

# SCHOOL LAW SECTION NEWSLETTER

June 2021 Edition



2021 Section Retreat!



87<sup>th</sup> Session Update

Danny Stockton gives us highlights



TRCP 2021 Amendments

Giana Ortiz keeps us informed

## 2021 Section Retreat

July 23<sup>rd</sup> & 24<sup>th</sup>, 2021

JW Marriott San Antonio  
Hill Country Resort & Spa

See you  
soon!

## Communications Committee

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## Interested in writing an article?

If you'd like to submit a piece for the Section Newsletter, we'd be happy to highlight you! We are always looking for important topics in school law and relevant news from across the state.

Please contact one of the committee members if you are interested!

# 87TH SESSION OF THE TEXAS LEGISLATURE



## 87<sup>th</sup> Session Updates

2021

Redistricting, COVID-19, Budgets & More!

By Danny Stockton

**Danny Stockton is the Executive Director of Government & Legal Affairs in Frisco ISD, the 12th largest school district in the state of Texas. A former state senate staffer and graduate of Duke Law School, he manages in-house legal services and oversees the legislative activities of the district. During his tenure, Frisco ISD has become a leader on legislative issues for school districts throughout the state by developing a series of legislative workshops for school districts in Regions 10 and 11 and serving as a resource on legislative issues for the in-house counsel group of the Texas Council of School Attorneys.**

The 87th legislative session ran from January 12 through May 31. The session began focused on redistricting, the state's response to COVID-19, and what looked to be a tight state budget. In February, the legislature began to grapple with responding to a severe winter storm that left millions without power and water for an extended period of time. These challenges occu-

pled a significant amount of attention in the legislature, yet a number of important pieces of legislation related to education made their way through the process.

House Bill 4545<sup>1</sup>, aimed at learning loss due to COVID-19, eliminates STAAR passage requirements for promotion in 5th and 8th grades. The bill also revamps accelerated learn-

-ing by imposing specific requirements for instructional time, group sizes, content, and staffing. While the language of the bill seems to suggest that these new requirements would be effective for students who do not perform satisfactorily on the 2022 administration of certain STAAR exams, the TEA has indicated that it expects school districts to adjust their accelerated learning plans based on 2021 STAAR results. This puts districts in the position of likely needing significant additional staff and other resources to be in place by August, a very short timeline to implement changes on this scale.

House Bill 3979<sup>2</sup> also received a significant amount of attention throughout the session as many observers classified the bill as state overreach that would result in teachers being concerned to discuss difficult, but important topics such as race, racism, current events, and the way in which these topics impact students' lives. Yet the language of the bill itself is often vague and confusing. House Democrats made significant amendments to the bill adding a number of topics to the social studies TEKS, including instruction on "the history of white supremacy, including but not limited to the institution of slavery, the eugenics movement, and the Ku Klux Klan, and the ways in which it is morally wrong." The remainder of the bill prohibits the teaching of certain concepts, none of which are part of the cur-

rent TEKS, in required social studies courses. The legislation, which was written as model legislation by a national organization and utilized throughout the country, does not appear to accomplish what most of its supporters and opponents claim it does.

Finally, House Bill 1252<sup>3</sup>, which received little attention outside the legal community, extends the statute of limitations for special education due process hearings to the maximum amount of time allowed by the IDEA. This effectively doubles the current statute of limitations from 1 year to 2 years and could result in a longer timeline for resolution of concerns and more due process hearings.

More is yet to come as the Governor announced the first of an anticipated two called special sessions.<sup>4</sup> The first session will begin on July 8<sup>5</sup>, and while the Governor has not yet announced the specific items on the agenda, an expansion of the concepts in House Bill 3979 is expected, as well as other education-related items<sup>6</sup>.

<sup>1</sup>House Bill 4545: <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/HB04545F.pdf#navpanes=0>

<sup>2</sup>House Bill 3979: <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/HB03979F.pdf#navpanes=0>

<sup>3</sup>House Bill 1252: <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/HB01252F.pdf#navpanes=0>

<sup>4</sup><https://gov.texas.gov/news/post/governor-greg-abbott-announces-special-session-date>

<sup>5</sup>Id.

