

**Sec. 1. NONDISCRIMINATION IN GENERAL**

Amigos Por Vida - Friends For Life Public Charter School shall not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of any of the following protected characteristics:

1. Race, color, or national origin;
2. Sex;
3. Religion;
4. Age (applies to individuals who are 40 years of age or older);
5. Disability; or
6. Genetic information.

*42 U.S.C. 1981; 42 U.S.C. 2000e et seq. (Title VII); 20 U.S.C. 1681 et seq. (Title IX); 42 U.S.C. 12111 et seq. (Americans with Disabilities Act); 29 U.S.C. 621 et seq. (Age Discrimination in Employment Act); 29 U.S.C. 793, 794 (Rehabilitation Act); 42 U.S.C. 2000ff et seq. (Genetic Information Nondiscrimination Act); U.S. Const. Amend. I; Human Resources Code 121.003(f); Texas Labor Code Chapter 21 (Texas Commission on Human Rights Act); Texas Labor Code Chapter 21, Subchapter H (genetic information).*

**a) *Job Qualification***

Amigos Por Vida - Friends For Life Public Charter School may take employment actions based on religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification. *42 U.S.C. 2000e-2(e); 29 U.S.C. 623(f); Labor Code 21.119.*

**b) *Employment Postings***

Amigos Por Vida - Friends For Life Public Charter School shall not print or publish any notice or advertisement relating to school employment that indicates any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin, unless the characteristic is a bona fide occupational qualification. *42 U.S.C. 2000e-3(b); Labor Code 21.059.*

**c) *Harassment of Employees***

Amigos Por Vida - Friends For Life Public Charter School shall maintain a working environment free of harassment on the basis of a protected characteristics. *42 U.S.C. 2000e et seq.; 29 CFR 1606.8(a), 1604.11.*

**d) *Retaliation***

Amigos Por Vida - Friends For Life Public Charter School may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. *29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 34 CFR 100.7(e) (Title VI); 34 CFR 110.34 (Age Act); 42 U.S.C. 12203 (ADA); Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005) (Title IX); Labor Code 21.055.*

**e) Notices**

The Superintendent or designee shall post in conspicuous places upon its premises a notice setting forth the information the Equal Employment Opportunity Commission deems appropriate to effectuate the purposes of the anti-discrimination laws. *29 U.S.C. 627; 42 U.S.C. 2000e-10.*

**i. Section 504 Notice**

The Superintendent or designee shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that Amigos Por Vida - Friends For Life Public Charter School does not discriminate on the basis of disability.

The notice shall state:

1. That Amigos Por Vida - Friends For Life Public Charter School does not discriminate in employment in its programs and activities; and
2. The identity of Amigos Por Vida - Friends For Life Public Charter School's 504 Coordinator.

Methods of notification may include:

1. Posting of notices;
2. Publication in newspapers and magazines;
3. Placing notices in School publications; and
4. Distributing memoranda or other written communications.

If Amigos Por Vida - Friends For Life Public Charter School publishes or uses recruitment materials containing general information that it makes available to applicants or employees, it shall include in those materials a statement of its non-discrimination policy.

*34 CFR 104.8.*

**Sec. 2. AGE DISCRIMINATION**

Amigos Por Vida - Friends For Life Public Charter School may take an employment action on the basis of age pursuant to a bona fide seniority system or a bona fide employee benefit plan.

However, a bona fide employee benefit plan shall not excuse the failure to hire any individual and no such benefit plan shall require or permit the involuntary retirement of any individual because of age. *29 U.S.C. 623(f); Labor Code 21.102.*

### **Sec. 3. SEX DISCRIMINATION**

#### **a) *Gender Stereotypes***

Amigos Por Vida - Friends For Life Public Charter School may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. *Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).*

#### **b) *Pregnancy***

Amigos Por Vida - Friends For Life Public Charter School shall treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe benefit programs. *42 U.S.C. 2000e(k); 29 CFR 1604.10; Labor Code 21.106.*

#### **c) *Equal Pay***

Amigos Por Vida - Friends For Life Public Charter School may not pay an employee at a rate less than the rate paid to employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort, or responsibility and which are performed under similar working conditions. This rule does not apply if the payment is pursuant to a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. *29 U.S.C. 206(d); 34 CFR 106.54.*

### **Sec. 4. RELIGIOUS DISCRIMINATION**

The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless Amigos Por Vida - Friends For Life Public Charter School demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship to Amigos Por Vida - Friends For Life Public Charter School's business. "Undue hardship" means more than a de minimus (minimal) cost. *42 U.S.C. 2000e(j); 29 CFR 1605.2; Labor Code 21.108.*

Amigos Por Vida - Friends For Life Public Charter School may not substantially burden an employee's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. & Rem. Code 110.003.*

### **Sec. 5. DISABILITY DISCRIMINATION**

Amigos Por Vida - Friends For Life Public Charter School may not discriminate against a qualified individual on the basis of disability in job application procedures, hiring, advancement, or discharge of employees, compensation, job training, and other terms, conditions, and privileges of employment. *42 U.S.C. 12112(a), 12201(g); 29 U.S.C. 794(a); Labor Code 21.051, 21.105.*

**a) *Discrimination Based on Lack of Disability***

The Americans with Disabilities Act (“ADA”) and the Texas Commission on Human Rights Act do not provide a basis for a claim that an individual was subject to discrimination because of the individual’s lack of disability. *42 U.S.C. 12201(g); Labor Code 21.005(c).*

Amigos Por Vida - Friends For Life Public Charter School must take positive efforts, if it receives assistance under the Individuals with Disabilities Education Act (“IDEA”), to employ and advance in employment qualified individuals with disabilities in programs assisted by the IDEA. *34 CFR 300.177(b).*

**b) *Definition of Disability***

“Disability” means a physical or mental impairment that substantially limits one or more of an individual’s major life activities, a record of having such an impairment, or being regarded as having such an impairment.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

An individual meets the requirement of being “regarded as” having an impairment if the individual establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. However, this provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of six months or less. *42 U.S.C. 12102(1), (3), (4); 29 CFR 1630.2(g); Labor Code 21.002, 21.0021.*

**c) *Mitigating Measures***

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices, prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

The ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses and contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

*42 U.S.C. 12102(1), (3), (4); 29 CFR 1630.2(g), (j)(1); Labor Code 21.002, .0021.*

**d) *Other Definitions***

i. *Physical or Mental Impairment*

“Physical or mental impairment” means:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
2. Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

*29 C.F.R. 1630.3(h).*

ii. *Major Life Activities*

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activities” also include the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *42 U.S.C. 12102(2); Labor Code 21.002.*

iii. *Qualified Individual*

“Qualified individual” means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. A written job description prepared before advertising or interviewing applicants for the job is evidence of the job’s essential functions. *42 U.S.C. 12111(8).*

**e) *Reasonable Accommodations***

Amigos Por Vida - Friends For Life Public Charter School shall make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability, unless Amigos Por Vida - Friends For Life Public Charter School can demonstrate that the accommodation would impose an undue hardship on the operation of Amigos Por Vida - Friends For Life Public Charter School. *42 U.S.C. 12112(b)(5); 29 CFR 1630.9; 29 U.S.C. 794; 34 CFR 104.11; Labor Code 21.128.*

“Reasonable accommodation” includes:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

*42 U.S.C. 12111(9); 29 CFR 1630.2(o); 34 CFR 104.12(b).*

“Undue hardship” means an action requiring significant difficulty or expense when considered in light of the nature and cost of the accommodation needed, overall financial resources of the affected facility and Amigos Por Vida - Friends For Life Public Charter School, and other factors set out in law. *42 U.S.C. 12111(10); 29 CFR 1630.2(p); 34 CFR 104.12(c).*

**f) *Discrimination Based on Relationship***

Amigos Por Vida - Friends For Life Public Charter School shall not exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association. *42 U.S.C. 12112(b)(4); 29 CFR 1630.8; 34 CFR 104.11.*

**g) *Illegal Drugs and Alcohol***

The term “qualified individual with a disability” does not include any employee or applicant who is currently engaging in the illegal use of drugs, when Amigos Por Vida - Friends For Life Public Charter School acts on the basis of such use.

**i. Drug Testing**

Amigos Por Vida - Friends For Life Public Charter School is not prohibited from conducting drug testing of employees and applicants for the illegal use of drugs or making employment decisions based on the results of such tests. *42 U.S.C. 12114(c), (d); Labor Code 21.002(6)(A).*

**ii. Alcohol Use**

The term “qualified individual with a disability” does not include an individual who is an alcoholic and whose current use of alcohol prevents the employee from performing the duties of his or her job or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others. *42 U.S.C. 12114(a); 29 U.S.C. 705(20)(C); 29 CFR 1630.3(a); 28 CFR 35.104; Labor Code 21.002(6)(A).*

**h) *Qualification Standards***

i. *Direct Threat to Health or Safety*

As a qualification standard, Amigos Por Vida - Friends For Life Public Charter School may require that an individual not pose a direct threat to the health or safety of other individuals in the workplace. “Direct threat” means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. *42 U.S.C. 12111(3); 29 CFR 1630.2(r); Labor Code 21.002(6)(B)*.

ii. *Vision Standards and Tests*

Amigos Por Vida - Friends For Life Public Charter School shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by Amigos Por Vida - Friends For Life Public Charter School, is shown to be job-related for the position in question and consistent with business necessity. *42 U.S.C. 12113(c); Labor Code 21.115(b)*.

iii. *Communicable Diseases*

Amigos Por Vida - Friends For Life Public Charter School may refuse to assign or continue to assign an individual to a job involving food handling if the individual has an infectious or communicable disease that is transmitted to others through handling of food. *42 U.S.C. 12113(d); 29 U.S.C. 705(20)(D); 29 CFR 1630.16(e); Labor Code 21.002(6)(B)*.

**i) *Service Animals***

Amigos Por Vida - Friends For Life Public Charter School shall comply with the reasonable accommodation requirements of Title I of the ADA and/or Section 504 of the Rehabilitation Act with respect to service animals. *28 C.F.R. 35.140*.

**Sec. 6. MILITARY SERVICE**

Amigos Por Vida - Friends For Life Public Charter School shall not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service. Amigos Por Vida - Friends For Life Public Charter School shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed Services Employment and Re-employment Rights Act (USERRA). *38 U.S.C. 4311*.

**Sec. 7. GENETIC NONDISCRIMINATION**

**a) *Definitions***

For the purpose of the Genetic Information Nondiscrimination Act (GINA), “genetic information” means information about:

1. An individual’s genetic tests;
2. The genetic tests of that individual’s family members;
3. The manifestation of disease or disorder in family members of the individual (family medical history);
4. An individual’s request for or receipt of genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or
5. The genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

“Genetic information” ***does not include*** information about the sex or age of the individual, the sex or age of family members, or information about the race or ethnicity of the individual or family members that is not derived from a genetic test.

*29 CFR 1635.3(c).*

“Genetic test” means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. Genetic tests include, but are not limited to:

1. A test to determine whether someone has the BRCA1 or BRCA2 variant evidencing a predisposition to breast cancer, a test to determine whether someone has a genetic variant associated with hereditary nonpolyposis colon cancer, and a test for a genetic variant for Huntington’s Disease;
2. Carrier screening for adults using genetic analysis to determine the risk of conditions such as cystic fibrosis, sickle cell anemia, spinal muscular atrophy, or fragile X syndrome in future offspring;
3. Amniocentesis and other evaluations used to determine the presence of genetic abnormalities in a fetus during pregnancy;
4. Newborn screening analysis that uses DNA, RNA, protein, or metabolite analysis to detect or indicate genotypes, mutations, or chromosomal changes, such as a test for PKU performed so that treatment can begin before a disease manifests;
5. Pre-implantation genetic diagnosis performed on embryos created using in vitro fertilization;
6. Pharmacogenetic tests that detect genotypes, mutations, or chromosomal changes that indicate how an individual will react to a drug or a particular dosage of a drug;



7. DNA testing to detect genetic markers that are associated with information about ancestry;  
and
8. DNA testing that reveals family relationships, such as paternity.

Examples of tests or procedures that are not genetic tests are:

1. An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes;
2. A medical examination that tests for the presence of a virus that is not composed of human DNA, RNA, chromosomes, proteins, or metabolites;
3. A test for infectious and communicable diseases that may be transmitted through food handling;
4. Complete blood counts, cholesterol tests, and liver-function tests.

A test for the presence of alcohol or illegal drugs is not a genetic test. However, a test to determine whether an individual has a genetic predisposition for alcoholism or drug use is a genetic test.

*29 CFR 1635.3(f).*

**b) Notices**

The Superintendent or designee shall post in conspicuous places on school premises, where notices to employees and applicants for employment are customarily posted, a notice setting forth excerpts from or summaries of the pertinent provisions of the GINA regulation and information pertinent to the filing of a complaint. *29 CFR 1635.10(c).*

**c) Prohibited Practices**

i. Discrimination

Amigos Por Vida - Friends For Life Public Charter School shall not discriminate against an individual on the basis of genetic information in regard to hiring, discharge, compensation, or terms, conditions, or privileges of employment. *42 U.S.C. 2000ff-1(a); 29 CFR 1635.4.*

ii. Retaliation

Amigos Por Vida - Friends For Life Public Charter School shall not discriminate against an individual because the individual has opposed any act or practice made unlawful by GINA or because the individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under GINA. *41 U.S.C. 2000ff-6(f); 29 CFR 1635.7.*

iii. Acquisition

Except as set forth below or otherwise provided in the GINA regulations, Amigos Por Vida - Friends For Life Public Charter School shall not request, require, or purchase genetic information of an individual or family member of the individual. *42 U.S.C. 2000ff-1(b); 29 CFR 1635.8(a)*.

“Request” includes:

1. Conducting an Internet search on an individual in a way that is likely to result Amigos Por Vida - Friends For Life Public Charter School’s obtaining genetic information;
2. Actively listening to third-party conversations or searching an individual’s personal effects for the purpose of obtaining genetic information; and
3. Making requests for information about an individual’s current health status in a way that is likely to result in Amigos Por Vida - Friends For Life Public Charter School’s obtaining genetic information.

*29 CFR 1635.8(a)*.

iv. Disclosure

Except as set forth in the GINA regulations, Amigos Por Vida - Friends For Life Public Charter School shall not disclose the genetic information of an employee, regardless of how Amigos Por Vida - Friends For Life Public Charter School obtained the information. *29 CFR 1635.9(b)*.

**d) Manifested Condition**

Amigos Por Vida - Friends For Life Public Charter School shall not be considered to be in violation of the GINA regulations based on the use, acquisition, or disclosure of medical information about a manifested disease, disorder, or pathological condition of an employee, even if the disease, disorder, or pathological condition has or may have a genetic basis or component. However, genetic information about a manifested disease, disorder, or pathological condition is subject to the requirements and prohibitions of GINA. *29 CFR 1635.12*.

“Manifestation” or “manifested” means, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health-care professional with appropriate training and expertise in the field of medicine involved. A disease, disorder, or pathological condition is not manifested if the diagnosis is based principally on genetic information. *29 CFR 1635.3(g)*.

**e) Inadvertent Acquisition**

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where Amigos Por Vida - Friends For Life Public Charter School inadvertently requests or requires genetic information of the individual or family member of the individual. This exception applies in, but is not necessarily limited to, situations where a manager or supervisor learns genetic information about an individual by:

1. Overhearing a conversation between the individual and others;
2. Receiving the information during a casual conversation, including in response to an ordinary expression of concern that is the subject of the conversation. This exception does not apply where a supervisor follows up with questions that are probing in nature, such as whether other family members have the condition or whether the individual has been tested for the condition, because the supervisor or official should know that these questions are likely to result in the acquisition of genetic information;
3. Receiving unsolicited information (e.g., where a supervisor receives an unsolicited e-mail about the health of an employee’s family member from a co-worker); or
4. Accessing a social media platform that the supervisor was given permission to access by the creator of the profile at issue (e.g., a supervisor and employee are connected on a social networking site and the employee provides family medical history on his page).

*29 CFR 1635.8(b)(1)(ii).*

**f) *Requests for Medical Information***

If Amigos Por Vida - Friends For Life Public Charter School acquires genetic information in response to a lawful request for medical information, the acquisition of genetic information will not generally be considered inadvertent unless Amigos Por Vida - Friends For Life Public Charter School directs the individual and/or health-care provider from whom it requested medical information not to provide genetic information. *29 CFR 1635.8(b)(1)(i)(A).*

Situations involving lawful requests for medical information include, for example:

1. Requests for documentation to support a request for reasonable accommodation under federal, state, or local law where the disability and/or need for accommodation is not obvious, the documentation is no more than is sufficient to establish that an individual has a disability and needs a reasonable accommodation, and the documentation relates only to the impairment that the individual claims to be a disability that requires reasonable accommodation;
2. Requests for medical information as required, authorized, or permitted by federal, state, or local law, such as where an employee requests leave under the Family and Medical Leave Act (“FMLA”) to attend to the employee’s own serious health condition or where an employee complies with the FMLA’s employee return to work certification requirements; or
3. Requests for documentation to support leave that is not governed by federal, state, or local laws requiring leave, as long as the documentation required to support the request otherwise complies with the requirements of the ADA and other laws limiting Amigos Por Vida - Friends For Life Public Charter School’s access to medical information.

*29 CFR 1635.8(b)(1)(i)(D).*

i. Safe Harbor

Any receipt of genetic information in response to a request for medical information shall be deemed inadvertent if Amigos Por Vida - Friends For Life Public Charter School uses language such as the following:

“The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. ‘Genetic information,’ as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.”

Amigos Por Vida - Friends For Life Public Charter School’s failure to give such a notice or to use this or similar language will not prevent Amigos Por Vida - Friends For Life Public Charter School from establishing that a particular receipt of genetic information was inadvertent if the request for medical information was not likely to result in Amigos Por Vida - Friends For Life Public Charter School’s obtaining genetic information (for example, where an overly broad response is received in response to a tailored request for medical information).

29 CFR 1635.8(b)(1)(i)(B), (C).

**g) *Employment Examinations***

The prohibition on acquisition of genetic information applies to medical examinations related to employment. Amigos Por Vida - Friends For Life Public Charter School shall tell health-care providers not to collect genetic information, including family medical history, as part of a medical examination intended to determine the ability to perform a job. 29 CFR 1635.8(d).

i. Remedial Measures

Amigos Por Vida - Friends For Life Public Charter School shall take additional reasonable measures within its control if it learns that genetic information is being requested or required in medical examinations related to employment. Such reasonable measures may depend on the facts and circumstances under which a request for genetic information was made, and may include no longer using the services of a health-care professional who continues to request or require genetic information during medical examinations after being informed not to do so. 29 CFR 1635.8(d).

**h) *Health or Genetic Services***

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where Amigos Por Vida - Friends For Life Public Charter School offers health or genetic services, including services offered as part of a voluntary wellness program, if the conditions at 29 CFR 1635.8(b)(2) are met.

Amigos Por Vida - Friends For Life Public Charter School may not offer a financial inducement for individuals to provide genetic information but may offer financial inducements for completion of health risk assessments that include questions about family medical history or other genetic information. Amigos Por Vida - Friends For Life Public Charter School shall make clear, in language reasonably likely to be understood by those completing the health risk assessment, that the inducement will be made available whether or not the participant answers questions regarding genetic information.

Amigos Por Vida - Friends For Life Public Charter School may offer financial inducements to encourage individuals who have voluntarily provided genetic information (e.g., family medical history) that indicates that they are at increased risk of acquiring a health condition in the future to participate in disease management programs or other programs that promote healthy lifestyles, and/or to meet particular health goals as part of a health or genetic service. However, Amigos Por Vida - Friends For Life Public Charter School must also offer these programs to individuals with current health conditions and/or to individuals whose lifestyle choices put them at increased risk of developing a condition.

