The screenshot shows a Mozilla Firefox browser window displaying the website tsbep.texas.gov/how-to-file-a-complaint-enforcement. The page features a navigation menu on the left with links such as Home, Información en Español, and How to File a Complaint/ Enforcement. The main content area is titled "How to File a Complaint" and includes a list of links: [How to File a Complaint](#), [How to Obtain a Complaint Form](#), [Instructions for completing the complaint form](#), [How Agency Processes Complaints](#), [Toll-free Complaint Referral System](#), and [Public Information on Investigation of Complaints Brochure](#). The text explains that anyone who believes a professional has violated the Act or rules can file a complaint by submitting a completed Board-approved form. It also provides instructions for completing the form, stating that simple, narrative language should be used to describe the violation. A contact number, (512) 305-7709, is provided for questions. The page footer includes a link for "How to Obtain a Complaint Form".

Informed Consent in Public Schools

The Texas State Board of Examiners of Psychologists (TSBEP) receives many requests for clarification of Board rules as they relate to informed consent in public schools. The TSBEP recognizes the unique difference in the delivery of school psychological services from that of the private sector and would like to offer clarification for LSSPs regarding the issue of informed parental consent. Before this issue is addressed, it is important to note that the TSBEP has no regulatory authority over public schools in Texas. However, since the TSBEP issues the required license for providing school psychological services in public schools (i.e., the LSSP), the TSBEP is required to regulate the "activities" of those individuals practicing with this license. In an attempt to address the regulatory requirements for LSSPs, particularly the requirements for informed parental consent in public schools, the Board offers the following clarifications:

LSSPs assigned to federal support programs (e.g., special education):

- When LSSPs are assigned by a public school to provide psychological services to eligible students in federal programs (such as special education) the federal requirements for these programs, including the requirements for informed parental consent, super cede Board rules.

LSSPs assigned to general education programs:

- When LSSPs are assigned by a public school to work with other populations of students (i.e., general education), the "activities" may or may not be considered "psychological services". Many of these activities are focused on prevention and support services and may not rise to the level of "psychological services", but may be considered "educational services". An example of an educational service might be *consultation*. However, since consultation might also be considered a psychological service, some differentiation is necessary.

Consultation as an *educational service*:

When consultation provided by an LSSP focuses on school-wide or classroom interventions aimed at all students or targeted groups of students as part of a Response to Intervention (RtI) process, this activity might be considered an "educational service".

Consultation as a *psychological service*:

When consultation provided by an LSSP focuses on targeted interventions for a specific student, this activity rises to a level of a direct service that might be considered a “psychological service”. Thus, LSSPs must determine if the activity they are performing rises to the level of “psychological services”, which would require informed parental consent.

When determining if an activity rises to the level of a “psychological service”, LSSPs should consider the questions provided in Figure 1 below:

Figure 1:

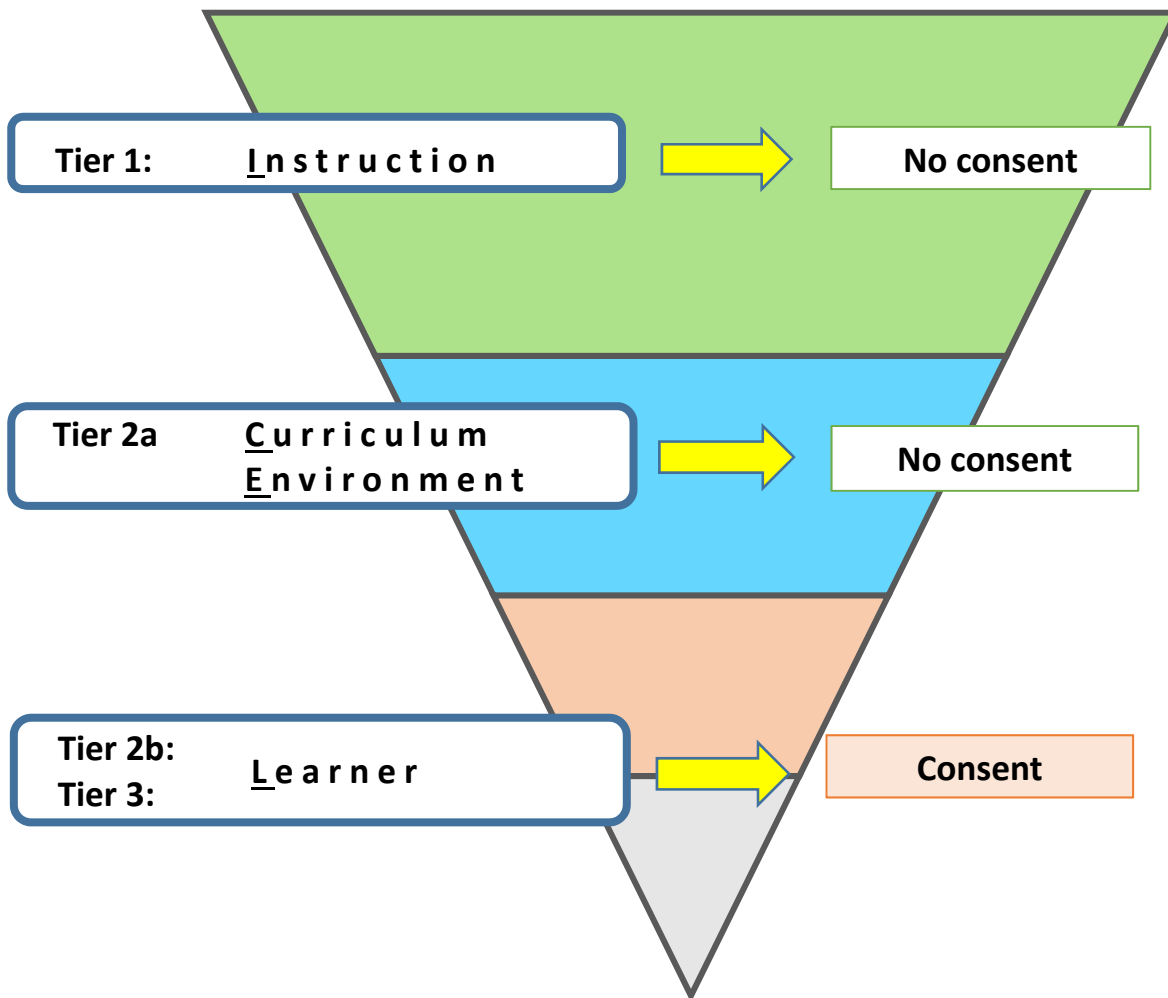
1. Does the activity require the individual to hold a specific license or credential in order to provide that activity in the public school (e.g., counseling, assessment, etc.)?
- 2. Is the activity solely reliant upon specialized education and training in psychology and psychological principles (such as that held by an LSSP)?**
- 3. Would the activity constitute the practice of psychology as defined by TSBEP and the Psychologists’ Licensing Act?**
4. Does the activity include direct student services (i.e., services that are not under the authority of the teacher or other staff member)?

If the answer to any of the above questions is “yes”, then the service should be considered a “psychological service”, which would require informed parental consent.

It should be noted, however, that questions #2 and #3 may be more challenging to answer when performing activities in a prevention-focused model, such as RtI. As a guide, the LSSP might consider other *domains* that could be impacting a student’s performance before providing student-focused consultation. These other *domains* are represented by the ICEL acronym – *Instruction, Curriculum, Environment, Learner*. It is possible that these *domains* can be altered before the LSSP provides consultation focused on the individual student (which would require informed parental consent). Below is an illustrated example (Figure 2) of how the ICEL *domains* might be considered within the context of the RtI process and when consent would be necessary. For example, if the LSSP were consulting at Tier 1, the LSSP might consider instructional issues that could be impacting student performance before the LSSP focused on a concern for a particular student.

Thus, no consent would be necessary since the focus is on instructional strategies and not on an individual student. Likewise, at Tier 2a, the LSSP might consider curriculum and environmental issues that could be impacting student performance *before* the LSSP focused on a concern for a particular student. Again, no consent would be necessary since the focus would be on the curriculum and environmental issues (e.g., classroom routines and structure) and not on an individual student. However, when an LSSP provides consultation at Tier 2b and Tier 3, issues become focused on the learner, or individual student. Thus, informed parental consent would be necessary.

Figure 2: Informed Consent Conceptual Framework within an RtI Model -Addressing ICEL Domains



Summary:

- TSBEP does not have the authority to regulate school districts, it only has the authority to regulate the “activities” of the individuals licensed by the Board (which includes LSSPs).
- The activities of LSSPs assigned to work with eligible students in federally-funded programs, such as special education, *may* be regulated by federal requirements that super cede TSBEP regulations, including requirements for informed parental consent.
- The activities of LSSPs assigned to work with students in general education settings may or may not rise to the level of “psychological services”, but some activities performed by LSSPs may be considered “educational services” and not subject to Board regulation.
- LSSPs should consider the four questions identified in Figure 1 to help differentiate “psycholgoical services” from “educational services”
- When providing consultation within a school’s RtI process, the consultation may not require informed parental consent if it is focused on other *domains* and not on the individual learner/student.

Texas State Board of Examiners of Psychologists

Analysis of Impact of Federal Education Law on Board Rules Governing Informed Consent

The TSBEP has received requests from LSSPs to provide clarification on the issue of informed parental consent in public schools. TSBEP's requirements for obtaining informed consent are provided in Board rule 465.11(a-h). Since these requirements are somewhat different from the requirements contained in federal regulations regarding consent (34 CFR § 300.9) in public schools, some discussion is warranted. The Board directed the following clarification:

Board rule 465.38 (Psychological Services in the Schools) "acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector." In fact, Board rule 465.38(6) states that "in the event of a conflict between state or federal statutes and Board rules, state or federal statutes control." Furthermore, Sec. 501.260(c) of the Psychologists' Licensing Act requires that "the rules of practice for a licensed specialist in school psychology must comply with nationally recognized standards for the practice of school psychology."