<sup>6</sup><https://gov.texas.gov/news/post/governor-abbott-signs-hb-3979-into-law>

## We Want to Hear From You!

If you have someone you want to highlight in the Section, news to share with your fellow members, or suggestions for content or fun items you would like to see, please email one of the committee members (see cover page for contact info).

# TRCP 2021 Amendments

## What You Need to Know

Giana Ortiz



On December 18 and 23, 2020, the Court finalized extensive amendments to the Texas Rules of Civil Procedure.<sup>1</sup> This quick summary points out major changes for Texas attorneys.

TRCP 106 – Method of Service. Courts have been, in appropriate circumstances, permitting service by electronic means even prior to the 2021 amendments. The amended TRCP set forth guidance to parties and courts, and aim to preserve due process. In particular, TRCP 106 now provides that upon affidavit or declaration, a court may authorize service by posting on “in any other manner, including electronically by social media, email, or other technology, that the statement or other evidence shows will be reasonably effective to give the defendant notice of the suit.” An accompanying affidavit, declaration, or other evidence attached to the motion should reflect that the social media account or email account is active and not fake.

TRCP 108a was also amended to allow substituted service in foreign countries by “other means”—including electronic—so long as the means are not prohibited by international law.

TRCP 47, 169(a) – Expedited Actions. The “expedited action” process was introduced into the TRCP in 2013, applying reduced discovery and quick trial dates in cases where the entire amount in controversy (including attorney’s fees, expenses, and interest), did not exceed \$100,000. The 2021 amendments to the TRCP now apply the expedited action process to cases in which the party seeks monetary relief of \$250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs. Certain statutory suits, including suits under the Family Code, the Property Code, and Tax Code, may be exempt from the expedited actions process. Also exempt are suits which seek equitable relief of any kind.

TRCP 190.2 has been amended to change Level 1 discovery limitations in expedited action cases. For any expedited action, the discovery period now begins after initial required disclosures are due. Parties can agree to, or seek court permission under TRCP 190.5, to be exempt from expedited-action discovery. A party may also remove a case from the expedited-action process through amended pleading.

**Required Disclosures.** For suits filed after January 1, 2021, disclosures are now required under the TRCP—eliminating the need for a request for initial disclosures, expert disclosures, and/or pretrial disclosures.

*TRCP 192.1, 192.2, 194.1, 194.2 – Initial Disclosures.* Initial disclosures must be provided within 30 days after filing of the first answer or general appearance, and no party may conduct discovery until after the responses are due. The required disclosures remain generally unchanged from the prior disclosure rules except that 1) any documents which may be used to support a claim must be provided (or described by category and location) with the disclosure; and 2) testifying expert disclosures are separated into a later required disclosure.

*TRCP 194.3, 195 – Expert Disclosures.* The prior disclosures related to testifying experts have been separated into TRCP 195.5, and the TRCP now require disclosure of a few additional categories of information including publications, prior testimony list, and compensation information. Expert disclosures must be served no later than 90 days before the end of discovery for parties seeking affirmative relief, and 60 days before the end of discovery for all other experts. Rule 195 also protects communications with experts and draft expert reports.

*TRCP 194.4 – Pretrial Disclosures.* At least 30 days before trial, each party must disclose its witness and exhibit lists to all other parties. The rules do not provide a deadline to object to

a party's pretrial disclosures.

*TRCP 193.3 – Privileges.* The 2021 amendments make clear that a party may assert a privilege in withholding information which would otherwise be subject to a required disclosure.

<sup>1</sup> The amendments were largely in response to legislative mandates in SB 891 (2019) and SB 2342 (2019). The Court's Rules Advisory Orders reflecting the redlined amendments are available at <https://www.txcourts.gov/supreme/administrative-orders/rules-advisories/>.

**Giana practices employee-side school law in Arlington, Texas. She has served on the State Bar's Court Rules Committee since 2010, and is the immediate past Chair of that Committee.**