29 CFR 1635.8(b)(2).

**i) *Leave Requests***

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where Amigos Por Vida - Friends For Life Public Charter School requests family medical history to comply with the certification provisions of the FMLA or state or local family and medical leave laws, or pursuant to a policy (even in the absence of requirements of federal, state, or local leave laws) that permits the use of leave to care for a sick family member and that requires all employees to provide information about the health condition of the family member to substantiate the need for leave. 29 CFR 1635.8(b)(3).

**j) *Publicly Available Information***

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where Amigos Por Vida - Friends For Life Public Charter School acquires genetic information from documents that are commercially and publicly available for review or purchase, including newspapers, magazines, periodicals, or books, or through electronic media, such as information communicated through television, movies, or the Internet, except that this exception does not apply to:

1. Medical databases, court records, or research databases available to scientists on a restricted basis;
2. Genetic information acquired through sources with limited access, such as social networking sites and other media sources which require access permission from a specific individual or where access is conditioned on membership in a particular group, unless Amigos Por Vida - Friends For Life Public Charter School can show that access is routinely granted to all who request it;
3. Genetic information obtained through commercially and publicly available sources if Amigos Por Vida - Friends For Life Public Charter School sought access to those sources with the intent of obtaining genetic information; or
4. Genetic information obtained through media sources, whether or not commercially and publicly available, if Amigos Por Vida - Friends For Life Public Charter School is likely to acquire genetic information by accessing those sources, such as Web sites and online discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination.

29 CFR 1635.8(b)(4).

**k) *Workplace Monitoring***

The general prohibition against requesting, requiring, or purchasing genetic information does not apply where Amigos Por Vida - Friends For Life Public Charter School acquires genetic information for use in the genetic monitoring of the biological effects of toxic substances in the workplace. Such monitoring must meet the criteria at 29 CFR 1635.8(b)(5).

**l) *Inquiries Made of Family Members***

Amigos Por Vida - Friends For Life Public Charter School does not violate the GINA regulations when it requests, requires, or purchases information about a manifested disease, disorder, or pathological condition of an employee whose family member is also employed by Amigos Por Vida - Friends For Life Public Charter School or who is receiving health or genetic services on a voluntary basis. For example, Amigos Por Vida - Friends For Life Public Charter School does not violate the GINA regulations by asking someone whose sister also works for Amigos Por Vida - Friends For Life Public Charter School to take a post-offer medical examination that does not include requests for genetic information. 29 CFR 1635.8(c).

**m) *Confidentiality***

The Superintendent or designee shall maintain genetic information in writing about an employee on forms and in medical files (including where the information exists in electronic forms and files) that are separate from personnel files. Amigos Por Vida - Friends For Life Public Charter School must treat such information as a confidential medical record. Amigos Por Vida - Friends For Life

Public Charter School may maintain genetic information about an employee in the same file in which it maintains confidential medical information under the ADA.

Genetic information placed in personnel files before November 21, 2009, need not be removed. Amigos Por Vida - Friends For Life Public Charter School will not be liable under the GINA regulations for the mere existence of the information in the file. However, the prohibitions on use and disclosure of genetic information apply to all genetic information that meets the statutory definition, including genetic information requested, required, or purchased before November 21, 2009.

Genetic information that Amigos Por Vida - Friends For Life Public Charter School receives orally need not be reduced to writing but may not be disclosed, except as permitted by 29 CFR part 1635.

Genetic information that Amigos Por Vida - Friends For Life Public Charter School acquires through sources that are commercially and publicly available, as provided by 29 CFR 1635.8(b)(4), is not considered confidential genetic information but may not be used to discriminate against an individual.

29 CFR 1635.9(a).

**n) *Disclosure Permitted***

Amigos Por Vida - Friends For Life Public Charter School may disclose genetic information, regardless of how such information was obtained (except for genetic information acquired through commercially and publicly available sources), as follows:

1. To the employee (or family member if the family member is receiving genetic services) about whom the information pertains upon receipt of the employee's written request;
2. To an occupational or other health researcher if the research is conducted in compliance with the regulations and protections at 45 CFR part 46;
3. In response to an order of a court. Amigos Por Vida - Friends For Life Public Charter School may disclose only the genetic information expressly authorized by the order. If the order was secured without the knowledge of the employee to whom the information refers, Amigos Por Vida - Friends For Life Public Charter School shall inform the employee of the order and any genetic information that was disclosed pursuant to the order;
4. To government officials investigating compliance with Title II of GINA if the information is relevant to the investigation;
5. To the extent the information is disclosed in support of an employee's compliance with the certification provisions of the FMLA or certification requirements under state family and medical leave laws; or
6. To a federal, state, or local public health agency, only with regard to information about the manifestation of a disease or disorder that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness, provided that the individual whose family member is the subject of the disclosure is notified of such disclosure.

*29 CFR 1635.9(b).*

***o) Relationship to HIPAA Privacy Regulations***

The GINA regulations do not apply to the use or disclosure of genetic information that is protected health information subject to regulation under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). *29 CFR 1635.9(c).*

**Sec. 8. BANKRUPTCY DISCRIMINATION**

Amigos Por Vida - Friends For Life Public Charter School shall not terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under federal bankruptcy laws, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt:

1. Is or has been a debtor under federal bankruptcy laws;
2. Has been insolvent before the commencement of a case under federal bankruptcy laws or during the case but before the grant or denial of a discharge; or
3. Has not paid a debt that is dischargeable in a case under federal bankruptcy laws.

*11 U.S.C. 525(b).*

**Sec. 9. GRIEVANCE POLICIES**

The Superintendent shall provide grievance procedure(s) concerning the following:

***a) Section 504***

That incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act. *34 CFR 104.7(b), 104.11.*

***b) Americans with Disabilities Act***

Providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the ADA. *28 CFR 35.107, 35.140.*

***c) Title IX***

Providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX. *34 CFR 106.8(b); North Haven Board of Education v. Bell, 456 U.S. 512 (1982).*



**Sec. 10. COMPLIANCE COORDINATOR**

Amigos Por Vida - Friends For Life Public Charter School shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, the Age Act, and the ADA. The Superintendent shall notify all employees of the name, office address, and telephone number of the employee(s) so designated. *34 CFR 104.7(b), 104.11; 28 CFR 35.107, 35.140; 34 CFR 106.8(b).*

**Sec. 1. NONDISCRIMINATION STATEMENT**

Amigos Por Vida - Friends For Life Public Charter School strictly prohibits discrimination, including harassment, against an employee on the basis of race, color, religion, gender, national origin, age, disability, genetic information, or any other legally protected classification. Retaliation against anyone involved in the complaint process is also a violation of Amigos Por Vida - Friends For Life Public Charter School policy.

For purposes of this policy, “employee” includes current employees, volunteers and applicants for employment.

**Sec. 2. GENERAL NON-DISCRIMINATION POLICY**

**a) *Prohibited Conduct***

In this policy, the term “prohibited conduct” includes discrimination, harassment, and/or retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

**i. Prohibited Discrimination**

Discrimination is defined as conduct directed at an employee on the basis of race, color, religion, gender, national origin, age, disability, genetic information or any other basis prohibited by law, that adversely affects his or her employment.

**ii. Prohibited Harassment**

Prohibited harassment of an employee is defined as unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information where:

1. Enduring the offensive conduct becomes a condition of continued employment; or
2. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive.

Harassment may also occur when unwelcome conduct based on an employee’s protected characteristic is so severe, persistent, or pervasive that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee’s work performance;
2. Creates an intimidating, threatening, hostile, or offensive work environment; or
3. Otherwise adversely affects the employee’s performance, environment, or employment opportunities.

Prohibited harassment may include, but is not limited to, offensive or derogatory language directed at another person’s religious beliefs or practices, accent, skin color, gender identity, or need for workplace accommodation; threatening or intimidating conduct; offensive jokes, name calling, slurs, or rumors; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other stereotypes; or other types of aggressive conduct such as theft or damage to property.

iii. *Prohibited Gender-Based Harassment*

Gender-based harassment includes physical, verbal, or nonverbal conduct based on an employee’s gender, the employee’s expression of characteristics perceived as stereotypical for the employee’s gender, or the employee’s failure to conform to stereotypical notions of femininity or masculinity.

Examples of gender-based harassment, regardless of the employee’s or alleged harasser’s actual or perceived gender, may include offensive jokes, name-calling, slurs, or rumors; physical aggression or assault; threatening or intimidating conduct; or other kinds of aggressive conduct such as theft or damage to property.

iv. *Prohibited Retaliation*

Amigos Por Vida - Friends For Life Public Charter School expressly prohibits retaliation against an employee who makes a claim alleging to have experienced discrimination or harassment, or an employee who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation.

Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, unjustified negative evaluations, unjustified negative references, or increased surveillance.

v. *False Claims*

An employee who intentionally makes a false claim, offers false statements, or refuses to cooperate or participate in an investigation regarding discrimination or harassment is subject to discipline, up to and including termination of employment.

**b) *Reporting Prohibited Conduct (Non-Sexual Harassment)***

An employee who believes that he or she has experienced prohibited conduct, or that another employee has experienced prohibited conduct, should immediately report the alleged conduct to the Principal or his or her supervisor, or to one of the school officials identified below.

In this policy, “prohibited conduct” includes discrimination, harassment, and/or retaliation, even if the behavior does not rise to the level of unlawful conduct.

The reporting procedures in this Section 2 will apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX (including sexual harassment), see the procedures below at Section 3, Sexual Harassment Prohibited – Title IX Policy.

i. *Title IX Coordinator*

The Title IX Coordinator is responsible for coordinating Amigos Por Vida - Friends For Life Public Charter School's efforts to comply with its responsibilities under Title IX with respect to discrimination based on sex, including sexual harassment. Amigos Por Vida - Friends For Life Public Charter School designates the following person(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended:

Ms. Claudia Zelaya, Position: School Counselor, Address: 5503 El Camino Del Rey St., Houston, TX 77081, Telephone: 713-349-9945 ext. 1120

ii. *ADA/Section 504 Coordinator*

Amigos Por Vida - Friends For Life Public Charter School designates the following person to coordinate its efforts to comply with legal requirements concerning discrimination on the basis of disability:

Ms. Alexandra Crane, Position: SpEd Teacher, Address: 5503 El Camino Del Rey St., Houston, TX 77081, Telephone: 713-349-9945 ext. 1190

iii. *Title VII/Age Coordinator*

Amigos Por Vida - Friends For Life Public Charter School designates the following person to coordinate its efforts to comply with legal requirements concerning discrimination on the basis of race, color, national origin, and age:

Ms. Nadia Garcia Position: Human Resources, Address: 5503 El Camino Del Rey St., Houston, TX 77081, Telephone: 713-349-9945 ext. 2181

iv. *All Other Complaints*

Reports concerning prohibited conduct against the Title IX Coordinator, ADA/Section 504 Coordinator, and/or Title VII/Age Coordinator may be made to the Superintendent or designee. Reports concerning prohibited conduct against the Superintendent or designee may be directed to the Board.

**c) *Timely Reporting***

Employees shall report prohibited conduct as soon as possible after the alleged act or knowledge of the alleged act.

Any supervisor who receives a report of prohibited conduct shall immediately inform the appropriate Amigos Por Vida - Friends For Life Public Charter School official identified above.

**d) *Investigating Reports of Prohibited Conduct***

Amigos Por Vida - Friends For Life Public Charter School may request, but not insist upon, a written report describing any alleged prohibited conduct. If a report is made orally, the Amigos Por Vida - Friends For Life Public Charter School official receiving the report shall reduce the report to writing.

After receiving a report or notice of a report, the appropriate Compliance Coordinator shall determine if the allegations, if proven, would constitute prohibited conduct under this policy. If so, the Compliance Coordinator shall immediately authorize or conduct an investigation, regardless of whether a criminal or regulatory investigation concerning the allegations is pending. The investigation may be conducted by the Compliance Coordinator or designee, or by a third party authorized by Amigos Por Vida - Friends For Life Public Charter School, such as an attorney. The employee's Principal or supervisor shall be notified of the investigation, if appropriate.

The investigation may consist of personal interviews of individuals with knowledge of the allegations, including the person making the report, and the person against whom the report is filed. The investigation may also include consideration of documents or other information concerning the allegations.

If appropriate, Amigos Por Vida - Friends For Life Public Charter School shall take prompt action to prevent prohibited conduct from occurring during the course of the investigation.

**i. Concluding the Investigation**

Investigations of prohibited conduct should be completed as soon as reasonably possible and appropriate under the circumstances. The investigator shall prepare a written report of the investigation, and provide the report to the Amigos Por Vida - Friends For Life Public Charter School official overseeing the investigation.

**ii. School Action**

If an investigation indicates that prohibited conduct occurred, Amigos Por Vida - Friends For Life Public Charter School shall promptly take appropriate disciplinary or corrective action to address the conduct.

Amigos Por Vida - Friends For Life Public Charter School may also take action following an investigation, even if the alleged conduct did not rise to the level of prohibited or unlawful conduct.

iii. Confidentiality

Amigos Por Vida - Friends For Life Public Charter School shall respect the privacy of all individuals involved in a report or investigation of prohibited conduct. Limited disclosures may be necessary.

iv. Appeal

A complainant who is dissatisfied with the outcome of an investigation may appeal through Board Policy PG-XX (Employee Complaints and Grievances – General).

e) ***Records Retention***

Copies of reports alleging prohibited conduct, investigation reports, and other related records shall be maintained for at least three years.

**Sec. 3. SEXUAL HARASSMENT PROHIBITED – TITLE IX POLICY**

a) ***Definitions for Title IX Terms***

i. Actual Knowledge

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to Amigos Por Vida - Friends For Life Public Charter School’s Title IX Coordinator or any Amigos Por Vida - Friends For Life Public Charter School official who has authority to institute corrective measures on behalf of Amigos Por Vida - Friends For Life Public Charter School, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of Amigos Por Vida - Friends For Life Public Charter School with actual knowledge is the respondent (as that term is defined below). The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of Amigos Por Vida - Friends For Life Public Charter School. “Notice” as used in this definition includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator. *34 C.F.R. 106.30(a)*.

ii. Complainant

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. *34 C.F.R. 106.30(a)*.

iii. Consent

“Consent” is not currently defined by the Title IX regulations, nor do the regulations require Amigos Por Vida - Friends For Life Public Charter School to adopt a particular definition of consent with respect to sexual assault. *34 C.F.R. 106.30(a)*.

iv. *Deliberate Indifference Standard*

If Amigos Por Vida - Friends For Life Public Charter School has actual knowledge of sexual harassment in an education program or activity of Amigos Por Vida - Friends For Life Public Charter School against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent. Amigos Por Vida - Friends For Life Public Charter School is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. *34 C.F.R. 106.44*.

v. *Education Program or Activity*

For purposes of this Title IX policy, “education program or activity” includes locations, events, or circumstances over which Amigos Por Vida - Friends For Life Public Charter School exercised substantial control over both the respondent and the context in which sexual harassment occurs. *34 C.F.R. 106.44*.

vi. *Formal Complaint*

“Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that Amigos Por Vida - Friends For Life Public Charter School investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in Amigos Por Vida - Friends For Life Public Charter School’s education program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by email, by using the contact information for the Title IX Coordinator provided by Amigos Por Vida - Friends For Life Public Charter School, and by any additional method designated by Amigos Por Vida - Friends For Life Public Charter School. As used in this definition, the term “document filed by a complainant” means a document or electronic submission (such as by email or through an online portal provided for this purpose by Amigos Por Vida - Friends For Life Public Charter School) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party to the Title IX formal complaint, and must comply with the requirements of the Title IX formal process, including the informal resolution process. *34 C.F.R. 106.30(a)*.

vii. *Respondent*

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. *34 C.F.R. 106.30(a)*.

viii. *Sexual Harassment*

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of Amigos Por Vida - Friends For Life Public Charter School conditioning the provision of an aid, benefit, or service of Amigos Por Vida - Friends For Life Public Charter School on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Amigos Por Vida - Friends For Life Public Charter School’s education program or activity; or
3. “Sexual assault” as defined in [20 U.S.C. 1091\(f\)\(6\)\(A\)\(v\)](#); “dating violence” as defined in [34 U.S.C. 12291\(a\)\(10\)](#); “domestic violence” as defined in [34 U.S.C. 12291\(a\)\(8\)](#); or “stalking” as defined in [34 U.S.C. 12291\(a\)\(30\)](#).

*34 C.F.R. 106.30(a)*.

ix. *Supportive Measures*

“Supportive measures” means nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to Amigos Por Vida - Friends For Life Public Charter School’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Amigos Por Vida - Friends For Life Public Charter School’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Amigos Por Vida - Friends For Life Public Charter School must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair Amigos Por Vida - Friends For Life Public Charter School’s ability to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. *34 C.F.R. 106.30(a)*.

**b) *Requirement to Designate Title IX Coordinator***

Amigos Por Vida - Friends For Life Public Charter School must designate at least one employee as a Title IX Coordinator to coordinate Amigos Por Vida - Friends For Life Public Charter School’s efforts to comply with its requirements under Title IX.

**c) *Notification of Title IX Policy***



Amigos Por Vida - Friends For Life Public Charter School must notify applicants for admission and employment, students, parents or legal guardians of students, and all professional organizations holding professional agreements with Amigos Por Vida - Friends For Life Public Charter School of the name or title, office address, email address, and telephone number of the employee or employees designated as the Title IX Coordinator.

Amigos Por Vida - Friends For Life Public Charter School must also notify the individuals noted above that Amigos Por Vida - Friends For Life Public Charter School does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required under Title IX not to discriminate in such a manner. The notification must also state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX to Amigos Por Vida - Friends For Life Public Charter School may be referred to the designated Title IX Coordinator, to the assistant secretary for civil rights of the Department of Education, or both.

*34 C.F.R. 106.8(a), (b)(1).*

**d) *Handbook Information and Website Postings***

Amigos Por Vida - Friends For Life Public Charter School must prominently display the contact information required to be listed for the Title IX Coordinator and the nondiscrimination policy described in “Notification of Title IX Policy,” above, on the Amigos Por Vida - Friends For Life Public Charter School website, if any, and in the Employee Handbook and Student / Parent Handbook.

Amigos Por Vida - Friends For Life Public Charter School may not use or distribute a publication stating that Amigos Por Vida - Friends For Life Public Charter School treats applicants, students, or employees differently on the basis of sex except when such treatment is permitted by Title IX.

*34 C.F.R. 106.8(b)(2).*

**e) *Reporting Sex Discrimination / Sexual Harassment***

Any person may report sex discrimination, including sexual harassment, whether or not the reporting person is the person alleged to be the victim of conduct that may constitute sex discrimination or sexual harassment. Reports may be made in person, by mail, by telephone, or by email through the contact information listed for Amigos Por Vida - Friends For Life Public Charter School’s Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Reports may be made at any time (including during nonbusiness hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator. *34 C.F.R. 106.8(a).*

**f) *Complaint Procedures***

Amigos Por Vida - Friends For Life Public Charter School must adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX, and a formal Title IX complaint process that complies with applicable federal regulations.

Amigos Por Vida - Friends For Life Public Charter School must provide notice to the individuals identified in Sec. 3(c) above of the school's procedures and Title IX formal complaint process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how Amigos Por Vida - Friends For Life Public Charter School will respond.

The requirements of this provision apply only to sex discrimination occurring against a person in the United States.