Nationally recognized standards have been developed by the National Association of School Psychologists (NASP). These standards, while not adopted by the TSBEP, are recognized as valuable resources for members of the profession. According to these standards, not all services provided by LSSPs will require informed parental consent. The following excerpt from Standard 1.1.1 of NASP's Principles for Professional ethics (PPE) provides:

"School psychologists¹ encourage and promote parental participation in school decisions affecting their children (see Standard II.3.10). However, where school psychologists are members of the school's educational support staff, not all of their services require informed parent consent. It is ethically permissible to provide school-based consultation services regarding a child or adolescent to a student assistance team or teacher without informed parent consent as long as the resulting interventions are under the authority of the teacher and within the scope of typical classroom interventions."

The NASP standard states that informed parental consent is not *ethically* required for the following activities related to individual students:

1. Reviewing an individual student's educational records
2. Conducting classroom observations of a student²
3. Assisting with in-class interventions and progress monitoring of a student
4. Participating in educational screenings conducted as part of a regular program of instruction

¹ The title "school psychologist" in this standard would be applicable to LSSPs in Texas.

² Classroom observations to collect data related to a suspected disability (e.g., using systematic procedures such as time sampling) would require informed consent.

However, the standard further states that informed parental consent is *ethically* required if the consultation about the individual student is likely to be extensive and ongoing or if school actions may result in a significant intrusion on student or family privacy beyond what might be expected in the course of ordinary school activities.

In addition to the national standards that address informed parental consent, there are federal regulations that provide clarification on when informed consent may be required. In 34 CFR §300.302, it states that *“The screening of a student by a teacher or **specialist** to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.”* (Authority: 20 USC 1414(a)(1)(E)). The terms “evaluation” and “screening” are further defined in the *Analysis of Comments and Changes* section of the Federal Register, Volume 71, Number 156 (August 14, 2006). The following definitions are provided:

An “evaluation,” as used in the Act, refers to an individual assessment to determine eligibility for special education and related services, consistent with the evaluation procedures in §§300.301 through 300.311. “Screening,” as used in §300.302 and section 614(a)(1)(E) of the Act, refers to a process that a teacher or specialist uses to determine appropriate instructional strategies. Screening is typically a relatively simple and quick process that can be used with groups of children. Because such screening is not considered an evaluation under §§300.301 through 300.311 to determine eligibility for special education services, parental consent is not required.”

Thus, federal regulations have control over the requirements for informed parental consent in the public schools and the national standards developed by NASP provide further clarification on when consent may or may not be required. LSSPs who participate as members of student assistance teams may not be required to obtain informed parental consent for activities identified in paragraph three above (items #1 - #4), as long as the resulting interventions are:

- under the authority of the teacher; and
- within the scope of typical classroom interventions

LSSPs may be required to obtain informed parental consent for the described activities if:

- the LSSP’s services are likely to be extensive and ongoing; or
- school actions may result in a significant intrusion on student or family privacy beyond what might be expected in the course of ordinary school activities

In short, if the LSSP’s services are consistent with the federal definition of “screening” and do not involve individual assessment practices (e.g., the administration, scoring and interpretation of norm-referenced assessment instruments with individual students) or the collection of extensive student and family information (beyond the typical information collected for school purposes), then, informed parental consent may not be required.

**TEXAS STATE
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EXAMINERS OF
PSYCHOLOGISTS**



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EXECUTIVE DIRECTOR
Darrel D. Spinks

October 25, 2012

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

Your letter of October 4, 2012 was reviewed by the Texas State Board of Examiners of Psychologists at its meeting on October 25, 2012. You inquired about who should keep the records/protocols after testing is complete in a scenario where a contract LSSP assists a public school with testing. The Board directed that the following response be provided to you.

Pursuant to Board rule 465.22(a)(6), all licensees working in the public school setting must comply with all federal and state laws and regulations relative to the content, maintenance, control, access, retention and destruction of psychological and educational records, test data and test protocols. Federal and state laws and regulations consider test protocols containing identifiable student information as educational records. Therefore, these protocols are the property of the school district and must remain in their possession as part of the student's educational record.

We hope this information is of assistance to you.

Sincerely,

A handwritten signature in black ink that reads "Darrel D. Spinks".

Darrel D. Spinks
Executive Director

333 Guadalupe, Suite 2-450, Austin, Texas 78701
(Administration) 512-305-7700 (Enforcement) 512-305-7709 (TDD) 1-800-735-2989
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The Texas State Board of Examiners of Psychologists is an equal opportunity employer and does not discriminate on the basis of race, color, religion, national origin, age, sex, disability, or sexual orientation.

October 04, 2012

TSBEP
333 Guadalupe
Tower 2, Room 450
Austin, Texas 78701

2012 OCT -5 AM 11:09

To: TSBEP Board
From: [REDACTED]
Ref: Records Management

I am a contract LSSP that assists districts when they have a large number of referrals to test. I do not conduct independent evaluations. I need to know who keeps the protocols after I have completed testing. One school district kept the paperwork, but I had another that stated I needed to keep the records because I am contract.

Keeping the protocols does not seem right to me because I did not conduct the evaluations as an independent evaluator for purposes of a second interpretation. I am helping the district with their testing load.

Please let me know who keeps the records/protocols after testing is completed. I need to make sure I follow the appropriate guidelines.

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3225-03	PROTEST OF RECORD STATEMENTS	Statements by parents or eligible students commenting on contested information in a student record, or stating why they disagree with a district's decision not to amend a record, or both.	For as long as the record containing the contested information is maintained.	By regulation - 34 CFR 99.21(c) (1).
SD3225-04	RECORD AMENDMENT REQUESTS AND RELATED DOCUMENTATION	Requests from parents or eligible students to amend student records, notices by the district of denial or consent to amendments, requests for hearings on denied requests, hearing notices, and written decisions by hearing examiners.	2 years.	

PART 3: RECORDS OF SPECIAL POPULATIONS AND SERVICES

Retention Note: The term "cessation of services" used in the retention periods set in sections 3-1 through 3-5 with reference to records created on students who are referred to but not subsequently enrolled in the special program described, means the date determination against enrollment is made.

SECTION 3-1: SPECIAL EDUCATION PROGRAM RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3250-01	ENROLLMENT LISTS AND ROSTERS		5 years.	See retentionnote (b) on page 7.
*SD3250-02	STUDENT RECORDS	Records of each student referred to or receiving special education services, including referral, assessment, and reevaluation reports; enrollment and eligibility forms; admission, review, and dismissal (ARD) and transitional planning committee documentation; individual educational plans (IEP) and individual transitional plans (ITP); parental consent forms for testing and placement; and other records of services required under federal and state regulation.	Cessation of services + 5 years, <i>but see retention note (a).</i>	<p>Retention Notes: a) It is an exception to the retention period given for this record group, that the following information must be retained PERMANENTLY in some form on each student in grades 9-12 participating in a special education program: name, last known address, student ID or Social Security number, grades, classes attended, and grade level and year completed. If an academic achievement record [see item number SD3200-01 (a)] is created for the student and maintained among those for students in the regular population, it is not necessary for special education records custodians to maintain the prescribed information beyond 5 years after the cessation of services, provided that it is contained in the Academic Achievement Record.</p> <p>b) Prior to the destruction of any records in this record group, the eligible student or the parents of the student, as applicable, must be notified in accordance with federal regulation.</p> <p>(c) See retention note (b) on page 7.</p>

SECTION 3-2: BILINGUAL AND SPECIAL LANGUAGE PROGRAM RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3250-08	STUDENT RECORDS	Records of each student referred to or receiving bilingual or special language services, including recommendations from parents or teachers for bilingual instruction, student interview documentation, notifications to parents, parental consents or denials, language proficiency assessment committee (LPAC) reports, exit reports, follow-up study reports, and other records of services required by state regulation or pertinent to the identification of students for bilingual education or special language programs.	Cessation of services + 5 years.	See retention note (b) on page 7.

SECTION 3-3: GIFTED/TALENTED PROGRAM RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3250-16	STUDENT RECORDS	Records of each student referred to or receiving services in a gifted/talented program, including nomination and observation documentation, testing results, parental consents, committee reports and recommendations, and other records of services required under state regulation or pertinent to the identification of students for participation in gifted/talented programs.	Cessation of services + 5 years.	

SECTION 3-4: SECTION 504 PROGRAM RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3250-20	STUDENT RECORDS	Records of each student referred to or receiving services under Section 504, including referral, pre-placement, and reevaluation reports, parental notices; group and impartial hearing deliberations; and other records of services required under Section 504 regulations.	Cessation of services + 5 years.	See retention note (b) on page 7.

SECTION 3-5: DYSLEXIA PROGRAM RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3250-26	ENROLLMENT LISTS AND ROSTERS		Cessation of services + 5 years.	
SD3250-27	STUDENT RECORDS	Records of each student referred to or receiving dyslexia program services, including referral and assessment reports; group deliberations; parental notices; and other records of services required under state regulation.	Cessation of services + 5 years.	Retention Note: This record group does not include the special education records of students with dyslexia or related disorders receiving special education services. See item number SD3250-02.

SECTION 3-6: MIGRANT STUDENT RECORD TRANSFER SYSTEM (MSRTS) RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3250-33	DAILY MSRTS LOGS		5 years.	See retention note (b) on page 7.
*SD3250-34	ENROLLMENT AND WITHDRAWAL REPORTS		5 years.	See retention note (b) on page 7.
*SD3250-35	MONITORING DOCUMENTATION	Summaries of eligibility verifications and validations, parent/guardian questionnaires, copies of validated certificates of eligibility, and copies of any correspondence from a school district to a regional educational service center requesting deletion of ineligible children from the MSRTS.	5 years.	See retention note (b) on page 7.
*SD3250-36	RECRUITING RECORDS	Recruiter logs, questionnaires, and similar records documenting efforts of recruiters to identify and enroll currently and formerly migrant students.	5 years.	See retention note (b) on page 7.
SD3250-37	STUDENT RECORDS			
*SD3250-37a	STUDENT RECORDS	Certificates of eligibility.	End of eligibility + 5 years.	Retention Note: Eligibility ends 6 years from the qualifying arrival date (QAD) as it appears on the certificate of eligibility. The qualifying arrival date was referred to as the last qualifying move (LQM) on certificates of eligibility prior to 1991. See retention note (b) on page 7.
SD3250-37b	STUDENT RECORDS	Copies of most current educational and health records or forms providing educational and health updates, information from which is transmittable to regional educational service centers for data entry.	US.	Retention Note: Program regulations require that an active file be maintained on each migrant child identified for the current school year in a project district or cooperative project district. The file must include, in addition to the certificate of eligibility, a copy of each of the most current educational and health records of the student. Although the minimum retention period is set as US, superseded records should not be disposed of until notification that all required data from the superseded records has been accurately reflected in MSRTS records in Little Rock. If original student educational and health records, rather than copies, are the source for MSRTS data, the

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3250-37c	STUDENT RECORDS	Data verification reports from the MSRTS center in Little Rock.	AV.	records must be retained for the periods established in Parts 1 and 5 of this schedule.