*34 C.F.R. 106.8(c)-(d).*

**g) *Response by Title IX Coordinator***

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, , inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

i. *Required Supportive Measures*

Amigos Por Vida - Friends For Life Public Charter School's response must treat complainants and respondents equitably by offering supportive measures and by following a grievance process that complies with the Title IX regulations (*see* Process for Formal Title IX Complaint, Sec. 3(h) below) before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

*34 C.F.R. 106.44(a).*

ii. *Response to Formal Complaint*

In response to a formal complaint, Amigos Por Vida - Friends For Life Public Charter School must follow a process that complies with the Title IX regulations (*see* Process for Formal Title IX Complaint, Sec. 3(h) below).

*34 C.F.R. 106.44(b)(1).*

iii. *Emergency Removals*

Amigos Por Vida - Friends For Life Public Charter School is not precluded from removing a respondent from its education program or activity on an emergency basis, provided that Amigos Por Vida - Friends For Life Public Charter School:

1. Undertakes an individualized safety and risk analysis;
2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
3. Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

This may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

*34 C.F.R. 106.44(c).*

iv. *Administrative Leave*

Amigos Por Vida - Friends For Life Public Charter School is not prohibited from placing a nonstudent employee respondent on administrative leave during the pendency of a Title IX formal complaint. This does not modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act. *34 C.F.R. 106.44(d).*

**h) *Process for Title IX Formal Complaint***

For purposes of addressing formal complaints of sexual harassment, Amigos Por Vida - Friends For Life Public Charter School's process must comply with the requirements listed in this section. Any provisions, rules, or practices other than those required by the Title IX regulations or this policy that Amigos Por Vida - Friends For Life Public Charter School adopts as part of its process for handling formal complaints of sexual harassment must apply equally to both parties. *34 C.F.R. 106.45(b).*

Amigos Por Vida - Friends For Life Public Charter School's Title IX formal complaint process must:

1. Treat complainants and respondents equally by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a process that complies with the Title IX regulations before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to Amigos Por Vida - Friends For Life Public Charter School's education program or activity. Such remedies may include the same individualized services described as supportive measures; however, remedies need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent.

2. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness.
3. Require that any individual designated by Amigos Por Vida - Friends For Life Public Charter School as a Title IX Coordinator, investigator, decision-maker, or any person designated by Amigos Por Vida - Friends For Life Public Charter School to facilitate an informal resolution process, not to have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Amigos Por Vida - Friends For Life Public Charter School must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process receive training on the definition of sexual harassment, the scope of Amigos Por Vida - Friends For Life Public Charter School’s education program or activity, how to conduct an investigation and Title IX formal complaint process (including hearings, appeals, and informal resolution processes, as applicable), and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Amigos Por Vida - Friends For Life Public Charter School must ensure that decision-makers receive training on any technology to be used at a live hearing, if any, and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant. Amigos Por Vida - Friends For Life Public Charter School must also ensure that investigators receive training on relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
4. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process.
5. Include reasonably prompt timeframes for concluding the grievance process, including reasonably prompt timeframes for filing and resolving appeals and informal resolution processes if Amigos Por Vida - Friends For Life Public Charter School offers informal resolution processes, and a process that allows for the temporary delay of the Title IX formal complaint process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
6. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that Amigos Por Vida - Friends For Life Public Charter School may implement following any determination of responsibility.
7. State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for

- formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment.
8. Include the procedures and permissible bases for the complainant and respondent to appeal.
  9. Describe the range of supportive measures available to complainants and respondents.
  10. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally-recognized privilege, unless the person holding such privilege has waived the privilege.

*34 C.F.R. 106.45(b)(1).*

i. *Notice of Allegations*

Upon receipt of a formal complaint, Amigos Por Vida - Friends For Life Public Charter School must provide the following written notice to the parties who are known:

1. Notice of Amigos Por Vida - Friends For Life Public Charter School's Title IX formal complaint process, including any informal resolution process.
2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
  - a. The identities of the parties involved in the incident, if known;
  - b. The conduct allegedly constituting sexual harassment; and
  - c. The date and location of the alleged incident, if known.

The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and may inspect and review evidence. The written notice must inform the parties of any provision in Amigos Por Vida - Friends For Life Public Charter School's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the Title IX formal complaint process.

If, in the course of an investigation, Amigos Por Vida - Friends For Life Public Charter School decides to investigate allegations about the complainant or respondent that are not included in the notice of allegations, Amigos Por Vida - Friends For Life Public Charter School must provide notice of the additional allegations to the parties whose identities are known.

*34 C.F.R. 106.45(b)(2).*

ii. *Dismissal of Formal Complaint*

Amigos Por Vida - Friends For Life Public Charter School must investigate the allegations in a formal complaint.

If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in Amigos Por Vida - Friends For Life Public Charter School's education program or activity, or did not occur against a person in the United States, then Amigos Por Vida - Friends For Life Public Charter School must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of Amigos Por Vida - Friends For Life Public Charter School's Code of Conduct.

Amigos Por Vida - Friends For Life Public Charter School may dismiss the formal complaint or any allegations therein if, at any time during the investigation or hearing (if applicable):

1. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
2. The respondent is no longer enrolled or employed by Amigos Por Vida - Friends For Life Public Charter School; or
3. Specific circumstances prevent Amigos Por Vida - Friends For Life Public Charter School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal of a formal complaint, Amigos Por Vida - Friends For Life Public Charter School must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

*34 C.F.R. 106.45(b)(3).*

iii. *Consolidation of Formal Complaints*

Amigos Por Vida - Friends For Life Public Charter School may consolidate formal complaints as to allegations of sexual harassment against more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a Title IX formal complaint process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable. *34 C.F.R. 106.45(b)(4).*

iv. *Investigating Formal Complaints*

When investigating a formal complaint and throughout the Title IX formal complaint process, Amigos Por Vida - Friends For Life Public Charter School must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Amigos Por Vida - Friends For Life Public Charter School and not on the parties, provided that Amigos Por Vida - Friends For Life Public Charter School cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Amigos Por Vida - Friends For Life Public Charter School obtains that party's voluntary, written consent to do so for a Title IX formal complaint. If a party is not an "eligible student," as defined in the FERPA regulations, Amigos Por Vida - Friends For Life Public Charter School must obtain the voluntary, written consent of a "parent," as defined in the FERPA regulations.
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
4. Provide the parties with the same opportunities to have others present during any Title IX formal complaint proceeding, including the opportunity to be accompanied to any related or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for either the complainant or respondent in any meeting or Title IX formal complaint proceeding; however, Amigos Por Vida - Friends For Life Public Charter School may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings (if applicable), investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which Amigos Por Vida - Friends For Life Public Charter School does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, Amigos Por Vida - Friends For Life Public Charter School must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report. Amigos Por Vida - Friends For Life Public Charter School must make all such evidence subject to the parties' inspection and review available at any hearing (if applicable) to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

7. Create an investigative report that fairly summarizes relevant evidence and, at least ten days prior to a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

*34 C.F.R. 106.45(b)(5).*

v. Hearings

Amigos Por Vida - Friends For Life Public Charter School’s Title IX formal complaint process may, but need not, provide for a hearing. With or without a hearing, after Amigos Por Vida - Friends For Life Public Charter School has sent to the investigate report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant. *34 C.F.R. 106.45(b)(6)(ii).*

vi. Determination Regarding Responsibility

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, Amigos Por Vida - Friends For Life Public Charter School must apply the same standard of evidence described at “Process for Title IX Formal Complaint, Sec. 3(h) above. The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment.
2. A description of the procedural steps taken from receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held (if any).
3. Findings of fact supporting the determination.
4. Conclusions regarding the application of Amigos Por Vida - Friends For Life Public Charter School’s Code of Conduct to the facts.
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions Amigos Por Vida - Friends For Life Public Charter School imposes on the respondent, and whether



- remedies designed to restore or preserve equal access to Amigos Por Vida - Friends For Life Public Charter School's education program or activity will be provided by Amigos Por Vida - Friends For Life Public Charter School to the complainant.
6. Amigos Por Vida - Friends For Life Public Charter School's procedures and permissible bases for the complainant and respondent to appeal.

Amigos Por Vida - Friends For Life Public Charter School must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that Amigos Por Vida - Friends For Life Public Charter School provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

*34 C.F.R. 106.45(b)(7)(i)-(iii).*

The Title IX Coordinator is responsible for effective implementation of any remedies identified in a determination regarding responsibility. *34 C.F.R. 106.45(b)(7)(iv).*

vii. Appeals

Amigos Por Vida - Friends For Life Public Charter School must offer both parties an appeal from a determination regarding responsibility, and from Amigos Por Vida - Friends For Life Public Charter School's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination on responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Amigos Por Vida - Friends For Life Public Charter School may offer an appeal equally to both parties on additional bases.

As to all appeals, Amigos Por Vida - Friends For Life Public Charter School must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with standards regarding conflict of interest and bias found in the Title IX regulations (as discussed in "Process for Formal Title IX Complaint," Sec. 3(h) above);

4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

*34 C.F.R. 106.45(b)(8).*

viii. *Informal Resolution*

Amigos Por Vida - Friends For Life Public Charter School may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with Title IX. Similarly, Amigos Por Vida - Friends For Life Public Charter School may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, Amigos Por Vida - Friends For Life Public Charter School may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.

With respect to informal resolution, Amigos Por Vida - Friends For Life Public Charter School must provide written notice to the parties disclosing:

1. The allegations;
2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Amigos Por Vida - Friends For Life Public Charter School also must obtain the parties' voluntary, written consent to the informal resolution process.

Amigos Por Vida - Friends For Life Public Charter School cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

*34 C.F.R. 106.45(b)(9).*

ix. *Recordkeeping*

Amigos Por Vida - Friends For Life Public Charter School must maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to Amigos Por Vida - Friends For Life Public Charter School's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. Amigos Por Vida - Friends For Life Public Charter School must make these training materials publicly available on its website or, if Amigos Por Vida - Friends For Life Public Charter School does not maintain a website, Amigos Por Vida - Friends For Life Public Charter School must make these materials available upon request for inspection by members of the public.

For each response required under "Response by Title IX Coordinator," Sec. 3(g) above, Amigos Por Vida - Friends For Life Public Charter School must create and maintain for a period of seven years records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, Amigos Por Vida - Friends For Life Public Charter School must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to Amigos Por Vida - Friends For Life Public Charter School's education program or activity.

If Amigos Por Vida - Friends For Life Public Charter School does not provide a complainant with supportive measures, Amigos Por Vida - Friends For Life Public Charter School must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit Amigos Por Vida - Friends For Life Public Charter School in the future from providing additional explanations or detailing additional measures taken.

*34 C.F.R. 106.45(b)(10).*

**i) *Retaliation Prohibited***

Neither Amigos Por Vida - Friends For Life Public Charter School nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.

Intimidation, threats, coercion, or discrimination, including charges against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal

complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Complaints alleging retaliation may be filed according to the “Process for Formal Title IX Complaint,” Sec. 3(h) above.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.

Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a Title IX formal complaint proceeding does not constitute retaliation prohibited by Title IX provided, however, that a determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

*34 C.F.R. 106.71(a)-(b).*

**j) Confidentiality**

Amigos Por Vida - Friends For Life Public Charter School must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (“FERPA”) statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of the Title IX regulations at 34 C.F.R. part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *34 C.F.R. 106.71(a).*

**k) Relationship to General Non-Discrimination Policy**

The formal complaint investigation and resolution process outlined above in Sec. 3(h) applies only to formal complaints alleging sexual harassment under Title IX, but not to complaints alleging sex discrimination that do not constitute sexual harassment. Complaints of sex discrimination that do not constitute sexual harassment may be filed with the Title IX Coordinator and will be handled under Amigos Por Vida - Friends For Life Public Charter School’s general process for receiving reports of suspected discrimination and harassment, as outlined in Section 2 above.

**Sec. 4. DISTRIBUTION OF POLICY**

The Superintendent or designee shall ensure that this policy and accompanying procedures are made available to all employees through the Amigos Por Vida - Friends For Life Public Charter School Employee Handbook.

**Sec. 5. LIABILITY FOR HARASSMENT**

Amigos Por Vida - Friends For Life Public Charter School accepts no liability for harassment of any student or employee by another employee. Any Amigos Por Vida - Friends For Life Public Charter School employee who is found to have engaged in prohibited conduct is subject to disciplinary action, up to and including termination.

Amigos Por Vida - Friends For Life Public Charter School does not consider conduct in violation of this policy to be within the course and scope of employment or the direct consequences of the discharge of one's duties. Accordingly, to the extent permitted by law, Amigos Por Vida - Friends For Life Public Charter School reserves the right not to provide a defense or pay damages assessed against employees for conduct in violation of this policy.

**Sec. 1. DEFINITIONS**

“Employee” means an employee or appointed officer who is paid to perform services for Amigos Por Vida - Friends For Life Public Charter School. This definition does not include independent contractors.

“Law” means a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance.

“Personnel action” means an action that affects an employee’s compensation, promotion, demotion, transfer, work assignment, or performance evaluation.

A “good faith” belief that a violation of law occurred means that:

1. An employee believed the conduct reported was a violation of law; and
2. The employee’s belief was reasonable in light of the employee’s experience and training.

A “good faith” belief that a law enforcement authority is an appropriate one means:

1. The employee believed the governmental entity was authorized to
  - a. Regulate under or enforce the law alleged to be violated in the report; or
  - b. Investigate or prosecute a violation of criminal law; and
2. The employee’s belief was reasonable in light of the employee’s experience and training.

**Sec. 2. WHISTLEBLOWER COMPLAINTS**

An employee who alleges a violation of whistleblower protection may take legal action against Amigos Por Vida - Friends For Life Public Charter School as described in Chapter 554 of the Texas Government Code. Before taking such action, an employee must initiate a grievance under PG-4.24 (Employee Complaints and Grievances - General).

The employee must invoke the grievance process under PG-4.24 no later than the 90th day after the date on which the alleged suspension, termination, or other adverse employment action occurred or was discovered by the employee through reasonable diligence. Amigos Por Vida - Friends For Life Public Charter School may shorten the timelines outlined in PG-4.24 (Employee Complaints and Grievances - General) in order to allow the Board to make a final decision concerning the grievance within 60 days of initiation of the grievance.

If the Board does not render a final decision before the 61st day after grievance procedures are initiated, the employee may elect to:

1. Exhaust the grievance process under PG-4.24 (Employee Complaints and Grievances - General), in which case the employee must file legal action not later than the 30th day after

the date those procedures are exhausted to obtain relief under Chapter 554 of the Texas Government Code; or

2. Terminate the grievance process under PG-4.24 (Employee Complaints and Grievances - General) and file legal action within the timelines set by sections 554.005 and 554.006 of the Texas Government Code.

*Gov't Code 554.005, .006.*

### **Sec. 3. WHISTLEBLOWER PROTECTIONS**

Neither the Board nor its agents shall suspend or terminate the employment of, or take other adverse personnel action against, an employee who in good faith reports a violation of law by Amigos Por Vida - Friends For Life Public Charter School or another Amigos Por Vida - Friends For Life Public Charter School employee to an appropriate law enforcement authority. *Gov't Code 554.002.*

### **Sec. 4. NOTICE OF RIGHTS**

Amigos Por Vida - Friends For Life Public Charter School shall inform employees of their rights regarding whistleblower protection by posting a sign in a prominent location in the workplace. *Gov't Code 554.009.*

**Sec. 1. MINIMUM QUALIFICATIONS FOR PRINCIPALS AND TEACHERS**

A person employed by Amigos Por Vida - Friends For Life Public Charter School as a Principal or teacher must hold at least a baccalaureate degree. *Education Code 12.129.*

**Sec. 2. PRE-EMPLOYMENT AFFIDAVIT**

An applicant for employment as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, school counselor, audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, licensed professional counselor, marriage and family therapist, social worker, or speech language pathologist must submit, using a form adopted by the Texas Education Agency, a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.

An applicant who answers affirmatively concerning an inappropriate relationship with a minor must disclose in the affidavit all relevant facts pertaining to the charge, adjudication, or conviction, including whether the charge was determined to be true or false.

An applicant is not precluded from being employed based on a disclosed charge if Amigos Por Vida - Friends For Life Public Charter School determines based on the information disclosed in the affidavit that the charge was false.

A determination that an employee failed to disclose information required to be disclosed by an applicant is grounds for termination of employment.

*Education Code 21.009.*

**Sec. 3. TEA REGISTRY OF PERSONS NOT ELIGIBLE FOR EMPLOYMENT IN PUBLIC SCHOOLS**

Amigos Por Vida - Friends For Life Public Charter School shall discharge or refuse to hire any person listed on the registry of persons who are not eligible to be employed by a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement, as such registry is maintained and published by the Texas Education Agency. *Education Code § 22.092(b).*

**Sec. 4. NOTICE TO PARENTS – QUALIFICATIONS**

The Superintendent or designee shall provide to the parent or guardian of each student enrolled in Amigos Por Vida - Friends For Life Public Charter School written notice of the qualifications of each teacher employed by Amigos Por Vida - Friends For Life Public Charter School. *Education Code 12.129.*



Parents may also request, and Amigos Por Vida - Friends For Life Public Charter School will provide in a timely manner, information regarding the professional qualifications of their student's classroom teachers. Information provided in response to a parent request will include, at a minimum:

1. Whether a child's teacher(s) have met state qualification and licensing criteria for their grade levels and subject areas;
2. Whether a child's teacher(s) are serving under emergency or other provisional status through which state qualification or licensing criteria have been waived;
3. Whether the teacher(s) are teaching in the field of discipline of the certification of the teacher; and
4. Whether a child receives services from paraprofessionals and, if so, their qualifications.

### **Sec. 5. ACCESS TO EMPLOYEE RECORDS**

Custodians of personnel records shall adhere to the requirements of the Texas Public Information Act ("TPIA").

Information in a personnel file is excepted from the requirements of the TPIA if the disclosure would constitute a clearly unwarranted invasion of personal privacy.

A Amigos Por Vida - Friends For Life Public Charter School employee shall choose whether to allow public access to information in Amigos Por Vida - Friends For Life Public Charter School's custody that relates to the employee's home address, home telephone number, emergency contact information, Social Security number, or that reveals whether the person has family members. *Gov't Code 552.024, 552.102(a)*. The Superintendent shall develop procedures for employees to opt-out of having the above information released.

All information in the personnel file of a Amigos Por Vida - Friends For Life Public Charter School employee shall be made available to that employee or the employee's designated representative as public information is made available under the TPIA. An employee or an employee's authorized representative has a special right of access, beyond the right of the general public, to information held by Amigos Por Vida - Friends For Life Public Charter School that relates to the employee and that is protected from public disclosure by laws intended to protect the accessing employee's privacy interests. Amigos Por Vida - Friends For Life Public Charter School may assert as grounds for denial of access other provisions of the TPIA or other laws that are not intended to protect the accessing employee's privacy interests.

**Sec. 1. DEFINITIONS**

“Criminal history clearinghouse” (“Clearinghouse”) means the electronic clearinghouse and subscription service established by the Department of Public Safety (“DPS”) to provide criminal history record information to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the criminal history record information requested must consent to the release of the information. *Gov’t Code 411.0845(a), (h)*.

“Criminal history record information” (the “CHRI”) means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include:

- (A) Identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or
- (B) Driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.

*Gov’t Code 411.082(2)*.

“National criminal history record information” (“NCHRI”) means criminal history record information obtained from DPS under Government Code Chapter 411, Subchapter F, and the Federal Bureau of Investigation (the “FBI”) under Government Code 411.087. *Education Code 22.081(2)*.

**Sec. 2. CERTIFIED PERSONS**

The State Board for Educator Certification (the “SBEC”) shall review the NCHRI of a person who has not previously submitted fingerprints to the department or been subject to a national criminal history record information review who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by Amigos Por Vida - Friends For Life Public Charter School. *Education Code 22.0831(b), (c)*.