SECTION 3-7: OTHER SPECIAL POPULATIONS RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3250-43	FEDERAL IMPACT AID SURVEY FORMS	Locally designed form used to survey parents to determine eligibility for federal impact aid under P.L. 81-874.		
*SD3250-43a	FEDERAL IMPACT AID SURVEY FORMS	Survey forms of students determined to be eligible and used to complete district applications for school assistance in federally affected areas.	5 years.	See retention note (b) on page 7.
SD3250-43b	FEDERAL IMPACT AID SURVEY FORMS	Survey forms of students determined not to be eligible.	AV.	
*SD3250-44	McKINNEY HOMELESS ASSISTANCE ACT STUDENT RECORD		5 years.	See retention note (b) on page 7.

PART 4: ATTENDANCE RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3275-01	ATTENDANCE CONTROL DOCUMENTATION			
SD3275-01a	ATTENDANCE CONTROL DOCUMENTATION	Correspondence to and from parents or guardians concerning absences and tardiness.	AV.	
SD3275-01b	ATTENDANCE CONTROL DOCUMENTATION	Correspondence with law enforcement or other agencies concerning violations of the compulsory school attendance law.	2 years.	



TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

LOCAL SCHEDULE SD (Revised Second Edition)

RETENTION SCHEDULE FOR RECORDS OF PUBLIC SCHOOL DISTRICTS

This schedule establishes mandatory minimum retention periods for records that are associated with Public School Districts. No local government office may dispose of a record listed in this schedule prior to the expiration of its retention period. A records control schedule of a local government may not set a retention period that is less than that established for the record in this schedule. Original paper records may be disposed of prior to the expiration of their minimum retention periods if they have been microfilmed or electronically stored pursuant to the provisions of the Local Government Code, Chapter 204 or Chapter 205, as applicable, and rules of the Texas State Library and Archives Commission adopted under those chapters. Actual disposal of such records by a local government is subject to the policies and procedures of its records management program.

Destruction of local government records contrary to the provisions of the Local Government Records Act of 1989 and administrative rules adopted under it, including this schedule, is a Class A misdemeanor and, under certain circumstances, a third degree felony (Penal Code, Section 37.10). Anyone destroying local government records without legal authorization may also be subject to criminal penalties and fines under the Public Information Act (Government Code, Chapter 552).

INTRODUCTION

The Government Code, Section 441.158, provides that the Texas State Library and Archives Commission shall issue records retention schedules for each type of local government, including a schedule for records common to all types of local governments. The law provides further that each schedule must state the retention period prescribed by federal or state law, rule of court, or regulation for a record for which a period is prescribed; and prescribe retention periods for all other records, which periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the commission.

Local Schedule SD sets mandatory minimum retention periods for records series (identified in the Records Series Title column) commonly found in local education agencies other than state colleges and universities and junior colleges. Except as noted below, it is for the use of public school districts of all types, regional educational service centers, educational cooperatives for special education or other purposes, rehabilitation districts, county industrial training school districts, and county vocational districts.

Local Schedule SD is also for the use of **active** offices of county superintendents of schools and county departments of education. The retention periods for the records of **abolished** offices of county superintendents of schools, some of which may be in the custody of local education agencies, are given in Part 6 of Local Schedule CC (Records of County Clerks).

This schedule should not be used by the following local education agencies, which are governed by state agencies or state boards, except to the extent permitted by the State and Local Records Management Division of the Texas State Library and Archives Commission: Texas School for the Blind, Texas School for the Deaf, University of North Texas Academy of Mathematics and Science, and any schools governed by state agencies such as Texas Youth Commission, Department of Aging and Disability Services, etc.).

The retention period for a record applies to the record regardless of the medium in which it is maintained. Some records listed in this schedule are maintained electronically in many offices, but electronically stored data used to create in any manner a record or the functional equivalent of a record as described in this schedule must be retained, along with the hardware and software necessary to access the data, for the retention period assigned to the record, unless backup copies of the data generated from electronic storage are retained in paper or on microfilm for the retention period. This includes electronic mail (e-mail), websites and electronic publications.

Unless otherwise stated, the retention period for a record is in calendar years from the date of its creation. The retention period, again unless otherwise noted, applies only to an official record as distinct from convenience or working copies created for informational purposes. Where several copies are maintained, each local government should decide which shall be the official record and in which of its divisions or departments it will be maintained. Local governments in their records management programs should establish policies and

procedures to provide for the systematic disposal of copies.

Section 202.002, Local Government Code, forbids the destruction of a local government record at the expiration of its retention period if the subject matter of the record is known by the custodian to be in litigation or if the record is subject to a pending request for disclosure under the Public Information Act. In addition, a record of a school district may not be destroyed if there is an outstanding request to inspect and review the record under the federal Family Educational Rights and Privacy Act (FERPA). A record of a school district may also not be destroyed, although its retention period has expired, if it is subject to a pending audit by a federal or state grantor or subgrantor agency or if questions remain unresolved from a conducted audit until audit finds are resolved.

A local government record whose retention period has expired may not be destroyed if any litigation, claim, negotiation, audit, public information request, administrative review, or other action involving the record is initiated; its destruction shall not occur until the completion of the action and the resolution of all issues that arise from it.

A local government record whose retention period expires during any litigation, claim, negotiation, audit, public information request, administrative review, or other action involving the record may not be destroyed until the completion of the action and the resolution of all issues that arise from it.

If a record described in this schedule is maintained in a bound volume of a type in which pages are not designed to be removed, the retention period, unless otherwise stated, dates from the date of the last entry.

If two or more records listed in this schedule are maintained together by a local government and are not severable, the combined record must be retained for the length of time of the component with the longest retention period. A record whose minimum retention period on this schedule has not yet expired and is **less than permanent** may be disposed of if it has been so badly damaged by fire, water, or insect or rodent infestation as to render it unreadable, or if portions of the information in the record have been so thoroughly destroyed that remaining portions are unintelligible. If the retention period for the record is **permanent** in this schedule, authority to dispose of the damaged record must be obtained from the Director and Librarian of the Texas State Library and Archives Commission. A Request for Authority to Destroy Unscheduled Records (Form SLR 501) should be used for this purpose.

Certain records listed in this schedule are assigned the retention period of AV (as long as administratively valuable). This retention period affords local governments the maximum amount of discretion in determining a specific retention period for the record described.

Use of Asterisk (*)

The use of an asterisk (*) in this revised second edition of Local Schedule SD indicates that the record is either new to the second edition, the retention period for the record has been changed for the record, or substantive amendments have been made to the description of or remarks concerning the record. An asterisk is not used to indicate minor amendments to grammar or punctuation.

ABBREVIATIONS USED IN THIS SCHEDULE

AV - As long as administratively valuable
CE - Calendar year end
CFR - Code of Federal Regulations
FE - Fiscal year end
TAC - Texas Administrative Code
US - Until Superseded
LA – Life of Asset

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RECORDS OF PUBLIC SCHOOL DISTRICTS

Retention Notes: a) OTHER SCHEDULES - This schedule should be used by public school districts, regional educational service centers, and other local education agencies (as defined on page 2) in conjunction with Local Schedule GR (Records Common to All Governments) and Local Schedule TX (Records of Property Taxation). In particular, many records maintained by public school districts are includable among the general administrative, financial, and personnel record series in Local Schedule GR, especially those relating to grant allocations, funding, and reporting. In any instances of conflict between retention periods established in this schedule and in Local Schedules GR or TX, the retention periods in this schedule shall prevail.

b) GRANT RECORDS - The 5-year retention period frequently established for records of school districts in this schedule and Local Schedule GR derives from federal requirements in 34 CFR 80.42(a)(1) and (c), which declares the following: “Starting date of retention period—(1) General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year’s records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.” These requirements involve the retention of financial and programmatic records, including supporting documents, statistical reports, and other records pertinent to program regulations or the grant agreement relating to projects or programs funded by the U.S. Department of Education through subgrants using federal funds from the Texas Education Agency.

These federal regulations require that all records of the types mentioned must be available for audit for 3 years after the date of submission of the single or last expenditure report by the Texas Education Agency as subgrantor, **not** by the school district. Because final expenditure reports are submitted by the Texas Education Agency **after** all reports from districts are received, a 5-year retention period for many records of school districts is necessary to satisfy this requirement adequately.

If an audit is pending in which an expenditure or the eligibility of a student to participate in a federal program is questioned, then all records affecting the outcome of the audit must be retained until the audit is settled.

Copies of reports or records submitted to the Texas Education Agency must be retained by school districts in accordance with this schedule.

For additional information on grant records, see pages 15 and 16 of Local Schedule GR.

PART 1: STUDENT ACADEMIC RECORDS

Retention Note: Any records in this part (e.g., enrollment cards) created for students who enroll or register in a school district, but who do not subsequently attend classes need be retained only as long as administratively valuable.