**Sec. 3. NONCERTIFIED EMPLOYEES**

This section applies to a person who is not an applicant for or holder of a certificate from the SBEC and who, on or after January 1, 2008, is offered employment by:

1. Amigos Por Vida - Friends For Life Public Charter School; or
2. A shared services arrangement, if the employee’s or applicant’s duties are or will be performed on school property or at another location where students are regularly present.

*For noncertified employees of Amigos Por Vida - Friends For Life Public Charter School or a shared services arrangement hired before January 1, 2008, see Section 7 (All Other Employees) below.*

**a) *Information to DPS and the Texas Education Agency (the “TEA”)***

Before or immediately after employing or securing the services of a person subject to this section, Amigos Por Vida - Friends For Life Public Charter School shall send or ensure that the person sends to the DPS information that the DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

Amigos Por Vida - Friends For Life Public Charter School shall provide the TEA with the name of a person to whom this section applies. The TEA shall examine the CHRI of the person and notify Amigos Por Vida - Friends For Life Public Charter School if the person may not be hired or must be discharged under Education Code 22.085.

**b) *Employment Pending Review***

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review and acceptability of that person’s CHRI by Amigos Por Vida - Friends For Life Public Charter School and by the TEA. If Amigos Por Vida - Friends For Life Public Charter School or the TEA makes a determination that the employee or applicant is ineligible for employment, the employee must be terminated.

**c) *Criminal History***

Amigos Por Vida - Friends For Life Public Charter School shall obtain all CHRI that relates to a person subject to this section through the Clearinghouse and shall subscribe to the CHRI of that person. Amigos Por Vida - Friends For Life Public Charter School may require the person to pay any fees related to obtaining the CHRI.

*Education Code 22.0833; 19 TAC 153.1109(d).*

**Sec. 4. SUBSTITUTE TEACHERS**

This section applies to a person who is a substitute teacher for Amigos Por Vida - Friends For Life Public Charter School or a shared services arrangement. For purposes of this policy, a “substitute teacher” is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

**a) *Information to DPS and TEA***

Amigos Por Vida - Friends For Life Public Charter School shall send or ensure that a person to whom this section applies sends to the DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

Amigos Por Vida - Friends For Life Public Charter School shall provide the TEA with the name of a person to whom this section applies. The TEA shall examine the CHRI and certification records of the person and notify Amigos Por Vida - Friends For Life Public Charter School if the person:

1. May not be hired or must be discharged as provided by Education Code 22.085; or
2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.

**b) *Employment Pending Review***

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by Amigos Por Vida - Friends For Life Public Charter School and by the TEA. If Amigos Por Vida - Friends For Life Public Charter School or the TEA makes a determination that the employee or applicant is ineligible for employment, the employee must be terminated.

**c) *Criminal History***

Amigos Por Vida - Friends For Life Public Charter School shall obtain all CHRI that relates to a person to whom this section applies through the Clearinghouse. Amigos Por Vida - Friends For Life Public Charter School may require the person to pay any fees related to obtaining the CHRI.

*Education Code 22.0836; 19 TAC 153.1101(5), 153.1111(d).*

**Sec. 5. STUDENT TEACHERS AND VOLUNTEERS**

This section applies to:

1. A person participating in an internship consisting of student teaching to receive a teaching certificate; and
2. A volunteer or person who has indicated, in writing, an intention to serve as a volunteer with Amigos Por Vida - Friends For Life Public Charter School.

**a) *Criminal History***

A person may not perform any student teaching or volunteer duties until:

1. The student teacher or volunteer has provided to Amigos Por Vida - Friends For Life Public Charter School a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government; and
2. Amigos Por Vida - Friends For Life Public Charter School has obtained from the DPS all CHRI that relates to the student teacher or volunteer. Amigos Por Vida - Friends For Life Public Charter School may also obtain CHRI relating to a student teacher or volunteer from any other law enforcement agency, criminal justice agency, or private consumer reporting agency.

Amigos Por Vida - Friends For Life Public Charter School may require a student teacher or volunteer to pay any costs related to obtaining the CHRI.

**b) *Exception***

The criminal history requirements above do not apply to a person who volunteers or is applying to volunteer with Amigos Por Vida - Friends For Life Public Charter School if the person:

1. Is the parent, guardian, or grandparent of a child who is enrolled in Amigos Por Vida - Friends For Life Public Charter School;
2. Will be accompanied by a Amigos Por Vida - Friends For Life Public Charter School employee while on a Amigos Por Vida - Friends For Life Public Charter School campus; or
3. Is volunteering for a single event on Amigos Por Vida - Friends For Life Public Charter School campus.

*Education Code 22.0835.*

**Sec. 6. COORDINATION OF EFFORTS**

Amigos Por Vida - Friends For Life Public Charter School may coordinate with the TEA, the SBEC, and a shared services arrangement as necessary to ensure that criminal history reviews are not unnecessarily duplicated. *Education Code 22.0833(h).*

**Sec. 7. ALL OTHER EMPLOYEES**

Amigos Por Vida - Friends For Life Public Charter School shall obtain CHRI that relates to a person who is not subject to a NCHRI review and who is an employee of:

1. Amigos Por Vida - Friends For Life Public Charter School; or
2. A shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present.

Amigos Por Vida - Friends For Life Public Charter School may obtain the CHRI from:

1. The DPS;
2. A law enforcement or criminal justice agency; or
3. A private consumer reporting agency.

*Education Code 22.083(a), (a-1), (c); Gov't Code 411.097.*

**Sec. 8. CONFIDENTIALITY OF CRIMINAL HISTORY RECORDS**

CHRI that Amigos Por Vida - Friends For Life Public Charter School obtains from the DPS, including any identification information that could reveal the identity of a person about whom the CHRI is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

1. Is for the exclusive use of Amigos Por Vida - Friends For Life Public Charter School; and
2. May be disclosed or used by Amigos Por Vida - Friends For Life Public Charter School only if, and only to the extent, disclosure is authorized or directed by a statute, rule, or order of a court of competent jurisdiction.

For purposes of these confidentiality provisions, “criminal history record” information does not refer to any specific document provided by the DPS, but to the information contained, wholly or partly, in a document’s original form or any subsequent form or use.

Amigos Por Vida - Friends For Life Public Charter School or an individual may not confirm the existence or non-existence of CHRI to any person who is not eligible to receive the information. *Gov't Code 411.084.*

CHRI obtained by Amigos Por Vida - Friends For Life Public Charter School, in the original form or any subsequent form, may not be released to any person except the individual who is the subject of the information, the TEA, the SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

A Amigos Por Vida - Friends For Life Public Charter School employee may request from the Human Resources Department a copy of any CHRI related to that employee that Amigos Por Vida - Friends For Life Public Charter School has obtained from the DPS. Amigos Por Vida - Friends For Life Public Charter School may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI. *Gov't Code 411.097(d), (f).*

Amigos Por Vida - Friends For Life Public Charter School generally will not print out CHRI, unless necessary for conducting a review of records or if seeking legal advice concerning eligibility for employment following receipt of a CHRI report.

Any Amigos Por Vida - Friends For Life Public Charter School employee who violates confidentiality protocols concerning access to, review of, or confidentiality of CHRI is subject to discipline, up to and including termination.

**a) *Destroying CHRI***

Amigos Por Vida - Friends For Life Public Charter School shall destroy CHRI obtained from the DPS on the earlier of:

1. The date the information is used for the authorized purpose; or
2. The first anniversary of the date the information was originally obtained.

*Gov't Code 411.097(d)(3).*

This process also applies if it is necessary to print out CHRI.

**Sec. 9. CONFIDENTIALITY OF CHRI INFORMATION**

Amigos Por Vida - Friends For Life Public Charter School may not release information collected about a person in order to obtain CHRI, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, except:

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);
2. By court order; or
3. With the consent of the person who is the subject of the information.

In addition, the information is not subject to disclosure under Government Code Chapter 522 (Public Information Act). Amigos Por Vida - Friends For Life Public Charter School shall destroy the information not later than the first anniversary of the date the information is received. *Education Code 22.08391.*

**Sec. 10. SBEC NOTIFICATION**

The Superintendent or designee shall promptly notify the SBEC in writing by filing a report with the TEA staff within seven calendar days of the date the Superintendent obtains or has knowledge of information indicating that an applicant for or holder of a certificate issued by the SBEC has a reported criminal history and Amigos Por Vida - Friends For Life Public Charter School obtained information about the educator's criminal record by a means other than by the DPS.

“Reported criminal history” means information concerning any formal criminal justice system charges and dispositions. The term includes arrests, detentions, indictments, criminal information,

convictions, deferred adjudications, and probations in any state or federal jurisdiction. *Education Code 22.087; 19 TAC 249.14(d), .3(43).*

**Sec. 11. DISCHARGE OF CONVICTED EMPLOYEES**

**a) *Discharge Under Education Code 22.085***

In accordance with Education Code 22.085, Amigos Por Vida - Friends For Life Public Charter School shall discharge or refuse to hire an employee or applicant for employment if Amigos Por Vida - Friends For Life Public Charter School obtains information through a CHRI review that the employee or applicant has been:

1. Convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Code of Criminal Procedure Chapter 62; or
2. Convicted of:
  - a. A felony offense under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed; or
  - b. An offense under the laws of another state or federal law that is equivalent to an offense under item 1 or item 2(a).

However, Amigos Por Vida - Friends For Life Public Charter School is not required to discharge or refuse to hire an employee or applicant if the person committed an offense under Title 5 Penal Code and:

1. The date of the offense is more than 30 years before:
  - a. June 15, 2007 in the case of a person employed by Amigos Por Vida - Friends For Life Public Charter School as of that date; or
  - b. The date the person's employment will begin, in the case of a person applying for employment with Amigos Por Vida - Friends For Life Public Charter School after June 15, 2007; and
2. The employee or applicant for employment satisfied all terms of the court order entered on conviction.

**b) *Discharge Under Education Code 12.120 and 19 TAC 100.151***

Additionally, in accordance with Education Code 12.120 and 19 TAC 100.1151, an individual may not be employed by Amigos Por Vida - Friends For Life Public Charter School if he or she:

1. Has been convicted of any felony or a misdemeanor involving moral turpitude;
2. Has been convicted of any offense listed in Education Code section 37.007(a); or
3. Has been convicted of an offense listed in the Code of Criminal Procedure section 62.001(5).



**c) *Exception***

Notwithstanding the foregoing, a person may be employed in any position by Amigos Por Vida - Friends For Life Public Charter School if a school district could employ the person in that position and the TEA approves of the employment pursuant to Education Code section 12.1059. *Education Code 12.120; 19 TAC 100.1151(b)*.

**d) *Certification to TEA***

Each school year, the Superintendent or designee shall certify to the Commissioner of Education that Amigos Por Vida - Friends For Life Public Charter School has complied with the above provisions.

**e) *Optional Termination***

Amigos Por Vida - Friends For Life Public Charter School may discharge an employee if it obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to the SBEC or Amigos Por Vida - Friends For Life Public Charter School.

**Sec. 12. NOTIFICATION OF ARRESTS, INDICTMENTS, CONVICTIONS, AND OTHER  
ADJUDICATIONS**

A Amigos Por Vida - Friends For Life Public Charter School employee shall notify his or her Principal or immediate supervisor within three calendar days of any arrest, indictment, conviction, guilty or no contest plea, or other adjudication of the employee for any felony offense or misdemeanor offense involving moral turpitude and/or:

1. Crimes involving Amigos Por Vida - Friends For Life Public Charter School property or funds;
2. Crimes involving attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
3. Crimes that occur wholly or in part on Amigos Por Vida - Friends For Life Public Charter School property or at a school-sponsored or school-related activity; or
4. Crimes involving moral turpitude, which include:
  - a. Dishonesty, fraud, deceit, theft, misrepresentation;
  - b. Deliberate violence;
  - c. Base, vile or depraved acts that are intended to arouse or gratify the sexual desire of the actor;
  - d. Acts constituting public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct; or

- e. Acts constituting abuse under the Texas Family Code.

**Sec. 13. DISCRIMINATION BASED ON CRIMINAL HISTORY**

Except as required by state or federal law, Amigos Por Vida - Friends For Life Public Charter School does not prohibit employment or refuse to consider an application for employment solely on the grounds that an applicant/employee has a prior criminal record. Amigos Por Vida - Friends For Life Public Charter School does not prohibit employment or refuse to consider an application for employment based solely on the grounds that the applicant/employee has been arrested. It is the policy of Amigos Por Vida - Friends For Life Public Charter School, prior to any exclusion of an applicant for employment or continued employment of an employee that has a criminal record, to conduct an individualized assessment of the criminal conduct at issue. In conducting such an assessment, Amigos Por Vida - Friends For Life Public Charter School shall carefully consider the following in order to determine that any exclusion based on criminal conduct is job related to the position in question and consistent with the business necessity of Amigos Por Vida - Friends For Life Public Charter School:

- The nature and gravity of the offense or offenses;
- The time that has passed since the conviction and/or completion of the sentence;
- The nature of the job held or sought.

Amigos Por Vida - Friends For Life Public Charter School shall consider the additional information provided by the applicant/employee that demonstrates that the criminal conduct is not job related and is consistent with business necessity of Amigos Por Vida - Friends For Life Public Charter School prior to making any final determination. Such additional information may include:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Age at the time of conviction, or release from prison;
- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense;
- Rehabilitation efforts, e.g., education/training;
- Employment or character references regarding fitness for the particular position;
- Whether the individual is bonded under a federal, state or local bonding program.

**Sec. 14. CONSUMER CREDIT REPORTS**

**a) *Definitions***

“Adverse action” includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

“Consumer report” includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person’s eligibility for employment.

“Consumer reporting agency” is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

“Employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

*15 U.S.C. 1681a.*

**b) *Obtaining Consumer Credit Reports***

Amigos Por Vida - Friends For Life Public Charter School may not procure a consumer report for employment purposes unless:

1. Amigos Por Vida - Friends For Life Public Charter School has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and
2. The applicant or employee has authorized in writing the procurement of the consumer report.

**c) *Adverse Action***

Before taking any adverse action based on the consumer report, Amigos Por Vida - Friends For Life Public Charter School shall provide the applicant or employee a copy of the consumer report and a written description of the person’s rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

*15 U.S.C. 1681b(b)(2).*

**d) *Discrepancies in Address***

The Superintendent or designee shall develop and implement reasonable policies and procedures designed to enable Amigos Por Vida - Friends For Life Public Charter School, when it receives a notice of address discrepancy, to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report. The Superintendent or designee shall also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which Amigos Por Vida - Friends For Life Public Charter School has reasonably confirmed is accurate, to the consumer reporting agency. *16 CFR 641.1.*

*e) Disposing of Consumer Credit Report Records*

Amigos Por Vida - Friends For Life Public Charter School must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information. “Dispose” includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

*16 CFR 682.3.*

Amigos Por Vida, Friends for Life Housing and Education Corporation shall strive to protect the privacy of employees' medical information to the greatest extent possible.

**Sec. 1. "MEDICAL INFORMATION" DEFINED**

"Medical information" is any information, data, or documentation relating to an employee's mental or physical condition. The term includes, but is not limited to:

1. Oral, written, or digital information concerning an employee's mental or physical condition;
2. Medical records;
3. Dental records;
4. Disability records;
5. Workers' compensation records;
6. Medical leave records;
7. Genetic information;
8. Health insurance information; and/or
9. Information concerning visits or payments to any health care professional, hospital, emergency room, or other type of short- or long-term health care facility.

**Sec. 2. CONFIDENTIALITY OF RECORDS**

Any medical information concerning employees will be maintained in separate, confidential medical files apart from regular personnel records. Only employees authorized by the Superintendent may access such files.

Employees are hereby notified that medical information concerning employees is absolutely confidential under state and federal laws and may not be discussed at any time with any person under any circumstances, unless:

1. An employee needs to do so in order to carry out his or her job duties, or
2. The person discussing the information is talking or otherwise communicating with the subject of the information at that person's invitation.

If an employee is concerned about a possible medical condition on the part of another employee, the employee must not discuss such concern with anyone other than his or her Principal or immediate supervisor.

**Sec. 3. POLICY VIOLATIONS**

Any employee who is found to have discussed medical information concerning another employee with anyone else in violation of this policy, or who is found to have released such information without authorization, will be subject to severe disciplinary action, up to and possibly including

immediate termination from employment. Such an employee may also be subject to both civil and criminal action in a court of law under state and federal law.

**Sec. 1. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION COMPLIANCE**

The Superintendent shall ensure that Amigos Por Vida - Friends For Life Public Charter School complies with all applicable requirements of the Occupational Safety and Health Administration (the “OSHA”) in order to reduce dangers to health and safety by creating and maintaining improved working conditions free from recognized hazards that may cause serious physical injury.

Accordingly, Amigos Por Vida - Friends For Life Public Charter School shall:

1. Maintain a log of all occupational injuries and illnesses and report such occurrences as required by the OSHA;
2. Post notice of employee protections under the OSHA in the workplace;
3. Post citations issued by the OSHA, if any, at or near the place of the alleged violation and correct workplace hazards in the time allowed; and
4. Furnish all employees a place of employment free from recognized hazards.

**a) *Reporting Employee Injuries***

Any employee suffering an injury or illness that is work-related – no matter how minor – is responsible for immediately reporting that illness or injury to his or her supervisor. Supervisors must report the injury or illness to the appropriate agency.

Once an injury or illness has been reported, an injury report must be completed within 48 hours.

**b) *Reporting Serious Injuries***

Within eight hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related accident, Amigos Por Vida - Friends For Life Public Charter School will orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the OSHA that is nearest to the site of the incident.

Amigos Por Vida - Friends For Life Public Charter School will utilize the required OSHA forms to document and log each recordable injury or illness. This information will be kept current, maintained accurately, and retained for a period of five years.

**c) *Personal Protective Equipment***

Each campus shall provide personal protective equipment for all employees so they are able to work safely with chemicals.

**d) *Safety Training***

The Superintendent or designee shall provide training to employees on hazards and related matters as required by the OSHA.

**Sec. 2. GENERAL SAFETY**

All employees are expected to work in a safe and prudent manner abiding by all safety related policies and procedures

Lighted candles or open flames are not permitted for any purpose in Amigos Por Vida - Friends For Life Public Charter School facilities, except when related to an approved lesson plan. Pyrotechnics in Amigos Por Vida - Friends For Life Public Charter School buildings or on school grounds is strictly prohibited.

**Sec. 3. ASBESTOS MANAGEMENT PLAN**

Amigos Por Vida - Friends For Life Public Charter School shall utilize the services of an accredited management planner to develop an asbestos management plan for each campus. A copy of the management plan shall be kept in the Central Office and be made available for inspection during normal business hours.

**Sec. 4. PEST CONTROL TREATMENT**

Employees are prohibited from applying any pesticide or herbicide without appropriate training and prior approval of the integrated pest management (IPM) coordinator. Any application of pesticide or herbicide must be done in a manner prescribed by law and Amigos Por Vida - Friends For Life Public Charter School's integrated pest management program.

Notices of planned pest control treatment will be posted in Amigos Por Vida - Friends For Life Public Charter School facilities 48 hours before the treatment begins. Individual employees may request in writing to be notified of pesticide applications. An employee who requests individualized notice will be notified by telephone, written or electric means.

Employees should immediately report any evidence of pest activity to Amigos Por Vida - Friends For Life Public Charter School administrators or the Business Office.

**Sec. 5. CLEAN AIR ACT**

In compliance with the Clean Air Act, Amigos Por Vida - Friends For Life Public Charter School shall use only licensed technicians to service and replace air conditioning and refrigeration equipment.