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3200-01	ACADEMIC RECORDS			
SD3200-01a	ACADEMIC RECORDS	The academic achievement record or its equivalent used to record academic achievement in grades 9-12.	PERMANENT.	
*SD3200-01b	ACADEMIC RECORDS	Cumulative record of achievement in grades Pre-K through 8.	Date of withdrawal + 5 years.	
SD3200-02	BIRTH DATE DOCUMENTATION	Copies of birth certificates, church records, bible records, passport or immigration records, or other documents used to establish a date of birth.	AV.	
SD3200-03	CUSTODY DOCUMENTS	Copies of court instruments relating to adoption, guardianship, or custody.	Until the student is 18.	Retention Note: It is an exception to the retention period given that a court order superseded by a subsequent order (e.g., a change in guardianship) need be retained only as long as administratively valuable.
*SD3200-04	ENROLLMENT OR REGISTRATION FORMS		Date of withdrawal + 5 years.	See retention note (b) on page 7.
*SD3200-05	HOME LANGUAGE SURVEYS		Date of withdrawal + 5 years.	See retention note (b) on page 7.
SD3200-06	MISSING CHILD PREVENTION AND IDENTIFICATION PROGRAM RECORDS			

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3200-06a	MISSING CHILD PREVENTION AND IDENTIFICATION PROGRAM RECORDS	Fingerprint cards.	Date of withdrawal.	
SD3200-06b	MISSING CHILD PREVENTION AND IDENTIFICATION PROGRAM RECORDS	Photographs.	US, or 3 years, whichever is sooner.	Retention Note: A Texas Education Agency regulation (19 TAC 61.1041) requires that at withdrawal a student's fingerprints and photograph taken as part of a Missing Child Prevention and Identification Program be returned to the student's parent or guardian. If a district is unable to return the fingerprints and photograph, they must be destroyed.
SD3200-06c	MISSING CHILD PREVENTION AND IDENTIFICATION PROGRAM RECORDS	Parental consents.	AV after fingerprints and/or photograph taken.	
SD3200-07	PARENTAL PERMISSION RECORDS	Parental consents for a student to engage in school activities or programs, <i>except</i> consents noted elsewhere in this schedule.	Until cessation of activity for which consent granted + 2 years; or, if annually renewable, US + 2 years.	Retention Note: If a student is involved in an accident while engaged in an activity for which parental consent was granted, the consent form or statement must be retained for the same period as Accident Reports (see item number SD3300-01).
SD3200-08	STUDENT WITHDRAWAL/RECORD TRANSFER FORM		AV.	Applies to both sending and receiving districts.
SD3200-09	TEST AND ACADEMIC MEASUREMENT REPORTS			

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3200-09a	TEST AND ACADEMIC MEASUREMENT REPORTS	Reports of results of TAAS, TEAMS, TABS, TAKS, STAAR, and other standardized state and national achievement, mental abilities, and aptitude tests reported by score, percentile rank, etc.	1 year after recording of data in the academic achievement or cumulative record.	Retention Note: If testing results of the types described are not recorded on the academic achievement or cumulative record (see item number SD3200-01) either manually or by affixing labels, the results must be retained PERMANENTLY for grades 9-12 and until the date of withdrawal + 5 years for all other grades.
*SD3200-09b	TEST AND ACADEMIC MEASUREMENT REPORTS	Reports of results of other tests or measurements (e.g., reading/mathematics profiles).	Date of withdrawal + 5 years.	See retention note (b) on page 7.
SD3200-09c	TEST AND ACADEMIC MEASUREMENT REPORTS	District summaries on a group basis of the results of standardized testing.	3 years.	
*SD3200-10	ETHNICITY FORMS	Student and Staff Ethnicity and Race Data Questionnaire	3 years or until litigation, claim, or audit is complete, whichever is later.	By Regulation - 34 CFR 74.53; 80.42; 71 FR 44866.
*SD3200-11	STATEMENT OF ASSURANCE FOR STUDENTS WHO ARE VICTIMS OF A VIOLENT CRIMINAL ACT	School Safety Choice Option (SSCO) Transfer Policy Statement of Assurance includes date the incident occurred, incident number, identity of perpetrator, if known, etc.	5 years.	Texas Education Agency Guidance Relating to a Student Who Is a Victim of a Violent Criminal Offense, Section III, (d).

PART 2: FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3225-01	ACCESS POLICIES	Written policies and procedures demonstrating how a district meets the requirements of the Family Educational Rights and Privacy Act of 1974, as amended, and federal rules adopted under the act.	US.	34 CFR 99.32.
SD3225-02	ACCESS TO INFORMATION, RECORDS OF	Record of each request for access to and each disclosure of personally identifiable information from the educational records of a student.		
SD3225-02a	ACCESS TO INFORMATION, RECORDS OF	Documentation of requests from and disclosures to the parent or eligible student, to an official of the district for what the district has determined are legitimate educational interests, to a party with written consent from the parent or eligible student, or to a party seeking directory information.	2 years.	
SD3225-02b	ACCESS TO INFORMATION, RECORDS OF	Documentation of requests from and disclosures to any party not included in (a).	PERMANENT.	By regulation - 34 CFR 99.32(a)(2).
SD3225-02c	ACCESS TO INFORMATION, RECORDS OF	Written consents from the parent or eligible student for information disclosure. (1) From the parent. (2) From the eligible student.	Until the student is 18. PERMANENT.	Retention Note: It is an exception to the retention periods given for parental and eligible student consents that if the only records covered by a consent are those associated with enrollment by a student in grades Pre-K through 8, the consents may be disposed of at the same time the records are destroyed.
SD3225-02d	ACCESS TO INFORMATION, RECORDS OF	Written refusals from the parent or eligible student to the disclosure of directory information. (1) If refusals are valid as long as the student is in attendance. (2) If refusals must be renewed each academic year.	AV after date of withdrawal. US or AV after date of withdrawal,	

Record Number	Record Title	Record Description	Retention Period	Remarks
			as applicable.	
SD3225-03	PROTEST OF RECORD STATEMENTS	Statements by parents or eligible students commenting on contested information in a student record, or stating why they disagree with a district's decision not to amend a record, or both.	For as long as the record containing the contested information is maintained.	By regulation - 34 CFR 99.21(c)(1).
SD3225-04	RECORD AMENDMENT REQUESTS AND RELATED DOCUMENTATION	Requests from parents or eligible students to amend student records, notices by the district of denial or consent to amendments, requests for hearings on denied requests, hearing notices, and written decisions by hearing examiners.	2 years.	

PART 3: RECORDS OF SPECIAL POPULATIONS AND SERVICES

Retention Note: The term "cessation of services" used in the retention periods set in sections 3-1 through 3-5 with reference to records created on students who are referred to but not subsequently enrolled in the special program described, means the date determination against enrollment is made.

SECTION 3-1: SPECIAL EDUCATION PROGRAM RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3250-01	ENROLLMENT LISTS AND ROSTERS		5 years.	See retention note (b) on page 7.
*SD3250-02	STUDENT RECORDS	Records of each student referred to or receiving special education services, including referral, assessment, and reevaluation reports; enrollment and eligibility forms; admission, review, and dismissal (ARD) and transitional planning committee documentation; individual educational plans (IEP) and individual transitional plans (ITP); parental consent forms for testing and placement; and other records of services required under federal and state regulation.	Cessation of services + 5 years, <i>but see retention note (a).</i>	<p>Retention Notes: a) It is an exception to the retention period given for this record group, that the following information must be retained PERMANENTLY in some form on each student in grades 9-12 participating in a special education program: name, last known address, student ID or Social Security number, grades, classes attended, and grade level and year completed. If an academic achievement record [see item number SD3200-01(a)] is created for the student and maintained among those for students in the regular population, it is not necessary for special education records custodians to maintain the prescribed information beyond 5 years after the cessation of services, provided that it is contained in the Academic Achievement Record.</p> <p>b) Prior to the destruction of any records in this record group, the</p>

Record Number	Record Title	Record Description	Retention Period	Remarks
				eligible student or the parents of the student, as applicable, must be notified in accordance with federal regulation. (c) See retention note (b) on page 7.

SECTION 3-2: BILINGUAL AND SPECIAL LANGUAGE PROGRAM RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3250-08	STUDENT RECORDS	Records of each student referred to or receiving bilingual or special language services, including recommendations from parents or teachers for bilingual instruction, student interview documentation, notifications to parents, parental consents or denials, language proficiency assessment committee (LPAC) reports, exit reports, follow-up study reports, and other records of services required by state regulation or pertinent to the identification of students for bilingual education or special language programs.	Cessation of services + 5 years.	See retention note (b) on page 7.

SECTION 3-3: GIFTED/TALENTED PROGRAM RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3250-16	STUDENT RECORDS	Records of each student referred to or receiving services in a gifted/talented program, including nomination and observation documentation, testing results, parental consents, committee reports and recommendations, and other records of services required under state regulation or pertinent to the identification of students for participation in gifted/talented programs.	Cessation of services + 5 years.	

SECTION 3-4: SECTION 504 PROGRAM RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3250-20	STUDENT RECORDS	Records of each student referred to or receiving services under Section 504, including referral, pre-placement, and reevaluation reports, parental notices; group and impartial hearing deliberations; and other records of services required under Section 504 regulations.	Cessation of services + 5 years.	See retention note (b) on page 7.

SECTION 3-5: DYSLEXIA PROGRAM RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3250-26	ENROLLMENT LISTS AND ROSTERS		Cessation of services + 5 years.	
SD3250-27	STUDENT RECORDS	Records of each student referred to or receiving dyslexia program services, including referral and assessment reports; group deliberations; parental notices; and	Cessation of services + 5 years.	Retention Note: This record group does not include the special education records of students with dyslexia or related disorders receiving special

Record Number	Record Title	Record Description	Retention Period	Remarks
		other records of services required under state regulation.		education services. See item number SD3250-02.

SECTION 3-6: MIGRANT STUDENT RECORD TRANSFER SYSTEM (MSRTS) RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3250-33	DAILY MSRTS LOGS		5 years.	See retention note (b) on page 7.
*SD3250-34	ENROLLMENT AND WITHDRAWAL REPORTS		5 years.	See retention note (b) on page 7.
*SD3250-35	MONITORING DOCUMENTATION	Summaries of eligibility verifications and validations, parent/guardian questionnaires, copies of validated certificates of eligibility, and copies of any correspondence from a school district to a regional educational service center requesting deletion of ineligible children from the MSRTS.	5 years.	See retention note (b) on page 7.
*SD3250-36	RECRUITING RECORDS	Recruiter logs, questionnaires, and similar records documenting efforts of recruiters to identify and enroll currently and formerly migrant students.	5 years.	See retention note (b) on page 7.
SD3250-37	STUDENT RECORDS			
*SD3250-37a	STUDENT RECORDS	Certificates of eligibility.	End of eligibility + 5 years.	Retention Note: Eligibility ends 6 years from the qualifying arrival date (QAD) as it appears on the certificate of eligibility. The qualifying arrival date was referred to as the last qualifying move (LQM) on certificates of eligibility prior to 1991. See retention note (b) on page 7.
SD3250-37b	STUDENT RECORDS	Copies of most current educational and health records or forms providing	US.	Retention Note: Program regulations require that an active file

Record Number	Record Title	Record Description	Retention Period	Remarks
		educational and health updates, information from which is transmittable to regional educational service centers for data entry.		be maintained on each migrant child identified for the current school year in a project district or cooperative project district. The file must include, in addition to the certificate of eligibility, a copy of each of the most current educational and health records of the student. Although the minimum retention period is set as US, superseded records should not be disposed of until notification that all required data from the superseded records has been accurately reflected in MSRTS records in Little Rock. If original student educational and health records, rather than copies, are the source for MSRTS data, the records must be retained for the periods established in Parts 1 and 5 of this schedule.
SD3250-37c	STUDENT RECORDS	Data verification reports from the MSRTS center in Little Rock.	AV.	

SECTION 3-7: OTHER SPECIAL POPULATIONS RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3250-43	FEDERAL IMPACT AID SURVEY FORMS	Locally designed form used to survey parents to determine eligibility for federal impact aid under P.L. 81-874.		
*SD3250-43a	FEDERAL IMPACT AID SURVEY FORMS	Survey forms of students determined to be eligible and used to complete district applications for school assistance in federally affected areas.	5 years.	See retention note (b) on page 7.
SD3250-43b	FEDERAL IMPACT AID SURVEY FORMS	Survey forms of students determined not to be eligible.	AV.	
*SD3250-44	McKINNEY HOMELESS ASSISTANCE ACT STUDENT RECORD		5 years.	See retention note (b) on page 7.

PART 4: ATTENDANCE RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3275-01	ATTENDANCE CONTROL DOCUMENTATION			
SD3275-01a	ATTENDANCE CONTROL DOCUMENTATION	Correspondence to and from parents or guardians concerning absences and tardiness.	AV.	
SD3275-01b	ATTENDANCE CONTROL DOCUMENTATION	Correspondence with law enforcement or other agencies concerning violations of the compulsory school attendance law, including all associated documentation.	2 years.	
SD3275-01c	ATTENDANCE CONTROL DOCUMENTATION	Attendance officer's logs and reports of parents or guardians visited.	2 years.	
*SD3275-01d	ATTENDANCE CONTROL DOCUMENTATION	Documents relating to student attendance hearings and appeals	Date of decision + 2 years.	
SD3275-02	ATTENDANCE REPORTS			
SD3275-02a	ATTENDANCE REPORTS	Copies of attendance and enrollment reports submitted to the Texas Education Agency, including those term and period reports	5 years.	

Record Number	Record Title	Record Description	Retention Period	Remarks
		submitted to the superintendent by principals for the purposes of compiling state-mandated reports.		
SD3275-02b	ATTENDANCE REPORTS	Daily Registers of Pupil Attendance (or an equivalent locally-designed record) and similar daily or periodic reports used to document the attendance and absence of students.	5 years.	
SD3275-03	SCHOLASTIC CENSUS RECORDS	Census cards or rolls of school age children residing in the county or district.	PERMANENT, <i>but see retention note.</i>	Retention Note: The Local Government Records Act (Section 201.008, Local Government Code) transferred custody of all scholastic census records still in the possession of elected county officials to the custody of the Texas State Library and Archives Commission for preservation as historical records. Some census documents, which were compiled by the office of the county superintendent of schools from 1905 through 1969, may have passed into the custody of independent school districts. These census cards and rolls must be retained PERMANENTLY, as well as those from the state-mandated 1970 enumeration, which was conducted by school districts. Although the Local Government Records Act did not automatically transfer any scholastic census records in the custody of school districts to the Texas State Library and Archives Commission, districts may offer to transfer census records to the commission for preservation. Census cards or rolls compiled by school districts in 1971 and after for local administrative reasons need be retained only as long as

Record Number	Record Title	Record Description	Retention Period	Remarks
				administratively valuable.
*SD3275-04	TRANSFER, APPLICATIONS FOR, AND ASSOCIATED REPORTS	Documentation concerning the transfer and enrollment of students in districts other than those in which they are a resident.	5 years.	See retention note (b) on page 7.

PART 5: STUDENT HEALTH RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3300-01	ACCIDENT REPORTS	Reports of accidents to students.	5 years; or 2 years after the student reaches the age of 18, whichever later.	
SD3300-02	ACTIVITY AND STATISTICAL REPORTS	Daily and other periodic activity and statistical reports, <i>except</i> those noted elsewhere in this section, compiled by school nurses or nurse extenders relating to student health matters.	3 years.	
SD3300-03	CORRESPONDENCE WITH PARENTS OR GUARDIANS	Correspondence to and from parents or guardians concerning student health matters.	2 years.	
SD3300-04	CUMULATIVE HEALTH CARD OR RECORD		Date of withdrawal + 2 years.	
SD3300-05	EMERGENCY CARDS	Card or other form of record providing information on whom to contact in case of accident or illness to a student.	US or until student ceases enrollment, whichever sooner.	
SD3300-06	EXCLUSION AND VERIFICATION DOCUMENTATION	Affidavits or similar documents seeking the exclusion of students from participation in immunization or other health care programs for medical or religious reasons, or verifications of previous illness or health testing.		
SD3300-06a	EXCLUSION AND VERIFICATION DOCUMENTATION	Exclusion documentation. (1) Affidavits of medical contraindications.	1 year, or date of withdrawal + 2	

Record Number	Record Title	Record Description	Retention Period	Remarks
		(2) Affidavits of religious conflicts.	years if contraindication is lifelong. Date of withdrawal + 2 years	
SD3300-06b	EXCLUSION AND VERIFICATION DOCUMENTATION	Verifications of mumps or measles illness.	Date of withdrawal + 2 years.	Retention Note: It is an exception to the retention periods set for subsections (b) and (c) of this group that if data from the verification documentation is recorded on the cumulative health card (see item number SD3300-04), the documentation need be retained only as long as administratively valuable after recording.
SD3300-06c	EXCLUSION AND VERIFICATION DOCUMENTATION	Verifications from physicians or health agencies of prior testing of sight, hearing, and spinal curvature.	Date of withdrawal + 2 years.	
SD3300-07	HEALTH SCREENING DOCUMENTATION			
SD3300-07a	HEALTH SCREENING DOCUMENTATION	Worksheets, checklists, examination forms, and similar documents used in student health screening.	AV after entry of information on Cumulative Health Record.	
*SD3300-07b	HEALTH SCREENING DOCUMENTATION	Vision, hearing, and spinal screening reports submitted to the Texas Department of State Health Services.	2 years.	
SD3300-08	IMMUNIZATION RECORDS			
SD3300-08a	IMMUNIZATION RECORDS	Immunization record (either separate or in combination with a cumulative health card as in item number 3300-04).	Date of withdrawal + 2 years.	Retention Note: It is an exception to the retention period given for the immunization record that if immunizations are performed by school nurses or other medical technicians employed by the school district, the immunization record and parental consent forms for the administration of vaccine must be retained by the school until the person receiving the vaccine is 20 years old or 10 years after the consent form was signed, whichever later.

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3300-08b	IMMUNIZATION RECORDS	Annual reports of immunization status.	3 years.	
SD3300-09	PHYSICIAN REFERRALS AND REPORTS	Copies of referrals to physicians, including any attached screening worksheets, and reports from physicians on referred health matters.	AV after entry of information on Cumulative Health Record.	
SD3300-10	REPORTS TO ENFORCEMENT AGENCIES	Copies of reports on child abuse or neglect, communicable disease, dog bites, drug offenses, missing children, or sexually transmitted disease submitted to the Texas Department of State Health Services, the Texas Health and Human Services Commission, or local law enforcement and animal control agencies.	2 years.	
SD3300-11	SPECIAL HEALTH CARE RECORDS			
SD3300-11a	SPECIAL HEALTH CARE RECORDS	Logs or reports of medications or treatment administered to students on a group or individual basis.	3 years.	
SD3300-11b	SPECIAL HEALTH CARE RECORDS	Parent's requests and physician's authorizations for specialized health care.	End of validity of request or authorization + 2 years.	

PART 6: INSTRUCTION AND GRADE REPORTING RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3325-01	CURRICULUM GUIDES		US.	
SD3325-02	GRADE BOOKS		1 year after entry of grades in the academic achievement or cumulative record.	Retention Note: If grades are entered in the academic achievement record or the cumulative record (see item number SD3200-01) from reports compiled from grade books, these reports must

Record Number	Record Title	Record Description	Retention Period	Remarks
				be retained for the same minimum period as grade books.
SD3325-03	GRADE REPORTS	Periodic grade reports created for internal administrative purposes, providing data on grades or grade rankings by class, teacher, campus, course, population, ethnic breakdown, etc. <i>except</i> reports of the type noted in item number 3325-05.	AV.	
SD3325-04	LESSON PLANS		AV.	
SD3325-05	REPORT CARDS	Copies of report cards or grade reports or a comparable record evidencing the grades that have been reported for a student to the student's parents.	1 year after entry of grades in the academic achievement or cumulative record.	Retention Note: If copies of report cards or grade reports are the only record of grades received at the K-8 levels they must be retained for date of withdrawal of the student + 5 years. If they are the only record of grades received at the 9-12 levels prior to the use of a standardized academic achievement record, they must be retained PERMANENTLY.