**Sec. 6. HAZARD COMMUNICATION ACT**

To the extent that the requirements of the OSHA do not apply to Amigos Por Vida - Friends For Life Public Charter School, Amigos Por Vida - Friends For Life Public Charter School shall comply with the Texas Hazard Communication Act, Health and Safety Code Chapter 502.

Amigos Por Vida - Friends For Life Public Charter School is concerned about the safety of all employees. The Superintendent or designee shall adopt procedures and perform the following duties in compliance with the Texas Hazard Communication Act:

1. Post and maintain the notice promulgated by the Texas Department of State Health Services (the “TDSHS”) in the workplace.
2. Provide an education and training program for employees using or handling hazardous chemicals under normal operating conditions or foreseeable emergencies.
3. Maintain the written hazard communication program and a record of each training session to employees, including the date, a roster of the employees who attend, the subjects covered in the training session, and the names of the instructors. Records will be maintained for at least five years.
4. Compile and maintain a workplace chemical list that includes required information for each hazardous chemical normally present in the workplace or temporary workplace in excess of 55 gallons or 500 pounds, or as determined by the TDSHS for certain highly toxic or dangerous hazardous chemicals. The list will be readily available to employees and their representatives.
5. Update the list as necessary, but at least by December 31 each year, and maintain the list as required by law. Each workplace chemical list shall be dated and signed by the person responsible for compiling the information.
6. As required by law, label new or existing stocks of hazardous chemicals with the identity of the chemical and appropriate hazard warnings, if such stocks are not already appropriately labeled.
7. Maintain a legible copy of the most current manufacturer’s material safety data sheets (“MSDS”) for each hazardous chemical; request such sheets from the manufacturer if not already provided or otherwise obtain a current MSDS; make such sheets readily available to employees or their representatives on request.
8. Provide employees with appropriate personal protective equipment.

**Sec. 7. PEST CONTROL TREATMENT NOTICE**

The Superintendent or designee shall notify employees of any planned pest control treatment by both of the following methods:

1. Posting the sign provided by the certified applicator or technician in an area of common access the employees are likely to check on a regular basis at least 48 hours before each planned treatment.

2. Providing the official Structural Pest Control Service Consumer Information Sheet to any individual working in the building, on request.

**Sec. 8. BLOODBORNE PATHOGEN CONTROL**

The Superintendent or designee shall establish a written Exposure Control Plan designed to eliminate or minimize exposure to blood or other potentially infectious materials, as defined by 29 C.F.R. 1910.1030.

The Exposure Control Plan shall contain at least the following elements:

1. An exposure determination containing:
  - a. A list of all job classifications in which all employees in those job classifications have occupational exposure;
  - b. A list of job classifications in which some employees have occupational exposure; and
  - c. A list of all tasks and procedures or groups of closely related task and procedures in which occupational exposure occurs and that are performed by employees in job classifications in which some employees have occupational exposure.
2. The schedule and method of implementation for the requirements set forth in 29 C.F.R. 1910.1030 regarding methods of compliance, HIV and HBV research laboratories and production facilities, Hepatitis B vaccination and post-exposure evaluation and follow-up, communication of hazards to employees, and recordkeeping; and
3. The procedure for the evaluation of circumstances surrounding exposure incidents as required by 29 C.F.R. 1910.1030.

The Exposure Control Plan shall be made accessible to all employees. The Superintendent or designee shall review and update the Exposure Control Plan at least annually and whenever necessary to reflect new or modified tasks and procedures that affect occupational exposure and to reflect new or revised employee positions with occupational exposure.

Where there is occupational exposure, Amigos Por Vida - Friends For Life Public Charter School shall provide, at no cost to employees, appropriate personal protective equipment. 29 C.F.R. 1910.1030.

**Sec. 9. PRE-EMPLOYMENT INQUIRIES AND EMPLOYMENT ENTRANCE EXAMINATIONS**

Amigos Por Vida - Friends For Life Public Charter School shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of a disability, except as provided below. However, Amigos Por Vida - Friends For Life Public Charter School is permitted to make pre-employment inquiries into the ability of an applicant to perform job-related functions, such as asking an applicant to describe or demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. *42 U.S.C. 12112(d)(2); 29 CFR 1630.14(a).*

Amigos Por Vida - Friends For Life Public Charter School may require a medical examination (and/or inquiry) after an offer of employment has been made to a job applicant and prior to the beginning of employment duties and may condition the offer on the results of such examination (and/or inquiry), provided all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

The results of an employment entrance medical examination shall be used only to determine the applicant's ability to perform job-related functions. *42 U.S.C. 12112(d)(3); 29 CFR 1630.14(b).*

**a) Confidentiality**

Information obtained regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and shall be treated as confidential medical records. However, supervisors and managers may be informed regarding necessary restrictions on the employee's work or duties and necessary accommodation; first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment. *29 CFR 1630.14(b)(c).*

**b) Examination During Employment**

Amigos Por Vida - Friends For Life Public Charter School may require a medical examination (and/or inquiry) of an employee that is job related and consistent with business necessity and may make inquiries into the ability of an employee to perform job-related functions. The results of an employee's medical examination shall be used only to determine the employee's ability to perform job-related functions. *42 U.S.C. 12112(d)(3)–(4); 29 CFR 1630.14(c).*

**Sec. 10. EXAMINATIONS DURING EMPLOYMENT**

The Superintendent or designee may require an employee to undergo a medical examination if information received from the employee, the employee's supervisor, or other sources indicates the employee has a physical or mental impairment that:

1. Interferes with the employee's ability to perform essential job functions; or
2. Poses a direct threat to the health or safety of the employee or others. A communicable or other infectious disease may constitute a direct threat.

Amigos Por Vida - Friends For Life Public Charter School may designate the physician to perform the examination. If Amigos Por Vida - Friends For Life Public Charter School designates the physician, Amigos Por Vida - Friends For Life Public Charter School shall pay the cost of the examination. Amigos Por Vida - Friends For Life Public Charter School may place the employee on paid administrative leave while awaiting results of the examination and evaluating the results.

Based on the results of the examination, the Superintendent or designee shall determine whether the employee has an impairment. If so, the Superintendent or designee shall determine whether the impairment interferes with the employee's ability to perform essential job functions or poses a direct threat. If not, the employee shall be returned to his or her job position.

If the impairment does interfere with the employee's ability to perform essential job functions or poses a direct threat, the Superintendent or designee shall determine whether the employee has a disability and, if so, whether the disability requires reasonable accommodation.

**Sec. 11. OTHER REQUIREMENTS**

Employees with communicable diseases shall follow recommendations of public health officials regarding contact with students and other employees. Food service workers shall comply with health requirements established by city, county, and state health authorities.

**Sec. 1. DRUG- AND ALCOHOL-FREE WORKPLACE**

Amigos Por Vida, Friends for Life Housing and Education Corporation intends to provide a safe and drug- and alcohol-free environment for employees and students. With this goal in mind, Amigos Por Vida, Friends for Life Housing and Education Corporation expressly prohibits:

1. The use, possession, solicitation for, or sale of narcotics or other illegal drugs, alcohol, or prescription medication without a prescription on Amigos Por Vida - Friends For Life Public Charter School property or while performing an assignment.
2. Being impaired or under the influence of legal or illegal drugs or alcohol away from Amigos Por Vida - Friends For Life Public Charter School, if such impairment or influence adversely affects the employee's work performance, the safety of the employee or of others, or put at risk Amigos Por Vida - Friends For Life Public Charter School's reputation.
3. Possession, use, solicitation for, or sale of legal or illegal drugs or alcohol away from Amigos Por Vida - Friends For Life Public Charter School, if such activity or involvement adversely affects the employee's work performance, the safety of the employee or of others, or puts at risk Amigos Por Vida - Friends For Life Public Charter School's reputation.
4. The presence of any detectable amount of prohibited substances in the employee's system while at work, while on Amigos Por Vida - Friends For Life Public Charter School property, or while on Amigos Por Vida - Friends For Life Public Charter School-related business. "Prohibited substances" include illegal drugs, alcohol, or prescription drugs not taken in accordance with a prescription given to the employee.

**Sec. 2. DRUG AND ALCOHOL TESTING**

Amigos Por Vida - Friends For Life Public Charter School will conduct drug and/or alcohol testing under any of the following circumstances:

**a) *School Drivers***

Employees who drive Amigos Por Vida - Friends For Life Public Charter School-owned or leased vehicle(s) on school-related business may be subject to drug and/or alcohol testing as determined necessary by the Amigos Por Vida - Friends For Life Public Charter School administration.

**b) *Random Testing***

Employees may be selected at random for drug and/or alcohol testing at any interval determined by Amigos Por Vida - Friends For Life Public Charter School.

**c) *For-Cause Testing***

Amigos Por Vida - Friends For Life Public Charter School may direct an employee to submit to a drug and/or alcohol test at any time Amigos Por Vida - Friends For Life Public Charter School believes that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:

1. Evidence of drugs or alcohol on or about the employee's person or in the employee's vicinity;
2. Unusual conduct on the employee's part that suggests impairment or influence of drugs or alcohol;
3. Negative performance patterns; or
4. Excessive and unexplained absenteeism or tardiness.

**d) *Post-Accident Testing***

Any employee involved in an on-the-job accident or injury under circumstances that suggest possible use or influence of drugs or alcohol in the accident or injury event may be asked to submit to a drug and/or alcohol test. "Involved in an on-the-job accident or injury" means not only the one who was or could have been injured, but also any employee who potentially contributed to the accident or injury event in any way.

**Sec. 3. POLICY VIOLATIONS**

An employee is subject to disciplinary sanctions under this policy if:

1. The employee is tested for drugs or alcohol outside of the employment context and the results indicate a violation of this policy;
2. The employee is tested for drugs or alcohol in accordance with this policy and the results indicate a violation of this policy; and/or
3. The employee refuses to submit to testing under this policy.

Disciplinary sanctions for violations of this policy may include, but are not limited to:

1. Referral to drug and/or alcohol counseling or rehabilitation programs;
2. Referral to employee assistance programs;
3. Referral to appropriate law enforcement officials for prosecution;
4. Removal from safety-sensitive functions;
5. Employment actions, up to and including termination of employment; and/or
6. Any other form of disciplinary sanction deemed appropriate by Amigos Por Vida - Friends For Life Public Charter School.

**Sec. 4. DRUG-FREE AWARENESS PROGRAM**

The Superintendent shall establish, as needed, a drug-free awareness program complying with legal requirements. The program shall provide relevant information to employees in the following areas:

1. The dangers of drug use and abuse in the workplace.
2. Amigos Por Vida - Friends For Life Public Charter School's drug-free workplace policy.
3. Counseling, rehabilitation, and other assistance programs available to employees in the community, if any.
4. Consequences on employment for violating Amigos Por Vida - Friends For Life Public Charter School's drug use and abuse prohibitions.

The employee shall be responsible for all fees or charges related to drug/alcohol counseling or rehabilitation, if any.

#### **Sec. 5. TOBACCO USE**

Amigos Por Vida, Friends for Life Housing and Education Corporation further intends to provide a tobacco-free environment for employees and students. Smoking (including, but not limited to cigarettes, cigars, and pipes) and the use of tobacco by employees is prohibited on all Amigos Por Vida - Friends For Life Public Charter School-owned property, in Amigos Por Vida - Friends For Life Public Charter School-owned vehicles, and while supervising students during school-related events.

Amigos Por Vida, Friends for Life Housing and Education Corporation also prohibits the use of any “vapor products”—meaning electronic cigarettes (e-cigarettes) or any other device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor that may include nicotine to the individual inhaling from the device; any substance used to fill or refill the device-cigarette; inhalants; electronic cigarette devices; and/or other devices or paraphernalia used with vapor products, other inhalants, or chemicals—at all times on Amigos Por Vida - Friends For Life Public Charter School property, at any Amigos Por Vida - Friends For Life Public Charter School event or activity (whether or not on school property), or in Amigos Por Vida - Friends For Life Public Charter School vehicles.

An employee who violates this tobacco use policy is subject to disciplinary action, up to and including termination from employment.

A Amigos Por Vida - Friends For Life Public Charter School officer or employee shall not:

1. Recommend to a student or a parent that the student use a psychotropic drug;
2. Suggest any particular diagnosis; or
3. Exclude a student from attending a class or participating in a school-related activity because of the parent's refusal to consent to the administration of a psychotropic drug to a student or to a psychiatric evaluation or examination of a student.

This policy does not prevent a Amigos Por Vida - Friends For Life Public Charter School officer or employee from:

1. Making an appropriate referral under Child Find;
2. Recommending that a child be evaluated by an appropriate medical practitioner, if the employee is a registered nurse, advanced nurse practitioner, physician, or certified or appropriately credentialed mental health professional; or
3. Discussing any aspect of a child's behavior or academic progress with the child's parent or other Amigos Por Vida - Friends For Life Public Charter School officer or employee, as appropriate.

*Education Code 38.016.*



## PART I: REPORTING EDUCATOR MISCONDUCT

### Sec. 1. MATTERS TO REPORT

In addition to the reporting requirements under Family Code 261.101<sup>1</sup>, the Superintendent shall notify the State Board for Educator Certification (the “SBEC”) if:

1. An educator employed by or seeking employment with Amigos Por Vida - Friends For Life Public Charter School has a reported criminal history and Amigos Por Vida - Friends For Life Public Charter School obtained information about the educator’s criminal record by a means other than the criminal history clearinghouse established by the Texas Department of Public Safety;
2. An educator’s employment with Amigos Por Vida - Friends For Life Public Charter School was terminated and there is evidence that the educator:
  - a. Abused or otherwise committed an unlawful act with a student or minor;
  - b. Was involved in a romantic relationship or solicited or engaged in sexual conduct with a student or minor;
  - c. Possessed, transferred, sold, or distributed a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. § 801 *et seq.*;
  - d. Illegally transferred, appropriated, or expended Amigos Por Vida - Friends For Life Public Charter School property or funds;
  - e. Attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for purposes of promotion or additional compensation; or
  - f. Committed a crime or any part of a crime while on Amigos Por Vida - Friends For Life Public Charter School property or at a school-sponsored event.
3. The educator resigned and reasonable evidence supported a recommendation to terminate the individual because he or she engaged in misconduct described in paragraph 2 above; or
4. The educator engaged in conduct that violated the assessment instrument security procedures established by Education Code section 39.0301.

*Education Code 21.006, 22.087; 19 TAC 243.14(d).*

### Sec. 2. REQUIREMENT TO COMPLETE INVESTIGATION

The Superintendent shall complete an investigation of an educator that involves evidence that the educator may have engaged in misconduct items 2(a) or (b) in Part I, Section 1 (Matters to Report) above, despite the educator’s resignation from employment before completion of the investigation.  
*Education Code 21.006(b-1).*

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<sup>1</sup> During the 87th regular legislative session in 2021, the standard for reporting child abuse and neglect under Texas Family Code §261.101 was changed from “cause to believe” to “***reasonable cause to believe.***” A person having reasonable cause to believe abuse or neglect has occurred is required to make a report within 48 hours of when they first had reasonable cause to believe the abuse or neglect occurred.

**Sec. 3. DEADLINE FOR REPORTING TO SBEC**

The Superintendent must notify the SBEC in writing not later than the seventh business day after the date the Superintendent receives a report under Part I, Section 6 (Report by Principal) or otherwise knew about an educator's termination of employment or resignation following an alleged incident of misconduct or an employee's criminal record. *Education Code 21.006(c)*.

**Sec. 4. CONTENTS OF REPORT**

The report shall be in writing in a form prescribed by the SBEC, and may be filed through the Internet portal developed and maintained by the SBEC, and must include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator. The report shall, at a minimum, describe in detail the factual circumstances requiring the report and identify the subject of the report by providing the following available information:

1. Name and any aliases;
2. Certificate number, if any, or social security number;
3. Last known mailing address and home and daytime phone numbers;
4. All available contact information for any alleged victim or victims;
5. Name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
6. Current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
7. Involvement by a law enforcement or other agency, including the Texas Education Agency.

*Education Code 21.006(c-1); 19 TAC 249.14(f)*.

The Superintendent shall include the name of a student or minor who is the victim of abuse or unlawful conduct by an educator, but the name of the student or minor is not public information under Government Code Chapter 552. *Education Code 21.006(h)*.

**Sec. 5. REPORT NOT REQUIRED**

The Superintendent is not required to notify the SBEC or file a report if the Superintendent:

1. Completes an investigation into an alleged incident of misconduct for:
  - a. Abuse or unlawful act with a student or minor; or
  - b. Involvement in a romantic relationship with or solicitation or engagement in sexual contact with a student or minor; and
2. Determines the educator did not engage in the alleged incident of misconduct.

*Education Code 21.006(c-2)*.

The Superintendent should seek legal counsel before making any such determination, and if there is any doubt or concern, err on the side of reporting to the SBEC.

**Sec. 6. REPORT BY THE PRINCIPAL**

The Principal of a Amigos Por Vida - Friends For Life Public Charter School campus must notify the Superintendent not later than the seventh business day after learning of an educator's termination of employment or resignation following an alleged incident of misconduct or the principal knew about an educator's criminal record, as described in Part I, Section 1 (Matters to Report) above. *Education Code 21.006(b-2)*.

**Sec. 7. NOTICE OF REPORT**

**a) *Notice to the Board and Educator***

The Superintendent shall notify the Board and the educator of the filing of a report to the SBEC. The Superintendent shall notify the Board before filing the report. *Education Code 21.006(d); 19 TAC 249.14(d)(3)(B)*.

**b) *Notice Prior to Accepting Educator's Resignation***

Before accepting an employee's resignation that requires filing a report, the Superintendent shall inform the educator in writing that a report will be filed and that sanctions against his or her certificate may result as a consequence. *19 TAC 249.14(d)(3)*.

**c) *Notice to Parents***

The Superintendent or designee shall provide notice to the parent or guardian of a student if there is evidence that an educator:

1. Abused or otherwise committed an unlawful act with a student or minor; or
2. Was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.

The notice must inform the parent or guardian:

1. That the alleged misconduct occurred;
2. Whether the educator was terminated following an investigation of the alleged misconduct or resigned before completion of the investigation; and
3. Whether a report was submitted to the SBEC concerning the alleged misconduct.

The Superintendent or designee shall provide such notice as soon as feasible after Amigos Por Vida - Friends For Life Public Charter School becomes aware that alleged misconduct may have occurred.

*Education Code 21.0061.*

**Sec. 8. IMMUNITY**

The Superintendent, a director, or principal who in good faith and while acting in an official capacity files a report with the SBEC under this policy or communicates with another superintendent, director, or principal concerning an educator’s criminal record or alleged incident of misconduct is immune from civil or criminal liability that might otherwise be incurred or imposed. *Education Code 21.006(e).*

**PART II: REPORTING EMPLOYEE (NON-EDUCATOR) MISCONDUCT**

**Sec. 1. APPLICABILITY**

Part II of this policy applies to a person who is employed by Amigos Por Vida - Friends For Life Public Charter School and who does not hold a certification or permit issued under Subchapter B, Chapter 21 of the Texas Education Code.

**Sec. 2. TERMINATIONS OR RESIGNATIONS TO REPORT**

In addition to the reporting requirement under Section 261.10, Family Code, the Superintendent shall notify the Commissioner of Education (the “Commissioner”) if:

1. An employee’s employment at Amigos Por Vida - Friends For Life Public Charter School was terminated and there is evidence that the employee:
  - a. Abused or otherwise committed an unlawful act with a student or minor; or
  - b. Was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor; or
2. The employee resigned and there is evidence that the employee engaged in misconduct described in item 1 above.