PART 7: DISCIPLINE AND COUNSELING RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3350-01	DISCIPLINE RECORDS	Records relating to the discipline, corporal punishment, suspension, and expulsion of students maintained by superintendents, principals, and counselors, including parental conference reports and correspondence with parents.		
*SD3350-01a	DISCIPLINE RECORDS	Records relating to removal to a Disciplinary Alternative Education Program, suspension, or expulsion.	5 years.	Retention Note: Records for discipline events resulting in the removal of a student from class must be maintained with Public Education Information Management System (PEIMS) data for five years.
SD3350-01b	DISCIPLINE RECORDS	Records relating to forms of discipline other than removal to a Disciplinary Alternative Education Program, suspension, or expulsion.	AV.	
SD3350-02	STUDENT GUIDANCE AND COUNSELING FILES	Individual student counseling files maintained by school counselors, including parental conference reports.	AV.	Retention Note: It is an exception to the retention period for this record group that guidance and counseling files programmatically associated with participation in special programs as described in Part 3 of this schedule must be retained for the same period as the student records for the special program. In addition, records of counseling in any federally funded special guidance or counseling project or program must be retained for 5 years beyond cessation of counseling services to the student.
*SD3350-03	LAW ENFORCEMENT NOTIFICATIONS	Notification from a law enforcement agency of the arrest of a student enrolled in a public primary or secondary school in accordance	End of school year	By law – Texas Education Code, Section 37.017.

Record Number	Record Title	Record Description	Retention Period	Remarks
		with Code of Criminal Procedure, art. 15.27.		Retention Note: State law (Texas Education Code, Section 37.017) directs school districts to retain law enforcement notification separately from a student's permanent academic file and requires destruction of the notification at the end of the school year in which the notification is issued.

PART 8: ADULT AND VOCATIONAL EDUCATION RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3375-01	CLASS ORGANIZATION REPORTS AND ROSTERS		5 years.	See retention note (b) on page 7.
*SD3375-02	CURRICULUM PLANNING DOCUMENTATION	Project and study plans developed by instructors in vocational education, including those for vocational summer work.	5 years.	See retention note (b) on page 7.
*SD3375-03	FOLLOW-UP REPORTS	Reports on post-instructional experience of leavers and completers of vocational education programs.	5 years.	See retention note (b) on page 7.
*SD3375-04	STUDENT RECORDS	Cooperative training plans; applications for participation in work study programs; student rating forms, progress reports, and record cards; individual follow-up records; and similar records of assignments to and the completion by a student of vocational education projects and tasks.	End of enrollment + 5 years.	See retention note (b) on page 7.

PART 9: DRIVERS EDUCATION RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3400-01	STUDENT RECORDS	Individual records of students enrolled in driver's education.	5 years.	See retention note (b) on page 7.
*SD3400-02	STUDENT ROSTERS		5 years, if used in lieu of individual student records; otherwise AV.	
SD3400-03	INSTRUCTIONAL CHECKLISTS		1 year after entry of scores and other data in student individual record or rosters.	
SD3400-04	LICENSING AND COMPLETION FORMS	Any copies of forms or certificates maintained in student files relating to applications for drivers licenses, course completions, insurance discount forms, and notices of cancellation.	AV.	
SD3400-05	REQUESTS FOR RECOGNITION OF COMPLETION DOCUMENTS		AV.	

PART 10: ACCREDITATION RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3425-01	ACCREDITATION REPORTS			
SD3425-01a	ACCREDITATION REPORTS	Reports to the Texas Education Agency on accreditation planning or the self-monitoring of progress toward the achievement of goals.	AV after subsequent accreditation.	
SD3425-01b	ACCREDITATION REPORTS	Accreditation investigative reports from the Texas Education Agency to the board of trustees of a school district.	PERMANENT.	
SD3425-02	PLANNING RECORDS	Self studies; planning documents used to establish goals and indicators; achievement reports; documents evidencing parent, community, and staff involvement in the establishment of performance objectives; and similar records created in school districts to plan for and monitor progress during interims between accreditation visits.	AV after subsequent accreditation.	Review before disposal; some records of this type may merit PERMANENT retention for historical reasons.

PART 11: FOOD SERVICE RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3450-01	CERTIFICATES OF AUTHORITY	Authorizations for persons to act on behalf of a school district in school lunch matters.	US + 5 years.	
SD3450-02	DAILY FOOD SERVICE RECORDS	Daily record of full-price, reduced-price, and free breakfasts and lunches served.	FE + 5 years.	
SD3450-03	FOOD AND FOOD EQUIPMENT INVENTORY RECORDS		FE + 5 years.	
SD3450-04	FREE OR REDUCED-PRICE MEAL RECORDS			
SD3450-04a	FREE OR REDUCED-PRICE MEAL RECORDS	Applications from parents for free or reduced-price breakfasts or lunches.	FE + 5 years.	

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3450-04b	FREE OR REDUCED-PRICE MEAL RECORDS	Rosters or lists of eligible students.	FE + 5 years.	
SD3450-04c	FREE OR REDUCED-PRICE MEAL RECORDS	Policy statements on free and reduced-price meals.	US + 5 years.	
SD3450-05	HEALTH INSPECTION REPORTS		3 years.	
SD3450-06	MENU RECORDS			
SD3450-06a	MENU RECORDS	Menu planning records.	AV.	
SD3450-06b	MENU RECORDS	Daily menus.	5 years.	

PART 12: TEXTBOOK RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3475-01	ANNUAL MEMBERSHIP REPORT		FE + 2 years.	
SD3475-02	LOCAL TEXTBOOK COMMITTEE REPORT		US.	
SD3475-03	TEXTBOOK CUSTODIAN BONDS		US + 2 years.	
SD3475-04	TEXTBOOK INVENTORY AND DISTRIBUTION CONTROL RECORDS			
SD3475-04a	TEXTBOOK INVENTORY AND DISTRIBUTION CONTROL RECORDS	Inventories	US + 1 year.	
SD3475-04b	TEXTBOOK INVENTORY AND DISTRIBUTION CONTROL RECORDS	Book cards or records comparable in function documenting what books were distributed to each student and similar records documenting their return or non-return.	FE + 2 years.	
SD3475-04c	TEXTBOOK INVENTORY AND DISTRIBUTION CONTROL RECORDS	Records documenting the distribution, transfer, and return of textbooks on a campus by campus basis.	FE + 2 years.	

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3475-04d	TEXTBOOK INVENTORY AND DISTRIBUTION CONTROL RECORDS	Reports on state-owned textbooks that have been destroyed.	FE + 2 years.	
SD3475-05	TEXTBOOK PROCUREMENT RECORDS			
SD3475-05a	TEXTBOOK PROCUREMENT RECORDS	Requisitions and supplemental requisitions for textbooks, learning systems, and related materials, including those for use by visually disabled students, placed with the Texas Education Agency (TEA), the Texas Instructional Materials Center for the Visually Impaired, or other vendors as may be permitted by law or regulation, including supporting documentation such as statements of charges, packing slips, freight bills, and shipment-error reports.	FE + 2 years.	
SD3475-05b	TEXTBOOK PROCUREMENT RECORDS	Order notifications from the Texas Education Agency (TEA) concerning processing of textbook orders.	AV after receipt and reconciliation of shipment.	
SD3475-05c	TEXTBOOK PROCUREMENT RECORDS	Documentation relating to the procurement of sample textbooks, learning systems, and related materials.	AV after receipt and reconciliation of shipment.	
SD3475-06	TEXTBOOK SALES AND DISPOSITION RECORDS			
SD3475-06a	TEXTBOOK SALES AND DISPOSITION RECORDS	State textbook sales invoices and acknowledgment statements, logs (district and campus) of textbooks paid for, payment or reduced payment waivers, payment account cards, and any district forms used for the transmittal of textbook funds from campuses to the textbook coordinator.	FE + 2 years.	
SD3475-06b	TEXTBOOK SALES AND DISPOSITION RECORDS	Records relating to the disposition by donation or destruction of expiring or out-of-adoption textbooks.	AV.	

PART 13: SCHOOL TRANSPORTATION RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3500-01	APPLICATIONS FOR NEW TRANSPORTATION PROGRAMS	Requests to the Texas Education Agency for approval of state funds for eligible pupil transportation services.	FE + 5 years.	
SD3500-02	CONTRACTS FOR TRANSPORTATION SERVICES	Contracts with public or commercial companies for pupil transportation services, including copies of applications to the Texas Education Agency (TEA) for contract approval.	4 years after the expiration or termination of the contract according to its terms.	
SD3500-03	DRIVERS RECORDS (see also Section 3-1 of Local Schedule GR)			
SD3500-03a	DRIVERS RECORDS (see also Section 3-1 of Local Schedule GR)	Medical examination reports.	US + 3 years.	
SD3500-03b	DRIVERS RECORDS (see also Section 3-1 of Local Schedule GR)	School bus driver training certification verifications.	3 years.	
SD3500-03c	DRIVERS RECORDS (see also Section 3-1 of Local Schedule GR)	Driver's license record checks.	US or date of separation + 2 years, as applicable.	
SD3500-04	ELIGIBLE RIDER DOCUMENTATION	Documentation, maintained in the form of lists of actual bus riders by name and route number, including all associated records providing source information needed to complete ridership sections of state-required pupil transportation reports (see item number 3500-05).	3 years.	
SD3500-05	PUPIL TRANSPORTATION REPORTS	Annual reports to the Texas Education Agency on the number of pupils transported by school bus or private means (including route mileage), used by the agency to determine transportation allotments.	3 years.	Retention Note: This record group includes requests for approval of bus routes, now part of the Regular Pupil Transportation Report, but submitted separately in prior years.
SD3500-06	ROUTE DESCRIPTIONS	A turn-by-turn accounting for each approved route, specifying road designations and corresponding mileages.	US + 3 years.	
SD3500-07	SCHOOL TRANSPORTATION COST AND MAINTENANCE			