*Education Code 22.093(c).*

**Sec. 3. NOTICE BY THE PRINCIPAL**

The Principal of any Amigos Por Vida - Friends For Life Public Charter School campus must notify the Superintendent not later than the seventh business day after the date of an employee’s termination of employment or resignation in the circumstances discussed in Part II, Section 2 (Terminations or Resignations to Report). *Education Code 22.093(e).*

**Sec. 4. REQUIREMENT TO COMPLETE INVESTIGATION**

The Superintendent shall complete an investigation of an employee that involves evidence that the employee may have engaged in misconduct described in Part II, Section 2 (Terminations or Resignations to Report), despite the employee's resignation from employment before completion of the investigation. *Education Code 22.093(d)*.

**Sec. 5. DEADLINE TO REPORT TO THE COMMISSIONER**

The Superintendent must notify the Commissioner by filing a report not later than the seventh business day after the date the Superintendent receives a report from a Principal or knew about an employee's termination of employment or resignation following an alleged incident of misconduct described in Part II, Section 2 (Terminations or Resignations to Report).

The report must be in writing and in a form prescribed by the Commissioner.

*Education Code 22.093(f)*.

**Sec. 6. ADDITIONAL REPORTS**

The Superintendent shall notify the Board and the employee of the filing of the report. *Education Code 22.093(g)*.

**Sec. 7. IMMUNITY**

The Superintendent, director, or Principal who in good faith and while acting in an official capacity files a report under this Sec. 4.3.2 is immune from civil or criminal liability that might otherwise be incurred or imposed. *Education Code 22.093(h)*.

**Sec. 1. REPORTING CHILD ABUSE OR NEGLECT**

Any Amigos Por Vida - Friends For Life Public Charter School officer, director, employee, agent, volunteer or contractor having reasonable cause to believe that a child’s physical or mental health or welfare has been adversely affected by abuse, maltreatment or neglect by any person shall **immediately** make a report (within 48 hours or less) to at least one of the following authorities after learning of facts giving rise to the reasonable cause to believe:

1. A local or state law enforcement agency;
2. The Texas Department of Family and Protective Services (“DFPS”), Child Protective Services Division;
3. A local office of Child Protective Services, where available; or
4. The state agency that operates, licenses, or registers the facility in which the alleged child abuse or neglect occurred.

If a professional has reasonable cause to believe that a child has been abused, maltreated or neglected or may be abused, maltreated or neglected, or that a child is a victim of an offense under Penal Code 21.11 (Indecency with a Child), and the professional has reasonable cause to believe that the child has been abused as defined by law, the professional shall make a report **not later than the 48th hour** after the hour the professional first has reasonable cause to believe that the child has been or may be abused or neglected or is a victim of an offense under Penal Code 21.11. A professional **may not delegate to or rely on** another person to make the report. For purposes of this policy, “professional” means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children.

A report should reflect the reporter’s belief that a child has been or may be abused or neglected or has died of abuse or neglect. The person making the report shall identify, if known:

1. The name and address of the child;
2. The name and address of the person responsible for the care, custody, or welfare of the child; and
3. Any other pertinent information concerning the alleged or suspected abuse or neglect.

If the suspected abuse or neglect involves a person responsible for the custody, care or welfare of the child, the report must generally be made to the DFPS. All other reports should be made to any local or state law enforcement agency, the DFPS, the Texas Education Agency (if abuse or neglect occurred at school), another state agency where the abuse or neglect occurred, or an agency designated by a court responsible for protection of children.

*Texas Family Code, Chapter 261; 19 TAC 100.1211.*

**Sec. 2. TRAINING**

The Superintendent or designee shall ensure that training on child abuse and neglect is provided as required by law.

Training concerning prevention techniques for, and recognition of, sexual abuse, trafficking, and all other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities, must be provided as a part of new employee orientation to all new Amigos Por Vida - Friends For Life Public Charter School employees. Amigos Por Vida - Friends For Life Public Charter School. The training must include:

1. Factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;
2. Warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;
3. Internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;
4. Techniques for reducing a child's risk for sexual abuse, trafficking, or other maltreatment; and
5. Information on community organizations that have relevant research-based programs that are able to provide training or other education for Amigos Por Vida - Friends For Life Public Charter School staff, students, and parents.

Amigos Por Vida - Friends For Life Public Charter School must maintain records that include the district or charter school staff members who participated in the training.

**Sec. 3. RETALIATION PROHIBITED**

Amigos Por Vida - Friends For Life Public Charter School may not suspend or terminate the employment of, discriminate against, or take any other adverse employment action against a person who is a professional, as that term is defined by Texas Family Code 261.101(b), and who in good faith:

1. Reports child abuse or neglect to:
  - a. The person's supervisor;
  - b. An administrator of the facility where the person is employed;
  - c. A state regulatory agency; or
  - d. A law enforcement agency; or
2. Initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

“Adverse employment action” means an action that affects an employee’s compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from making or supporting a report of abuse or neglect.

*Texas Family Code 261.110.*

**Sec. 4. POSTING INFORMATION**

Using a format and language that is clear, simple, and understandable to students, Amigos Por Vida - Friends For Life Public Charter School shall post, in English and in Spanish:

1. The current toll-free DFPS Abuse Hotline telephone number;
2. Instructions to call 911 for emergencies; and
3. Directions for accessing the DFPS website ([www.txabusehotline.org](http://www.txabusehotline.org)) for more information on reporting abuse, neglect, and exploitation.

This information shall be posted at each Amigos Por Vida - Friends For Life Public Charter School campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11.17 inches or larger) in large print and placed at eye-level to the student for easy viewing. The current toll-free DFPS Abuse Hotline telephone number should be in bold print.

**Sec. 5. ANNUAL REVIEW**

The Board shall annually review policies for reporting child abuse and neglect. *19 Tex. Admin. Code § 61.1051(b).*

**Sec. 6. COMPUTER TECHNICIAN REPORTS OF CHILD PORNOGRAPHY**

Any computer technician employed by Amigos Por Vida - Friends For Life Public Charter School who, in the course and scope of employment or business with Amigos Por Vida - Friends For Life Public Charter School, views an image on a computer that is or appears to be child pornography must immediately report the discovery to a local or state law enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children. The report must include the name and address of the owner or person claiming a right to possession of the computer, if known, and as permitted by federal law.

Except in a case of willful or wanton misconduct, a computer technician may not be civilly liable for reporting or failing to report the discovery of an image. A computer technician who intentionally fails to report an image may be subject to criminal prosecution. *Business & Commerce Code 110.002.*



**Sec. 1. EMPLOYEE SEARCHES**

Amigos Por Vida - Friends For Life Public Charter School reserves the right to conduct searches to monitor compliance with rules concerning safety of employees, security of Amigos Por Vida - Friends For Life Public Charter School and individual property, drugs and alcohol, and possession of other prohibited items.

“Prohibited items” include illegal drugs, alcoholic beverages, prescription drugs or medications not used or possessed in compliance with a current valid prescription, weapons, any items of an obscene, harassing, demeaning, or violent nature, and any property in the possession or control of an employee who does not have authorization from the owner of such property to possess or control the property.

“Control” means knowing where a particular item is, having placed an item where it is currently located, or having any influence over its continued placement.

In addition to Amigos Por Vida - Friends For Life Public Charter School premises, Amigos Por Vida - Friends For Life Public Charter School may search employees, their work areas, lockers, personal vehicles if driven or parked on Amigos Por Vida - Friends For Life Public Charter School property, and other personal items such as bags, purses, briefcases, backpacks, lunch boxes, and any and all other containers.

**Sec. 2. NO EXPECTATION OF PRIVACY**

There is no general or specific expectation of privacy in the Amigos Por Vida - Friends For Life Public Charter School workplace, either on Amigos Por Vida - Friends For Life Public Charter School property or while on duty. In general, employees should assume that what they do while on duty or on Amigos Por Vida - Friends For Life Public Charter School property is not private. All employees and all of the areas listed above are subject to search at any time. The areas in question may be searched at any time, with or without the employee being present. As a general rule, with the exception of items relating to personal hygiene or health, no employee should ever bring anything to work or store anything at work that he or she would not be prepared to show and possibly turn over to Amigos Por Vida - Friends For Life Public Charter School officials and/or law enforcement authorities.

**Sec. 3. LOCKERS AND OTHER STORAGE AREAS**

If an employee uses a locker or other storage area at work, including a locking desk drawer or locking cabinet, Amigos Por Vida - Friends For Life Public Charter School will either furnish the lock and keep a copy of the key or combination, or else allow the employee to furnish a personal lock. If the employee uses a personal lock, he or she must provide a copy of the key or combination to Amigos Por Vida - Friends For Life Public Charter School.

**Sec. 4. APPLICABILITY OF POLICY**

All Amigos Por Vida - Friends For Life Public Charter School employees are subject to this policy. However, any given search may be restricted to one or more specific individuals, depending upon the situation. Searches may be done on a random basis, or based upon reasonable suspicion. “Reasonable suspicion” means circumstances suggesting to a reasonable person that there is a possibility that one or more individuals may be in possession of a prohibited item, as defined above.

Any search under this policy will be done in a manner protecting employee privacy, confidentiality, and personal dignity to the greatest extent possible. Amigos Por Vida - Friends For Life Public Charter School will respond severely to any unauthorized release of information concerning individual employees.

No employee will ever be physically forced to submit to a search. However, an employee who refuses to submit to a search request by Amigos Por Vida - Friends For Life Public Charter School will face disciplinary action, up to and possibly including immediate termination of employment.

**Sec. 5. VIDEO SURVEILLANCE**

In order to promote the safety of Amigos Por Vida - Friends For Life Public Charter School employees, students, and visitors, as well as the security of its facilities, Amigos Por Vida - Friends For Life Public Charter School may conduct video surveillance of any portion of its premises at any time. The only areas excepted from video surveillance are private areas of restrooms, showers, and dressing rooms. All video cameras will be positioned in appropriate places in and around Amigos Por Vida - Friends For Life Public Charter School buildings and used to promote the safety and security of people and property.

**Sec. 1. FAIR LABOR STANDARDS ACT**

**a) *Classification of Positions***

The Superintendent or designee shall determine the classification of positions or employees as “exempt” or “nonexempt” for purposes of payment of overtime in compliance with the Fair Labor Standards Act (FLSA).

**b) *Exempt***

Amigos Por Vida - Friends For Life Public Charter School shall pay employees who are exempt from the overtime pay requirements of the FLSA on a salary basis. The salaries of these employees are intended to cover all hours worked, and Amigos Por Vida - Friends For Life Public Charter School shall not make deductions that are prohibited under the FLSA or state law.

Exempt employees (excluding teachers) are paid on a salaried basis, and their salary is not reduced for absences of less than one full day.

An employee who believes deductions have been made from his or her salary in violation of this policy should bring the matter to Amigos Por Vida - Friends For Life Public Charter School’s attention, through the Amigos Por Vida - Friends For Life Public Charter School complaint process. If improper deductions are confirmed, Amigos Por Vida - Friends For Life Public Charter School will reimburse the employee and take steps to ensure future compliance with the FLSA.

The Superintendent or designee may assign noncontractual supplemental duties to personnel exempt under the FLSA, as needed. The employee may be compensated for these assignments according to Amigos Por Vida - Friends For Life Public Charter School’s compensation plans.

**c) *Nonexempt***

Nonexempt employees may be compensated on an hourly basis or on a salary basis. Employees who are paid on an hourly basis shall be compensated for all hours worked. Employees who are paid on a salary basis are paid for a 40-hour workweek and do not earn additional pay unless the employee works more than 40 hours.

A nonexempt employee shall have the approval of his or her supervisor before working overtime. An employee who works overtime without prior approval is subject to discipline, up to and including termination, but shall be compensated in accordance with the FLSA.

**d) *Minimum Wage and Overtime***

Unless an exemption applies, Amigos Por Vida - Friends For Life Public Charter School shall pay each of its employees not less than minimum wage for all hours worked and for exempt employees,

in accordance with the minimum salary basis requirements (except for instructional employees as defined in the FLSA).

Unless an exemption applies, Amigos Por Vida - Friends For Life Public Charter School shall pay a non-exempt employee not less than one and one-half times the employee's regular rate of pay for all actual hours worked in excess of forty in any workweek.

**e) *Workweek Defined***

For purposes of FLSA compliance, the workweek for school employees shall be <<workweek start time, e.g. 12:00 a.m. Saturday>> until <<workweek end time, e.g. 11:59 p.m. Friday>>.

**Sec. 2. WAGE AND HOUR RECORDS**

Amigos Por Vida - Friends For Life Public Charter School shall maintain and preserve payroll or other records for nonexempt employees containing the information required by the regulations under the FLSA. Records shall also be kept in accordance with applicable State record retention schedules.

**Sec. 3. COMPLIANCE WITH FEDERAL AND STATE WAGE AND HOUR LAWS**

Amigos Por Vida - Friends For Life Public Charter School shall take all reasonable steps to ensure that employees receive the correct amount of pay in each paycheck and that employees are paid promptly on the scheduled paydays and in accordance with Federal and State Wage and Hour Laws including the FLSA and the Texas Payday Act. The Superintendent or designee shall adopt procedures to ensure that Amigos Por Vida - Friends For Life Public Charter School complies with applicable Federal and State Wage and Hour Laws.

As permitted by state law, Amigos Por Vida - Friends For Life Public Charter School provides workers’ compensation benefits to employees who suffer a work-related illness or personal injury due to accidents arising out of their employment with Amigos Por Vida - Friends For Life Public Charter School. These benefits are paid for entirely by Amigos Por Vida - Friends For Life Public Charter School and help pay for medical treatment and make up for part of the income lost while recovering. All work-related illnesses, accidents, or injuries should be reported immediately to the employee’s supervisor and the Superintendent or designee.

Employees who suffer a work-related injury or illness, and who must be off work due to such injury or illness, shall be governed by applicable provisions of the Workers’ Compensation Act (the “WCA”) and the federal Family and Medical Leave Act where applicable.

The Superintendent shall develop procedures to implement Amigos Por Vida - Friends For Life Public Charter School’s Workers Compensation program, including procedures for requesting and use of leave benefits, injury reporting requirements, return to work and reinstatement procedures, absence control procedures, and any other procedure necessary to effectuate the WCA as required by law

**Sec. 1. MANDATORY REQUIREMENTS**

Workers’ Compensation Insurance covers all employees during the time they are on the job.

1. Covered injuries and illnesses may be physical or mental and specific or cumulative.
2. An injury is considered job-related when it arises out of and in the course and scope of employment.
3. The activity that caused the injury must also be an activity that is in the course and scope of employment.

**Sec. 2. DENIAL OF WORKERS’ COMPENSATION INSURANCE BENEFITS**

Except as otherwise required by state law, injuries not covered by Workers’ Compensation Insurance include those where the employee:

1. Was intoxicated on alcohol or drugs.
2. Was in the process of committing a felony (and has been convicted).
3. Was participating in a social or recreational activity off-duty that was not directly related to his or her work.
4. Was commuting to or from work unless doing so under the direct control/orders of Amigos Por Vida - Friends For Life Public Charter School on school-related business.
5. Caused the injury intentionally, or committed suicide.
6. Was “horsing around” or fighting on the job.
7. Violated a school safety policy or procedure.

If Amigos Por Vida - Friends For Life Public Charter School denies a Workers’ Compensation Insurance claim:

1. The employee may contest the decision in accordance with the provisions of the Workers’ Compensation laws of the State of Texas.
2. All costs incurred by the employee in contesting a denial of the claim shall be the sole responsibility of the employee.
3. Amigos Por Vida - Friends For Life Public Charter School is not obligated to make any commitments or statements pertaining to its liability concerning an employee’s injury or illness.

**Sec. 3. FRAUDULENT CLAIMS FOR WORKERS’ COMPENSATION**

Filing a false or fraudulent claim is a violation of law and Amigos Por Vida - Friends For Life Public Charter School’s policy, and can result in disciplinary employment actions, including termination of employment.

**Sec. 4. PROHIBITED DISCRIMINATION**

Amigos Por Vida - Friends For Life Public Charter School may not discharge or in any other manner discriminate against an employee because the employee has:

1. Filed a workers’ compensation claim in good faith.
2. Hired a lawyer to represent the employee in a claim.
3. Instituted or caused to be instituted in good faith a proceeding under the WCA.
4. Testified or is about to testify in a proceeding under the WCA.

*Labor Code 451.001.*

**Sec. 1. ATTENDANCE**

Amigos Por Vida - Friends For Life Housing and Education Corporation expects all employees to conduct themselves in a professional manner during their employment. This includes practicing good attendance habits. All employees should regard coming to work on time, working their shift as scheduled, and arriving and leaving at the scheduled time as essential functions of their jobs.

Amigos Por Vida - Friends For Life Housing and Education Corporation has established the following policies for employee attendance:

1. Employees should arrive to work and be at their assigned duty station no later than their scheduled start time.
2. Employees should remain at their duty station unless the needs of the job require being elsewhere or as authorized by their supervisor, except during authorized breaks.
3. Employees should take only the time normally allowed for breaks as authorized by their supervisor.
4. Non-salaried/non-exempt employees should leave promptly at the end of their scheduled workday, unless given permission by their supervisor to work past that time.
5. Employees should call in and personally notify a supervisor if they will be absent or tardy, unless a verifiable emergency makes it impossible to do so.
6. In addition to any time clock or time-recording system Amigos Por Vida - Friends For Life Public Charter School may implement, time keeping for non-exempt employees must be done weekly and manually using Amigos Por Vida - Friends For Life Public Charter School's approved time sheets.

**Sec. 2. NOTICE OF ABSENCE OR TARDINESS**

Absence or tardiness may be excused under exceptional circumstances, but generally only if an employee provides prior written notice of the need to be absent or tardy. Such advance notice is necessary so that other arrangements can be made to cover the employee's responsibilities, if necessary.

The Superintendent or designee and Human Resources Department shall develop procedures concerning employee absence and tardiness. These procedures shall be distributed to all employees; this distribution may be through the Amigos Por Vida - Friends For Life Public Charter School Employee Handbook.

**Sec. 3. EMPLOYEE WORK SCHEDULES**

The Superintendent or designee and Human Resources Department shall see that work schedules are developed and distributed for each position with Amigos Por Vida - Friends For Life Public Charter School.

**Sec. 4. JOB ABANDONMENT**

An employee who is absent without notice for 3 or more consecutive days shall be considered as having abandoned his or her job; Amigos Por Vida - Friends For Life Public Charter School shall process the employee's work separation as a voluntary resignation without good cause related to the work.



An employee's dress and grooming shall be clean, neat, in a manner appropriate for his or her assignment, and in accordance with any additional standards established by the employee's supervisor and/or the Superintendent or designee.

**Sec. 1. ELECTRONIC AND SOCIAL MEDIA**

Electronic media includes all forms of social media, such as text messaging, instant messaging, electronic mail (e-mail), web logs (blogs), electronic forums (chat rooms), video-sharing web sites, editorial comments posted on the Internet, and social network sites. Electronic media also includes all forms of telecommunication, such as land lines, cell phones, and web-based applications.

**Sec. 2. ELECTRONIC COMMUNICATIONS WITH STUDENTS**

**a) *Introduction***

In this policy, “electronic communication” means any communication facilitated by the use of any electronic device, including a telephone, cellular telephone, computer, computer network, personal data assistant, or pager. The term includes e-mails, text messages, instant messages, and any communications made through an Internet website, including a social media website or a social networking website.

**b) *Electronic Communications with Students***

Amigos Por Vida - Friends For Life Public Charter School employees may engage in electronic communications with students who are currently enrolled in Amigos Por Vida - Friends For Life Public Charter School for academic purposes only. All other employees are prohibited from communicating electronically with a student who is enrolled in Amigos Por Vida - Friends For Life Public Charter School unless express authorization is provided by the Superintendent or designee. An employee is not subject to these provisions to the extent he or she has a social or family relationship with a student.

**i. Inappropriate Communications**

Amigos Por Vida - Friends For Life Public Charter School employees are prohibited from using electronic communications in a manner that constitutes prohibited harassment or abuse of a Amigos Por Vida - Friends For Life Public Charter School student; adversely affects a student’s learning, mental health, or safety; includes threats of violence against a student; reveals confidential information about a student; or constitutes an inappropriate communication with a student.

Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

- The nature, purpose, timing, and amount of the communication;
- The subject matter of the communication;

- Whether the communication was made openly or the educator attempted to conceal the communication;
- Whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship ;
- Whether the communication was sexually explicit; and
- Whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.

ii. *No Expectation of Privacy*

Amigos Por Vida - Friends For Life Public Charter School have no expectation of privacy in electronic communications with students. Employees shall comply with Amigos Por Vida - Friends For Life Public Charter School’s requirements for record retention and destruction to the extent those requirements apply to electronic communications with students.

c) ***Incident Notification***

A Amigos Por Vida - Friends For Life Public Charter School employee shall report to the Principal any incident in which a student engages in improper communications with the employee. Such reports should include a summary of the student’s communication, as well as the time, date, and method of communication.

d) ***Disclosing Personal Telephone Number or E-mail Address***

A Amigos Por Vida - Friends For Life Public Charter School employee may elect not to disclose to students the employee’s personal telephone number or e-mail address.

**Sec. 3. PERSONAL USE**

Employees shall be held to the same professional standards in their public use of electronic media as they are for any other public conduct. If an employee’s use of electronic media violates state or federal law or Amigos Por Vida - Friends For Life Public Charter School policy, or interferes with the employee’s ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment.

**Sec. 1. TECHNOLOGY RESOURCES DEFINED**

For purposes of this policy, the term “technology resources” means electronic communication systems and electronic equipment belonging to Amigos Por Vida - Friends For Life Public Charter School.

**Sec. 2. ACCESS TO TECHNOLOGY RESOURCES**

Amigos Por Vida - Friends For Life Public Charter School’s technology resources, including its network and access to the Internet, are made available to employees primarily for administrative and instructional purposes or as otherwise allowed by administrative regulation.

Limited personal use of Amigos Por Vida - Friends For Life Public Charter School’s technology resources is permitted if the use:

- 1) Does not result in any direct cost paid with State funds, or if Amigos Por Vida - Friends For Life Public Charter School is reimbursed for any direct costs involved;
- 2) Does not relate to private commercial purposes;
- 3) Involves only incidental amounts of employee time, comparable to reasonable coffee breaks during the day; and
- 4) Does not have an adverse impact on an employee’s job performance.

Employees may only access the Internet through Amigos Por Vida - Friends For Life Public Charter School’s approved Internet firewall.

All technology resources are Amigos Por Vida - Friends For Life Public Charter School property, and any information located in or on technology resources is also Amigos Por Vida - Friends For Life Public Charter School property and will be subject to inspection by Amigos Por Vida - Friends For Life Public Charter School.

**Sec. 3. E-MAIL AND VOICE MAIL SYSTEMS**

All messages sent, received, composed and/or stored on Amigos Por Vida - Friends For Life Public Charter School e-mail and/or voice mail systems are the property of Amigos Por Vida - Friends For Life Public Charter School. E-mail transmissions and other use of Amigos Por Vida - Friends For Life Public Charter School’s electronic communications systems are not confidential and can be monitored at any time to ensure appropriate use.

**Sec. 4. CONFIDENTIALITY**

Employees shall not use a password, access a file, or retrieve any stored information unless authorized to do so. Employees may not attempt to gain access to another employee’s files/messages.

Additionally, access to student records accessible through technology resources is restricted to those employees with a legitimate educational interest in such records in accordance with the Family Educational Rights and Privacy Act (“FERPA”). An employee has a legitimate educational interest in student records if:

1. The information is necessary for the employee to perform appropriate tasks that are specified in his or her position;
2. The information is to be used within the context of official school business and not for purposes extraneous to the employee’s areas of responsibility;
3. The information is relevant to the accomplishment of some task or to a determination about the student; or
4. The information is to be used consistently with the purpose for which student records are maintained.

Having access to student records through technology resources does not constitute authority to share this information with anyone without authority or permission to view student records.

#### **Sec. 5. PRIVACY AND MONITORED USE**

All files and messages on Amigos Por Vida - Friends For Life Public Charter School’s technology resources are Amigos Por Vida - Friends For Life Public Charter School property. They are not the property of any employee, even if created by an employee. Anything created on the Internet may, and likely will, be reviewed by others. If necessary, employees shall take steps to help protect the security of documents. Amigos Por Vida - Friends For Life Public Charter School has the right, but not the duty, to monitor any and all aspects of its technology resources, including, but not limited to, monitoring sites employees visit on the Internet. Employees have no expectation of privacy in anything they create, store, send, or receive on Amigos Por Vida - Friends For Life Public Charter School’s technology resources.

#### **Sec. 6. RESTRICTIONS**

- 1) Employees are not allowed to use Amigos Por Vida - Friends For Life Public Charter School’s technology resources for any reason other than official school business, except as allowed under Section 2 (Access to Technology Resources) above.
- 2) Employees may not use e-mail or the Internet to send or receive materials, proprietary financial information, or other similar materials that violate copyright law.
- 3) Amigos Por Vida - Friends For Life Public Charter School’s e-mail system may not be used to create any offensive or disruptive messages. Among those which are considered offensive are any messages that contain sexual implications, racial or gender-specific slurs, or any other comment that offensively addresses an individual’s age, sexual orientation, religious or political beliefs, national origin, disability, or anything that could be construed as harassment or disparaging of others.

- 4) Employees should refrain from sending non-business-related e-mails to other Amigos Por Vida - Friends For Life Public Charter School employees or persons outside the Amigos Por Vida - Friends For Life Public Charter School system.
- 5) Amigos Por Vida - Friends For Life Public Charter School is responsible for maintaining records of software licensing agreements for Amigos Por Vida - Friends For Life Public Charter School. In order to ensure compliance with copyright laws and software licensing agreements, and help prevent computer viruses from being transmitted through the system, employees are not permitted to install or download any software or content, such as music, videos, or non-work related “zipped” files onto Amigos Por Vida - Friends For Life Public Charter School’s computer system without prior approval from the Principal or designee.
- 6) Unauthorized duplication of software, often referred to as “piracy,” is a federal crime. Employees are not permitted to make, acquire, or use unauthorized copies of computer software.

Employees who are authorized to use Amigos Por Vida - Friends For Life Public Charter School’s technology resources are required to abide by the provisions of this policy and any related administrative procedures. Failure to do so can result in suspension or termination of privileges and may lead to disciplinary action, up to and including termination of employment. Employees should notify their immediate supervisor(s) or the IT Department upon learning of violations of this policy.

#### **Sec. 7. ACCEPTABLE USE POLICY**

The Superintendent or designee shall develop and implement administrative regulations and guidelines for acceptable use of Amigos Por Vida - Friends For Life Public Charter School’s technology resources. Such regulations and guidelines shall be provided annually to employees as part of the Employee Handbook, or in another method deemed appropriate by the Superintendent.

Access to Amigos Por Vida - Friends For Life Public Charter School’s technology resources is a privilege, not a right. All employee users will be required to acknowledge receipt and understanding of Amigos Por Vida - Friends For Life Public Charter School’s acceptable use regulations and guidelines, and shall agree in writing to allow monitoring of their use and to comply with such regulations and guidelines. Noncompliance with Amigos Por Vida - Friends For Life Public Charter School’s acceptable use policy may result in disciplinary action, up to and including termination, as allowed by Amigos Por Vida - Friends For Life Public Charter School policy. Violations of law may result in referral to criminal authorities, as well as disciplinary action by Amigos Por Vida - Friends For Life Public Charter School.

#### **Sec. 8. DISCLAIMER OF LIABILITY**

Amigos Por Vida - Friends For Life Public Charter School will not be liable for an employee’s inappropriate use of technology resources, violations of copyright restrictions or other laws, users’ mistakes or negligence, and costs incurred by users. Amigos Por Vida - Friends For Life Public

Charter School is not responsible for ensuring the availability of technology resources or the accuracy, age appropriateness, or usability of any information accessed through the Internet.

**Sec. 9. ACCESS TO CELLULAR AND/OR WIRELESS TELEPHONE EQUIPMENT AND ACCOUNTS**

Access to cellular and/or wireless telephone equipment and accounts belonging to Amigos Por Vida - Friends For Life Public Charter School is made available exclusively for instructional and administrative purposes in accordance with guidelines and regulations developed by Amigos Por Vida - Friends For Life Public Charter School. Access to this equipment is a privilege, not a right, and can be revoked at any time.

The Superintendent or designee shall develop and define guidelines for the responsible and ethical use of Amigos Por Vida - Friends For Life Public Charter School-supplied telephone equipment and accounts. Such guidelines shall be distributed to all Amigos Por Vida - Friends For Life Public Charter School employees.

**a) *Consequences for Violations***

Violations of Amigos Por Vida - Friends For Life Public Charter School's guidelines for access to cellular and/or wireless telephone equipment and accounts will be treated like other allegations of wrongdoing. Allegations of misconduct will be adjudicated according to established procedures. Sanctions for violations of these guidelines may include, but are not limited to, one or more of the following:

1. Temporary or permanent revocation of access to some or all cellular or wireless telephone resources.
2. Disciplinary action, up to and including termination.
3. Legal action according to applicable laws and contractual agreements.

**Sec. 10. RECORD RETENTION**

Amigos Por Vida - Friends For Life Public Charter School employees shall retain electronic records pertaining to Amigos Por Vida - Friends For Life Public Charter School business, whether created or maintained using Amigos Por Vida - Friends For Life Public Charter School's technology resources or using personal technology resources, in accordance with Amigos Por Vida - Friends For Life Public Charter School's record management program.

Amigos Por Vida – Friends For Life Public Charter School employees seeking to schedule use of Amigos Por Vida – Friends For Life Public Charter School buildings and facilities must submit a request for such use to the Superintendent, Mr. Freddy Delgado.



**Sec. 1. PROHIBITION ON SOLICITATION AND DISTRIBUTION OF PROMOTIONAL MATERIALS**

Amigos Por Vida – Friends For Life Public Charter School prohibits solicitation of employees by salespersons or other employees on Amigos Por Vida – Friends For Life Public Charter School property.

Amigos Por Vida – Friends For Life Public Charter School further prohibits the distribution of promotional or sales literature on Amigos Por Vida – Friends For Life Public Charter School property by salespersons or employees at all times.

Commercial advertisements or sales for personal profit are also prohibited.

**Sec. 2. PROHIBITION ON DIETARY SUPPLEMENTS**

Employees of Amigos Por Vida – Friends For Life Public Charter School may not:

1. Knowingly sell, market, or distribute a dietary supplement that contains performance enhancing compounds to a primary or secondary education student with whom the employee has contact as part of the employee’s school duties; or
2. Knowingly endorse or suggest the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance enhancing compounds by a primary or secondary education student with whom the employee has contact as part of the employee’s school duties.

However, Amigos Por Vida – Friends For Life Public Charter School employees are not prohibited from:

1. Providing or endorsing a dietary supplement that contains performance enhancing compounds to, or suggesting the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance enhancing compounds by, the employee’s child; or
2. Selling, marketing, or distributing a dietary supplement that contains performance enhancing compounds to, or endorsing or suggesting the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance enhancing compounds by, a primary or secondary education student as part of activities that:
  - a. Do not occur on Amigos Por Vida – Friends For Life Public Charter School property or at a school-related function;
  - b. Are entirely separate from any aspect of the employee’s employment with Amigos Por Vida – Friends For Life Public Charter School ; and
  - c. Do not in any way involve information about or contacts with students that the employee has had access to, directly or indirectly, through any aspect of the employee’s employment with Amigos Por Vida – Friends For Life Public Charter School .

For purposes of this policy:

1. “Dietary supplement” means a product (other than tobacco) intended to supplement the diet that bears or contains one or more of the following dietary ingredients:
  - a. A vitamin;
  - b. A mineral;
  - c. An herb or other botanical;
  - d. An amino acid;
  - e. A dietary substance for use by man to supplement the diet by increasing the total dietary intake; or
  - f. A concentrate, metabolite, constituent, extract, or combination of any ingredient described in items (a)-(e).
2. “Performance enhancing compound” means a manufactured product for oral ingestion, intranasal application, or inhalation that:
  - a. Contains a stimulant, amino acid, hormone precursor, herb or other botanical, or any other substance other than an essential vitamin or mineral; and
  - b. Is intended to increase athletic or intellectual performance, promote muscle growth, or increase an individual’s endurance or capacity for exercise.

*Education Code 38.011.*

**Sec. 1. OWNERSHIP OF INTELLECTUAL PROPERTY**

All copyrights, trademarks, and other intellectual property rights shall remain with Amigos Por Vida – Friends For Life Public Charter School at all times.

**a) *Student Work***

A student shall retain all rights to work created as part of instruction or using Amigos Por Vida – Friends For Life Public Charter School technology resources.

**b) *Employee Work***

As an agent of Amigos Por Vida – Friends For Life Public Charter School, a Amigos Por Vida – Friends For Life Public Charter School employee shall not have rights to work he or she creates on Amigos Por Vida – Friends For Life Public Charter School time or using Amigos Por Vida – Friends For Life Public Charter School technology resources. Amigos Por Vida – Friends For Life Public Charter School shall own any work or work product created by a Amigos Por Vida – Friends For Life Public Charter School employee in the course and scope of his or her employment, including the right to obtain copyrights.

If the employee obtains a patent for such work, the employee shall grant a non-exclusive, non-transferable, perpetual, royalty-free, district-wide license to Amigos Por Vida – Friends For Life Public Charter School for use of the patented work. A Amigos Por Vida – Friends For Life Public Charter School employee shall own any work or work product produced on his or her own time, away from his or her job and with personal equipment and materials, including the right to obtain patents or copyrights.

A Amigos Por Vida – Friends For Life Public Charter School employee may apply to the Superintendent or designee to use Amigos Por Vida – Friends For Life Public Charter School materials and equipment in his or her creative projects, provided the employee agrees either to grant to Amigos Por Vida – Friends For Life Public Charter School a non-exclusive, non-transferable, perpetual, royalty-free, district-wide license to use the work, or permits Amigos Por Vida – Friends For Life Public Charter School to be listed as co-author or co-inventor if Amigos Por Vida – Friends For Life Public Charter School contribution to the work is substantial. Amigos Por Vida – Friends For Life Public Charter School materials do not include student work, all rights to which are retained by the student.

**c) *Works Made for Hire***

A “work made for hire” is:

1. A work prepared by a Amigos Por Vida – Friends For Life Public Charter School employee within the scope of employment; or

2. A work specially ordered or commissioned for use as a contribution to a collective work (for example, a supplementary work, a test, an instructional text, answer material for a test, etc.) if the parties agree in a signed written instrument that the work is considered a work made for hire.

Amigos Por Vida – Friends For Life Public Charter School may hire an independent contractor for specially commissioned work(s) under a written works-made-for-hire agreement that provides that Amigos Por Vida – Friends For Life Public Charter School shall own the work product created under the agreement, as permitted by copyright law. Independent contractors shall comply with copyright law in all works commissioned.

**d) *Return of Intellectual Property***

Upon the termination of any person’s association with Amigos Por Vida – Friends For Life Public Charter School, all permission to possess, receive, or modify Amigos Por Vida – Friends For Life Public Charter School’s intellectual property shall also immediately terminate. All such persons shall return to Amigos Por Vida – Friends For Life Public Charter School all intellectual property, including but not limited to any copies, no matter how kept or stored, and whether directly or indirectly possessed by such person.

**Sec. 2. USE OF COPYRIGHTED MATERIAL**

Unless the proposed use of a copyrighted work is an exception under the “fair use” guidelines maintained by the Superintendent or designee, Amigos Por Vida – Friends For Life Public Charter School shall require an employee or student to obtain a license or permission from the copyright holder before copying, modifying, displaying, performing, distributing, or otherwise employing the copyright holder’s work for instructional, curricular, or extracurricular purposes. This policy does not apply to any work sufficiently documented to be in the public domain.

**a) *Technology Use***

All persons are prohibited from using Amigos Por Vida – Friends For Life Public Charter School technology in violation of any law including copyright law. Only appropriately licensed programs or software may be used with Amigos Por Vida – Friends For Life Public Charter School technology resources. No person shall use Amigos Por Vida – Friends For Life Public Charter School’s technology resources to post, publicize, or duplicate information in violation of copyright law. The Board shall direct the Superintendent or designee to employ all reasonable measures to prevent the use of Amigos Por Vida – Friends For Life Public Charter School technology resources in violation of the law. All persons using Amigos Por Vida – Friends For Life Public Charter School technology resources in violation of law shall lose user privileges in addition to other sanctions.

**b) *Electronic Media***

Unless a license or permission is obtained, electronic media in the classroom, including motion pictures and other audiovisual works, must be used in the course of face-to-face teaching activities as defined by law.

**Sec. 3. TRADEMARK USE**

Amigos Por Vida – Friends For Life Public Charter School protects all Amigos Por Vida – Friends For Life Public Charter School and campus trademarks, including names, logos, mascots, and symbols, from unauthorized use.

**a) *School-Related Use***

Amigos Por Vida – Friends For Life Public Charter School grants permission to students, student organizations, parent organizations and other Amigos Por Vida – Friends For Life Public Charter School affiliated school-support or booster organizations to use, without charge, Amigos Por Vida – Friends For Life Public Charter School and campus trademarks to promote a group of students, an activity or event, a campus, or Amigos Por Vida – Friends For Life Public Charter School, if the use is in furtherance of school-related business or activity. The Superintendent or designee shall determine what constitutes use in furtherance of school-related business or activity and is authorized to revoke permission if the use is improper or does not conform to administrative regulations.

**b) *Public Use***

Members of the general public, outside organizations, vendors, commercial manufacturers, wholesalers, and retailers shall not use Amigos Por Vida – Friends For Life Public Charter School trademarks without the written permission of the Superintendent or designee. Any production of merchandise with Amigos Por Vida – Friends For Life Public Charter School trademarks for sale or distribution must be pursuant to a trademark licensing agreement and may be subject to the payment of royalties. Any individual, organization, or business that uses Amigos Por Vida – Friends For Life Public Charter School trademarks without appropriate authorization shall be subject to legal action.

**Sec. 1. RATIONALE**

Amigos Por Vida – Friends For Life Public Charter School employees are expected to avoid apparent or actual conflicts of interest, favoritism, or bias in their workplace relationships. Consensual romantic relationships can give rise to such realities or perceptions and are thus potentially exploitative, especially when they involve supervisor/subordinate relationships. In addition, such relationships can and often do create an uncomfortable work or educational environment for students and staff.

**Sec. 2. DEFINITION OF ROMANTIC RELATIONSHIPS**

A “romantic relationships” is one that involves or is a prelude to sexual intimacy. A romantic relationship may be manifest through, but is not limited to, one or more of the following workplace behaviors: a pattern of exclusivity between two persons; consensual physical touching that implies a romantic intention or desire; the sharing of personal information appropriate for a romantic relationship but beyond the boundaries of a professional workplace relationship; actual physical intimacy; written communications or other actions that demonstrate or imply a romantic interest.

**Sec. 3. RELATIONSHIPS BETWEEN EMPLOYEES AND STUDENTS**

Employees shall never form romantic relationships with students. Any sexual relationship between a student and an employee is prohibited and unlawful, even if consensual.

**Sec. 4. REPORTABLE ROMANTIC RELATIONSHIPS BETWEEN EMPLOYEES**

Romantic relationships are generally discouraged between a Amigos Por Vida – Friends For Life Public Charter School employee and that employee’s immediate or distant supervisor. The power differential makes such relationships open to abuse and to charges of sexual harassment or unprofessional conduct.