Record Number	Record Title	Record Description	Retention Period	Remarks
	RECORDS			
SD3500-07a	SCHOOL TRANSPORTATION COST AND MAINTENANCE RECORDS	Vehicle master record containing the following: complete description of the vehicle, including vehicle identification and license numbers; annual beginning and ending odometer readings; total annual fuel, maintenance, labor, and parts costs; and complete maintenance history (in summary form showing date and nature of service, repair or state inspection).	LA.	Retention Notes: a) This schedule does not require the creation of a vehicle master record of the type described, but if a vehicle master record is not maintained, records containing the prescribed information must be retained for the life of the vehicle. For example, if work orders in (b) are the only record maintained of repairs to school buses, they must be retained for the life of the vehicle. (b) If a school bus is salvaged as the result of an accident, the vehicle master record or, if one is not created, documents providing the types of information prescribed, must be retained for LA + 3 years.
SD3500-07b	SCHOOL TRANSPORTATION COST AND MAINTENANCE RECORDS	Service requests/work orders.	2 years.	
SD3500-07c	SCHOOL TRANSPORTATION COST AND MAINTENANCE RECORDS	Daily activity reports compiled by vehicle shop personnel and/or drivers showing fuel and oil consumption, odometer readings, routine inspections, etc., from which data is derived for operating cost reports and the vehicle master record.	2 years.	
SD3500-07d	SCHOOL TRANSPORTATION COST AND MAINTENANCE RECORDS	School bus usage reports for extracurricular activities, field trips, or for private purposes under contract needed for compiling annual operating costs reports under (e).	2 years.	
SD3500-07e	SCHOOL TRANSPORTATION COST AND MAINTENANCE RECORDS	Annual operation cost reports submitted to the Texas Education Agency.	FE + 5 years.	
SD3500-08	SCHOOL BUS PURCHASE		FE + 5 years.	

Record Number	Record Title	Record Description	Retention Period	Remarks
	REQUISITIONS			
*SD3500-09	SCHOOL BUS SURVEILLANCE VIDEO			
*SD3500-09a	SCHOOL BUS SURVEILLANCE VIDEO (no incident)	Video recorded where no incident occurs.	AV.	Retention Note: The Texas State Library and Archives Commission strongly urges, but does not require, retaining school bus surveillance videos for a minimum of ten school days as recording technology permits.
*SD3500-09b	SCHOOL BUS SURVEILLANCE VIDEO (incident)	Video that records an incident.	30 days after incident resolved or verdict is rendered.	

PART 14: SCHOOL SAFETY RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3525-01	EVACUATION AND FIRE EXIT PLANS		US.	
SD3525-02	FIRE DRILL RECORDS	Records of fire drills, including schedules, reports, correspondence with fire departments, and associated documentation.	3 years.	
SD3525-03	FIRE SAFETY INSPECTION REPORTS		3 years.	

PART 15: FINANCIAL RECORDS

Retention Note: This part supplements and should be used in conjunction with Part 2 of Local Schedule GR.

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3550-01	AGENCY FUND ACCOUNTING RECORDS	Any accounts payable, accounts receivable, or ledgers and journals used to document the receipt and expenditure of local agency funds from clearing accounts that are custodial in nature (e.g., student picture accounts).	FE + 3 years.	Retention Note: Compare item numbers GR1025-26, GR1025-27, and GR1025-30 in Local Schedule GR. The minimum retention period for records of agency funds is an exception to the prevailing FE + 5 year retention period for school district financial records.
SD3550-02	COUNTY AVAILABLE REPORTS		FE + 3 years.	
SD3550-03	SCHOOL BONDS, APPLICATIONS FOR GUARANTY OF		Until receipt of guaranty documentation.	

PART 16: PERSONNEL AND STAFFING RECORDS

Retention Notes: a) This part supplements and should be used in conjunction with Part 3 of Local Schedule GR.

b) If the retention period for a record in this part is given as US or as US + a specific number of years and the person to whom the record relates ceases employment before supercession occurs, the date of separation shall also be considered the date of supercession for records retention purposes.

SECTION 16-1: INDIVIDUAL EMPLOYEE RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3575-01	ABSENCE FROM DUTY REPORTS		4 years.	
SD3575-02	APPLICATIONS AND RECOMMENDATIONS FOR PROFESSIONAL OR PARAPROFESSIONAL CERTIFICATES OR PERMITS, COPIES OF	Copies of applications/recommendations endorsed by the superintendent or other authorized school official and forwarded by the district or the applicant to the Texas Education Agency for the purposes of certification or review of qualifications.		
SD3575-02a	APPLICATIONS AND RECOMMENDATIONS FOR PROFESSIONAL OR PARAPROFESSIONAL CERTIFICATES OR PERMITS, COPIES OF	Application for Nonrenewable Permit	1 year.	
SD3575-02b	APPLICATIONS AND RECOMMENDATIONS FOR PROFESSIONAL OR PARAPROFESSIONAL CERTIFICATES OR PERMITS, COPIES OF	All others.	AV.	
SD3575-03	AUDIT VERIFICATION CARDS		US, but see retention note.	Retention Note: The most recent audit verification card present in his or her personnel file upon separation of an employee must be retained PERMANENTLY and

Record Number	Record Title	Record Description	Retention Period	Remarks
				should be considered an addendum to the Teacher Service Record (see item number GR1050-12 in Local Schedule GR).
SD3575-04	DEFICIENCY PLAN		US by a teaching certificate, or separation of employee + 5 years, as applicable.	
*SD3575-05	PERFORMANCE APPRAISAL RECORDS			Retention Notes: The records listed in this group are those currently used in the Professional Development and Appraisal System (PDAS) and its local equivalent implemented on a statewide basis in the 1997-1998 school year; in the Texas Teacher Appraisal System (TTAS) implemented on a statewide basis in the 1986-1987 school year and used through the 1996-1997 school year for the career ladder appraisal process; and in TTAS functional equivalents used in districts for teacher performance appraisals for the 1983-1984, 1984-1985, and 1985-1986 school years. For teacher appraisal records prior to the 1983-1984 school year see item number GR1050-21 in Local Schedule GR.
SD3575-05a	PERFORMANCE APPRAISAL RECORDS	Appraisal record (including documentation submitted by the teacher).	PERMANENT.	
SD3575-05b	PERFORMANCE APPRAISAL RECORDS	Observation/evaluation forms (including documentation submitted by the teacher).	4 years after teacher signs for receipt of appraisal record.	
SD3575-05c	PERFORMANCE APPRAISAL RECORDS	Notes taken by appraisers during observations or similar written	AV after teacher signs for receipt of	

Record Number	Record Title	Record Description	Retention Period	Remarks
		documentation created by the teacher's supervisor that, in combination with the formal observation, is used to determine credit for the criteria and indicators on the observation/evaluation forms.	observation/evaluation form.	
*SD3575-05d	PERFORMANCE APPRAISAL RECORDS	Teacher assessments of instructional goals and outcomes.	AV	
SD3575-05e	PERFORMANCE APPRAISAL RECORDS	Professional growth plans.	4 years.	
SD3575-05f	PERFORMANCE APPRAISAL RECORDS	Grievance and response documents.	For the same period as the appraisal record to which they relate.	Retention Note: For employee grievance records other than those relating to performance appraisals see item number GR1050-20 in Local Schedule GR.
SD3575-06	SERVICE RECORD AFFIDAVITS	Affidavits attached to teacher service record claiming months served prior to the 1949-50 school year.	PERMANENT.	
SD3575-07	STATEMENTS OF COMMITMENT (OUT-OF-STATE CERTIFICATES)		Until receipt by district of Texas certificate or date of separation + 5 years, as applicable.	
*SD3575-08	STATEMENTS OF INTENTION TO BECOME A UNITED STATES CITIZEN		AV.	
SD3575-09	TEACHER CERTIFICATE REGISTERS		PERMANENT.	Retention Note: This was a standard record of county superintendents of schools, but it was also maintained in some independent school districts in years prior to the emergence of a formal Teacher Service Record (see item number GR1050-12 in Local Schedule GR).
*SD3575-10	TUBERCULOSIS CERTIFICATES		AV.	
*SD3575-11	CRIMINAL HISTORY CHECKS		1 year from date obtained or after the	By law - Section 411.084, Local Government Code.

Record Number	Record Title	Record Description	Retention Period	Remarks
			information is used for the authorized purpose, whichever is sooner.	Retention Note: This record series is only for public school employees; for all other government employees, see item number GR1050-11 in Local Schedule GR.

SECTION 16-2: STAFFING RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3575-16	PERSONNEL ROSTERS	Including those detailing assignments to grades, courses, etc.	3 years.	
*SD3575-17	PERSONNEL UNIT REQUIREMENT CALCULATION WORKSHEETS		AV.	
SD3575-18	SUBSTITUTE TEACHING ROSTERS		3 years.	

PART 17: MISCELLANEOUS REPORTS AND SURVEYS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3600-01	PUBLIC EDUCATION INFORMATION MANAGEMENT SYSTEM (PEIMS) DATA SUBMISSIONS		5 years.	
SD3600-02	DATA VERIFICATION REPORTS	Data printouts or reports from the Texas Education Agency (TEA) or other agencies provided for informational purposes showing data received and entered in Texas Education Agency (TEA) or other agency databases and similar documents seeking confirmation of the accuracy of current data information.	AV.	Retention Note: For example, reports sent by Texas Education Agency (TEA) or an educational service center showing data received and entered as the result of Public Education Information Management System (PEIMS) data submissions fall under this record group as well as any retained copies of data verification reports returnable to Texas Education Agency (TEA), such as forms used to confirm and/or update data for the Texas School Directory.
SD3600-03	SURVEYS	Surveys, questionnaires, opinion polls, and similar documents received from the Texas Education Agency or other agencies, completed and returned by the superintendent or other school official, and used by the surveying agency for the preparation of needs assessments or statistical reports and not for the specific purpose of monitoring compliance with a required or grant-funded program in the respondent district.	AV.	Retention Note: It is an exception to the retention period given for this record group that records of the type described received by a regional education service center as a surveying agency must be retained by the center for 5 years.

PART 18: MISCELLANEOUS RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
SD3625-01	PROGRAM APPROVAL APPLICATIONS	Applications and supporting documentation for local programs that must be approved by the Texas Education Agency before implementation but which do not involve the allocation of state or federal funds controlled by the agency.		
SD3625-01a	PROGRAM APPROVAL APPLICATIONS	Applications approved.	US + 5 years or life of program + 5 years, whichever applicable	
SD3625-01b	PROGRAM APPROVAL APPLICATIONS	Applications not approved.	AV	
SD3625-02	REQUESTS FOR WAIVER OF TEXAS EDUCATION AGENCY POLICIES AND RULES	Requests and renewals of requests for waivers of Texas Education Agency policies and rules, including any attached documentation.		
SD3625-02a	REQUESTS FOR WAIVER OF TEXAS EDUCATION AGENCY POLICIES AND RULES	Requests granted.	5 years	
SD3625-02b	REQUESTS FOR WAIVER OF TEXAS EDUCATION AGENCY POLICIES AND RULES	Requests not granted.	AV	
SD3625-03	SCHOOL CALENDAR		US + 2 years	
SD3625-04	UNIVERSITY INTERSCHOLASTIC LEAGUE RECORDS	Correspondence, schedules, rosters, reports, records of participation, and similar documentation, <i>except</i> financial records (see Local Schedule GR), concerning the participation of a district in academic, music, and athletic contests and programs governed by the University Interscholastic League.	2 years	
*SD3625-05	EXTRACURRICULAR ACTIVITY RECORDS	Application, selection, and evaluation records for participation in extracurricular activities (cheerleading, National Honor Society, student council, etc.)	2 years	

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3625-06	STUDENT DRUG/ALCOHOL TEST RESULTS			
*SD3625-06a	STUDENT DRUG/ALCOHOL TEST RESULTS (negative results)	Negative Results.	1 year.	
*SD3625-06b	STUDENT DRUG/ALCOHOL TEST RESULTS (positive results)	Positive Results or Refusal Form.	Date of withdrawal, graduation, or 5 years, whichever sooner.	Retention Note: All documentation should be maintained separate from the student cumulative folder and only released to student, his/her parent or person in lawful control of student, Superintendent, Head Coach/Sponsor of extracurricular activity, and other school officials with legitimate interest in information. Results shall not be shared with law enforcement except as required by law.
*SD3625-07	VISITOR LOGS		2 years.	
*SD3625-08	PARKING DECAL/PERMIT RECORDS		US or expiration of permit.	

PART 19: LIBRARY RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
*SD3650-01	ACCESSION/DEACCESSION RECORDS	Records used to update library catalogs or inventory records of the accession through purchase or gift or the deaccession through loss or withdrawal of library and museum materials.	AV.	Retention Note: This record series does not include the record copy of purchase requisitions or orders or accounts payable documentation. See item numbers GR1025-26 and GR1075-03 in Local Schedule GR.
*SD3650-02	BORROWER REGISTRATION RECORDS	Records documenting the registration of borrowers.	AV.	
*SD3650-03	CIRCULATION RECORDS	Records documenting the circulation of library materials to individual borrowers.	AV.	
*SD3650-04	INTERLIBRARY LOAN RECORDS	Records relating to the lending and borrowing of library materials through interlibrary loan.	AV.	Retention Note: It is an exception to the retention period for this item that if interlibrary loan services are funded by indirect grants from the U.S. Department of Education, the record copy of documents evidencing interlibrary loan activity must be retained for FE + 7 years. See introductory retention note concerning grant records in Part 2 of Local Schedule GR.
*SD3650-05	INVENTORY RECORDS	Shelf lists or equivalent records showing current library and museum holdings.	US.	
*SD3650-06	LIBRARY CATALOGS		US.	



TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

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512-463-5460 or 512-463-5436 Fax

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ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2013

Tim F. Branaman, Ph.D.
Chair, Texas State Board of Examiners
of Psychologists
333 Guadalupe, Suite 2-450
Austin, Texas 78701

Opinion No. GA-1025

Re: Whether an individual licensed as a specialist in school psychology who is employed by a university in that capacity is exempt from the Psychologists' Licensing Act (RQ-1126-GA)

Dear Dr. Branaman:

You ask two questions on behalf of the State Board of Examiners of Psychologists (the "Board") about licensed specialists in school psychology and whether they may be exempt from the Psychologists' Licensing Act ("the Act") in specific circumstances.¹

The Act, Occupations Code chapter 501, governs the practice of psychology. TEX. OCC. CODE ANN. §§ 501.001–.505 (West 2012 & Supp. 2013). Within the Act, the Legislature has authorized the Board to issue four separate licenses: (1) psychologist; (2) provisional license holder; (3) psychological associate; and (4) licensed specialist in school psychology ("LSSP"). *Id.* §§ 501.252, .253, .259, .260 (West 2012). "A person may not engage in or represent that the person is engaged in the practice of psychology unless the person is licensed under [the Act] or exempt under Section 501.004." *Id.* § 501.251. Section 501.004 states in relevant part:

This chapter does not apply to . . . the activity or service of a person, or the use of an official title by the person, who is employed as a psychologist or psychological associate by a regionally accredited institution of higher education if the person performs duties the person is employed by the institution to perform within the confines of the institution

Id. § 501.004(a) (West Supp. 2013).²

¹See Letter from Tim F. Branaman, Ph.D., Chair, State Bd. of Exam'rs of Psychologists, to Honorable Greg Abbott, Tex, Att'y Gen. at 1 (May 21, 2013), <http://www.texasattorneygeneral.gov/opin> ("Request Letter").

You ask whether a university must use the official title of psychologist or psychological associate when describing employees in order for those employees' activity and service to be exempt from the Act under section 501.004. Request Letter at 1. Section 501.004 exempts both "the activity or service of a person" and "use of an official title by the person" when employed as a psychologist or psychological associate by an entity subject to that provision. TEX. OCC. CODE ANN. § 501.004(a)(1) (West Supp. 2013). Nothing in the language of the statute requires that an official title of "psychologist" or "psychological associate" be used in order for the exemption to apply. Rather than conclude that an employee's job title is dispositive of whether the section 501.004 exemption applies, a court would likely conclude that "the function of the position at issue" determines whether the individual is employed as a psychologist or a psychological associate. *Cf. Patton v. Jones*, 212 S.W.3d 541, 549 (Tex. App.—Austin 2006, pet. denied) (applying the same analysis for purposes of the ministerial exception under the Free Exercise Clause of the First Amendment) (citation omitted).

Furthermore, whether an individual is employed as a psychologist or psychological associate is a question to be determined in the first instance by the employing entity. *See Tex. Att'y Gen. Op. No. JC-0321 (2001)* at 7 (explaining that whether a particular activity or service is beyond the scope of a licensee's employment is a question for the regionally accredited institution of higher education in the first instance). "It is, after all, the employing [entity] that has established any particular employee's scope of employment." *Id.* Thus, section 501.004 does not require a university to use the official title of "psychologist" or "psychological associate" when describing employees in order for those employees' activity or service to be exempt from the Act under section 501.004.

You also ask whether, pursuant to section 501.004, "an individual licensed as a specialist in school psychology (LSSP) who is employed by a regionally accredited institution of higher education (University) *as an LSSP*, is exempt from" the Act. Request Letter at 1. You explain that your question arises because while section 501.004 expressly exempts "the activity or service of individuals employed as psychologists or psychological associates by a University, the Act contains no such exemption for LSSPs." *Id.* at 2.

Although you phrase your question in terms of whether an individual is exempt, subsection 501.004(a) does not provide a blanket exemption for an individual. *See TEX. OCC. CODE ANN. § 501.004(a)* (West Supp. 2013). Instead, it exempts the activity or service that an individual performs as a psychologist or psychological associate employee of a specified entity. *Id.*; *Tex. Att'y Gen. Op. No. JC-0321 (2001)* at 6. And as discussed above, it is not the employee's title that is relevant, but the activity or service that determines the capacity in which a university employs a person as a psychologist or a psychological associate.

²The Act does not define "regionally accredited institution of higher education." The Board has defined the term as "an educational institution which satisfies the standards of the accrediting association" for the region in which the institution is located. 22 TEX. ADMIN. CODE § 463.6 (2013).

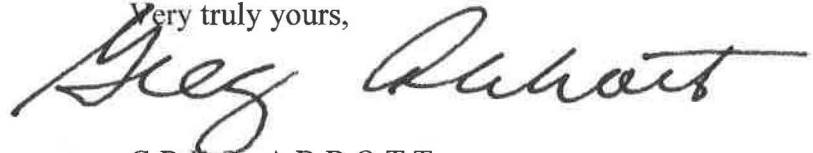
The Act authorizes psychologists to “engage in the practice of psychology.” TEX. OCC. CODE ANN. § 501.002(5) (West 2012); *see id.* § 501.003(b) (explaining what it means to be “engaged in the practice of psychology”). Thus, a university to which section 501.004 applies could employ an individual with an LSSP license—or an unlicensed individual—to engage in the practice of psychology, and all activity or service performed within the scope of that employment would be exempt. *See* Tex. Att’y Gen. Op. No. JC-0321 (2001) at 6 (“Whether or not the employee . . . is licensed is irrelevant.”). As this office noted in a prior opinion, by exempting from the Act’s application the activity or service of an employee of a regionally accredited institution of higher education, where the activity or service is within the scope of employment, the Legislature has indicated that generally “the Board is not to interfere in the workings of” those entities. *Id.* at 7.

S U M M A R Y

A university is not required to use the official title of “psychologist” or “psychological associate” when describing employees in order for those employees’ activity or service to be exempt from the Psychologists’ Licensing Act under Occupations Code section 501.004.

A university subject to section 501.004 could employ a licensed specialist in school psychology as a psychologist or psychological associate, and that individual’s activity or service performed within the scope of the employment would be exempt from the Psychologists’ Licensing Act.

Very truly yours,

A handwritten signature in black ink that reads "Greg Abbott". The signature is written in a cursive, flowing style.

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JAMES D. BLACKLOCK
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

Virginia K. Hoelscher
Assistant Attorney General, Opinion Committee