This policy is not intended to prohibit romantic or outside relationships among peers or colleagues; however, employees involved in such relationships are cautioned to avoid situations that may contribute to an uncomfortable work or educational environment for other employees or students.

**Sec. 5. REPORTING REQUIREMENTS**

In the event that consensual romantic relationships exist or begin to develop between an employee and supervisor, the supervisor is charged with the responsibility of notifying his or her immediate supervisor of the relationship. The reporting supervisor shall cooperate in making appropriate workplace arrangements and adjustments, which may include but are not limited to reassignments of duties, departments and/or locations.

**Sec. 6. FAILURE TO REPORT OR COOPERATE**

Employees in positions of authority who fail to report a romantic relationship with a subordinate or fail to cooperate in efforts to reduce the potential for workplace conflicts as directed will be subject to disciplinary action, up to and including termination.

**Sec. 1. GUIDING PRINCIPLES**

Amigos Por Vida, Friends For Life Housing and Education Corporation values the opinions of all its employees. Employees have the right to express their views through appropriate informal and formal processes.

**a) *Informal Process***

The Board encourages employees to discuss their grievances and complaints through informal meetings with their supervisor or Principal, or other administrator with authority to address the grievance or complaint. Grievances and complaints should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

**b) *Complaint Procedures***

The Superintendent or designee shall develop a detailed employee grievance/complaint process; this grievance/complaint process shall recognize the Board’s final authority to hear or decide employee grievances or complaints. The grievance/complaint process shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or “mini-trial” at any level.

The Superintendent or designee shall ensure that the detailed employee grievance/complaint process is made available to employees through the Employee Handbook.

**c) *Board Consideration of Employee Complaints and Grievances***

The Board shall retain final authority to hear or decide employee grievances/complaints. *19 TAC 100.1033(b)(14)(C)(i).*

The Board may conduct a closed meeting when hearing or deciding an employee grievance/complaint as allowed by applicable law. *Gov’t Code Ch. 551, Subch. D.*

**d) *Freedom from Retaliation***

Neither the Board nor any Amigos Por Vida – Friends For Life Public Charter School employee shall unlawfully retaliate against an employee for bringing a grievance or complaint.



**Sec. 1. PERSONAL LEAVE**

Amigos Por Vida - Friends For Life Public Charter School does not directly participate in the State Personal Leave Program or provide or recognize “State Days” under Education Code, Chapter 22; therefore, accumulated state personal leave days from other Texas School Districts or public schools may not be transferred in or out of the Amigos Por Vida - Friends For Life Public Charter School system.

**a) *Local Leave***

Amigos Por Vida - Friends For Life Public Charter School grants all employees under 220 days contract 05 local leave days annually. The Superintendent shall adopt procedures to implement and control Local Leave benefits.

**b) *Medical Certification***

Any employee who is absent more than three days because of a personal or family illness must submit a medical certification from a qualified health care provider confirming the specific dates of the illness, the reason for the illness, and – in the case of personal illness – the employee’s fitness to return to work.

**c) *Forfeiture of Leave***

Unused State Leave Days: Unused state leave days can be transferred to other schools and districts and will carry over to next school year

Unused Local Leave Days: Unused local leave days cannot transfer but can be carried over while employed at Amigos Por Vida - Friends For Life Public Charter School. If at the end of the annual contract period, an employee has accumulated more than 20 local days, he or she may request, in writing no later than August 5<sup>th</sup> to be paid. This can be paid for the excess days at the employee’s daily rate, up to a maximum of \$100 per day. All local accrued days will be forfeited at the time employment ends at the school.

**Sec. 2. EXTENDED SICK LEAVE**

Amigos Por Vida - Friends For Life Public Charter School shall also provide all employees who have worked for Amigos Por Vida - Friends For Life Public Charter School for at least one calendar year 12 weeks of extended sick leave, under FMLA guidelines<sup>1</sup>. This leave may be used in combination of the employee’s earned Leave benefits and only for the employee’s personal illness or disability, including pregnancy-related disability.

<sup>1</sup> <https://www.dol.gov/agencies/whd/fmla/faq>

**Commented [A1]:** This policy is highly customizable. You will want to be sure that this policy matches the school's current practices with respect to leave offerings.

Extended sick leave is to be used for single, long-term illnesses or conditions. “Single” is defined as one illness or condition; “long-term” is defined as an absence of ten or more consecutive days. An employee is eligible for extended sick leave once every three years.

A doctor’s written statement confirming the need for extended sick leave may be required, at Amigos Por Vida – Friends For Life Public Charter School’s discretion. Extended sick leave begins upon notice of the first absence, whether or not a formal FMLA request has been submitted. Extended sick leave will stop on the date the doctor releases the employee or when all extended sick leave has been exhausted, whichever comes first.

Amigos Por Vida – Friends For Life Public Charter School is not required to hold an employee’s position who is on leave for more than 12 weeks, and they may be separated if they have not returned after 12 weeks of sick leave. Amigos Por Vida – Friends For Life Public Charter School is not required to create a role to accommodate the illness or condition of an employee and he or she may be separated for the inability or lowered ability to perform their regular duties assigned to their job position

**Sec. 3. EMERGENCY LEAVE**

Employees may be granted up to 10 School Calendar days of emergency leave without loss of pay or accumulated Local Leave for destruction of their home or domicile due to flood, fire, or storm, other natural disasters or force majeure and depending on the severity of the case. Such leave is subject to the approval of the Superintendent or designee. Any further leave granted will result in a deduction of accumulated Local Leave, a deduction of the daily rate of pay, or unpaid leave, unless otherwise provided by Amigos Por Vida - Friends For Life Public Charter School.

**Sec. 4. BEREAVEMENT LEAVE**

Amigos Por Vida - Friends For Life Public Charter School employees may be absent, without loss of pay, in the event of the death of one of the following relatives of the employee or his or her spouse: husband, wife, child (including a biological, adopted, stepchild, a child for whom the employee stands in loco parentis, or foster child), father, mother, brother, sister, grandfather, grandmother, grandchildren, or any person who may be residing in the employee’s household at the time of illness or death. No more than 03 paid local leave days will be used for this purpose in any one school year unless otherwise approved by the Superintendent or designee.

**Sec. 5. RELIGIOUS OBSERVANCES**

An employee requesting to attend a religious observance on a regularly scheduled school day may use Personal Leave. In the event that all Personal Leave has been used, deductions from the employee’s salary shall be made on the basis of the employee’s daily rate of pay.

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**Sec. 6. JURY DUTY AND OTHER COURT APPEARANCES**

Amigos Por Vida - Friends For Life Public Charter School will pay a non-exempt employee his or her normal daily compensation for each regularly scheduled workday on which the employee serves in any phase of jury service. Any employee selected for jury duty must notify his or her supervisor within 48 hours of the court's notice. The employee must also present documentation of jury service to his or her supervisor.

Employees will be paid while on leave to comply with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. Absences for court appearances related to an employee's personal business must be taken as local leave or leave without pay (if no local leave is available). Employees may be required to submit documentation of their need for leave for court appearances.

Amigos Por Vida - Friends For Life Public Charter School shall not discharge, threaten to discharge, intimidate, or coerce any permanent employee because the employee serves as a juror or grand juror, or for the employee's attendance or scheduled attendance in connection with the service, in any court in the United States.

**Sec. 7. VOTING LEAVE**

Any employee who does not have two consecutive non-work hours while the polls are open on election day will be given up to two hours off with pay in order to vote, unless more time is required by state law. The employee should notify the appropriate supervisor before Election Day if time off is needed, so that the timing of the employee's absence can be pre-arranged.

**Sec. 8 LIMITATIONS ON LEAVES OF ABSENCE**

With the exception of leaves of absence for military duty, peace officer leave, or approved leave under the Family and Medical Leave Act, if an employee accumulates more than 2 days of absence after exhausting all available paid and unpaid leave, the employee shall be separated due to unavailability for work, subject to any reasonable accommodation duties Amigos Por Vida - Friends For Life Public Charter School may have under the Americans with Disabilities Act (ADA) or similar law. Any employee separated for unavailability for work following exhaustion of all available leave will be eligible for rehire, and will be able to apply for any vacancies that may exist at any given time, depending upon qualifications and availability of job openings.

**Sec. 1. EMPLOYEE MILITARY LEAVE**

Any Amigos Por Vida - Friends For Life Public Charter School employee who is absent from employment due to voluntary or involuntary service in the uniformed services is entitled to certain rights and benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) if:

1. The employee (or an appropriate officer of the uniformed service in which the employee serves) has provided written or verbal notice of such military notice to Amigos Por Vida - Friends For Life Public Charter School (unless notice cannot be given because of military necessity or is unreasonable or impossible to provide);
2. The cumulative length of the absence and all previous absences from employment with Amigos Por Vida - Friends For Life Public Charter School does not exceed five years; and
3. The employee reports to or submits an application for reemployment to Amigos Por Vida - Friends For Life Public Charter School and applies with all other applicable requirements.

For purposes of leave under USERRA, “uniformed service” means the Armed Forces; the Army National Guard, and the Air National Guard when an individual is engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; and any other category of persons designated by the President of the United States in time of war or emergency.

A person who is re-employed by Amigos Por Vida - Friends For Life Public Charter School under USERRA is entitled to the seniority and other rights and benefits that he or she held on the date that uniformed service commenced, plus the additional seniority, rights, and benefits that would have been attained had he or she remained continuously employed.

**Sec. 4.15.1.1. Exception**

Amigos Por Vida - Friends For Life Public Charter School is not required to re-employ an employee if:

1. Circumstances at Amigos Por Vida - Friends For Life Public Charter School have changed so as to make re-employment impossible or unreasonable;
2. The re-employment of the employee would cause undue hardship for Amigos Por Vida - Friends For Life Public Charter School;
3. The employment with Amigos Por Vida - Friends For Life Public Charter School from which the employee leaves to perform uniformed service is for a brief, nonrecurrent period and there is no reasonable expectation that employment with Amigos Por Vida - Friends For Life Public Charter School will continue indefinitely or for a significant period; or
4. The employee is separated from uniformed service with a dishonorable or bad conduct discharge, under other than honorable conditions, or in other circumstances outlined in federal regulation at 20 C.F.R. § 1002.135.

*38 U.S.C. 4301, et. seq.*

**Sec. 1. GENERAL PROVISIONS**

**a) *Family and Medical Leave***

The Family and Medical Leave Act (“FMLA”) provides eligible employees with unpaid leave for certain family and medical reasons during a 12-month period. During this leave, employees are entitled to continue group health plan coverage as if they had continued to work. At the conclusion of the leave, subject to some exceptions, employees generally have the right to return to the same or an equivalent position, equivalent pay, benefits and working conditions.

**b) *Employment Eligibility Criteria***

An “eligible employee” is one who:

1. Has been employed by Amigos Por Vida - Friends For Life Public Charter School for at least 12 months (which need not be consecutive);
2. Has been employed by Amigos Por Vida - Friends For Life Public Charter School for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and
3. Works at a Amigos Por Vida - Friends For Life Public Charter School facility where at least 50 employees are employed within 75 miles.

**i. Events Entitling Employees to FMLA Leave**

An eligible employee shall be entitled to FMLA leave for one or more of the following:

1. For the birth of a son or daughter of the employee and to care for the newborn child.
2. For placement of a son or daughter with the employee for adoption or foster care.
3. To care for the employee’s spouse, son or daughter, or parent with a serious health condition.
4. Because of a serious health condition that makes the employee unable to perform the functions of his or her position.
5. Because of any Qualified Exigency (defined below) arising out of the fact that the employee’s spouse, son or daughter, or parent is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
6. To care for a covered servicemember with a serious injury or illness incurred in the line of duty if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

**ii. Qualifying Exigency FMLA Leave**

An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

1. Short-notice deployment.
2. Military events and related activities.
3. Childcare and school activities.
4. Financial and legal arrangements.
5. Counseling.
6. Rest and recuperation.
7. Post-deployment activities.
8. Parental care.
9. Additional activities, provided that Amigos Por Vida - Friends For Life Public Charter School and the employee agree that the leave shall qualify as an exigency and agree to both the timing and duration.

iii. *Pregnancy or Birth*

Both parents are entitled to FMLA leave to be with a healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. In addition, the expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health-care provider during the absence and even if the absence does not last for more than three consecutive calendar days. A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated, during her prenatal care, or following the birth of a child if the spouse has a serious health condition.

**Sec. 2. SECTION II: LEAVE ENTITLEMENT AND USE**

**a) *Maximum Amount of FMLA Leave Within a 12-Month Period***

Except in the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during a 12-month period for any one or more of the qualifying reasons.

Spouses who are employed by Amigos Por Vida - Friends For Life Public Charter School may be limited to a combined total of 12 workweeks of leave during any 12-month period if the leave is taken for birth of a son or daughter, the placement of a child for adoption or foster care, or to care for a parent with a serious health condition. Each spouse may be entitled to additional FMLA leave for other FMLA-qualifying reasons, but not more than a total of 12 workweeks per person.

**b) *Determining the 12-Month Period***

Except with respect to military caregiver leave, Amigos Por Vida - Friends For Life Public Charter School may choose any one of the following methods for determining the “12-month period” in which the 12 weeks of leave entitlement occurs:

1. The calendar year;
2. Any fixed 12-month “leave year,” such as a fiscal year or a year starting on an employee’s “anniversary date”;
3. The 12-month period measured forward from the date any employee’s first FMLA leave begins; or
4. A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

i. *Military Caregiver Leave*

In the case of military caregiver leave, an eligible employee’s FMLA leave entitlement is limited to a total of 26 workweeks of leave during a “single 12-month period.” The “single 12-month period” is measured forward from the date an employee’s first FMLA leave to care for the covered servicemember begins, regardless of the method used by Amigos Por Vida - Friends For Life Public Charter School to determine the 12-month period for other FMLA leaves. During the “single 12-month period,” an eligible employee’s FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason.

Spouses who are employed by Amigos Por Vida - Friends For Life Public Charter School may be limited to a combined total of 26 weeks of FMLA leave during the “single 12-month period” if leave is taken as military caregiver leave, for the birth of a son or daughter, for the placement of a child for adoption or foster care, or to care for a parent with a serious health condition.

ii. *Summer Vacation and Other Extended Breaks*

If Amigos Por Vida - Friends For Life Public Charter School’s activity temporarily ceases and employees generally are not expected to report for work for one or more weeks – e.g., a school closing for Spring Break or for the Christmas/New Year holiday – those days do not count against an employee’s FMLA leave entitlement. Similarly, the time during summer vacation when the employee is not required to report to work does not count against the employee’s FMLA leave entitlement.

c) *Intermittent or Reduced Work Schedule Leave*

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. “Intermittent leave” is FMLA leave taken in separate blocks of time due to a single qualifying reason. A “reduced leave schedule” is a leave schedule that reduces an employee’s usual number of working hours per workweek, or hours per workday.



For leave taken because of the employee’s own serious health condition, to care for a parent, son, or daughter with a serious health condition, or military caregiver leave, there must be a medical need for leave, and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. Leave due to a qualifying exigency may also be taken on an intermittent or reduced schedule basis.

When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently, or on a reduced leave schedule, only if Amigos Por Vida - Friends For Life Public Charter School agrees.

i. *Transfer to an Alternative Position*

If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, Amigos Por Vida - Friends For Life Public Charter School may require the employee to transfer temporarily to an available alternative position for which the employee is qualified, and which better accommodates recurring periods of leave than does the employee’s regular position.

ii. *Calculating Leave Use*

When an employee takes leave on an intermittent or reduced schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. Amigos Por Vida - Friends For Life Public Charter School must account for intermittent or reduced schedule leave using an increment no greater than the shortest period of time that Amigos Por Vida - Friends For Life Public Charter School uses to account for use of other forms of leave, provided the increment is not greater than one hour.

**d) *Special Rules for Instructional Employees***

Special rules affect leave taken intermittently or on a reduced schedule, or taken near the end of an academic term (semester) by instructional employees.

“Instructional employees” are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

i. *Failure to Provide Notice of Foreseeable Leave*

If an instructional employee does not give required notice of foreseeable leave to be taken intermittently or on a reduced schedule, Amigos Por Vida - Friends For Life Public Charter School may require the employee to take leave of a particular duration or to transfer temporarily to an alternative position. Alternatively, Amigos Por Vida - Friends For Life Public Charter School may require the employee to delay the taking of leave until the notice provision is met.

ii. Twenty Percent Rule

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or for the employee's own serious health condition; the leave is foreseeable based on planned medical treatment; and the employee would be on leave for more than 20% of the total number of working days over the period the leave would extend, Amigos Por Vida - Friends For Life Public Charter School may require the employee to choose:

1. To take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
2. To transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

“Periods of a particular duration” means a block or blocks of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave. If an employee chooses to take leave for “periods of a particular duration” in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

iii. Leave at the End of a Semester

As a rule, Amigos Por Vida - Friends For Life Public Charter School may not require an employee to take more FMLA leave than the employee needs. The FMLA recognizes exceptions where instructional employees begin leave near the end of a semester. As set forth below, Amigos Por Vida - Friends For Life Public Charter School may in certain cases require the employee to take leave until the end of the semester.

The school semester, or “academic term,” typically ends near the end of the calendar year and the end of spring each school year. In no case may Amigos Por Vida - Friends For Life Public Charter School have more than two academic terms or semesters each year for purposes of the FMLA.

If Amigos Por Vida - Friends For Life Public Charter School requires the employee to take leave until the end of the semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. Any additional leave required by Amigos Por Vida - Friends For Life Public Charter School to the end of the semester

is not counted as FMLA leave; however, Amigos Por Vida - Friends For Life Public Charter School shall maintain the employee's group health insurance and restore the employee to the same or equivalent job, including other benefits, at the end of the leave.

iv. *More than Five Weeks Before the End of the Semester*

Amigos Por Vida - Friends For Life Public Charter School may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave more than five weeks before the end of the semester;
2. The leave will last at least three weeks; and
3. The employee would return to work during the three-week period before the end of the semester.

v. *During the Last Five Weeks of the Semester*

Amigos Por Vida - Friends For Life Public Charter School may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave during the last five weeks of the semester for any reason other than the employee's own serious health condition or a qualifying exigency;
2. The leave will last more than two weeks; and
3. The employee would return to work during the two-week period before the end of the semester.

vi. *During Last Three Weeks of the Semester*

Amigos Por Vida - Friends For Life Public Charter School may require an instructional employee to continue taking leave until the end of the semester if the employee begins leave during the three-week period before the end of the semester for any reason other than the employee's own serious health condition or a qualifying exigency.

**e) *Substitution of Paid Leave Time***

Generally, FMLA leave is unpaid leave. However, an employee may choose to substitute accrued paid leave for unpaid FMLA leave. If an employee does not choose to substitute accrued paid leave, Amigos Por Vida - Friends For Life Public Charter School may require the employee to do so. The term "substitute" means that the paid leave provided by Amigos Por Vida - Friends For Life Public Charter School, and accrued pursuant to established policies of Amigos Por Vida - Friends For Life Public Charter School, will run concurrently with the unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of Amigos Por Vida - Friends For Life Public Charter School normal leave policy.

i. *FMLA and Workers' Compensation*

A serious health condition may result from injury to the employee “on or off” the job. If Amigos Por Vida - Friends For Life Public Charter School designates the leave as FMLA leave, the leave counts against the employee’s FMLA leave entitlement. Because the workers’ compensation absence is not unpaid, neither the employee nor Amigos Por Vida - Friends For Life Public Charter School may require the substitution of paid leave. However, Amigos Por Vida - Friends For Life Public Charter School and an employee may agree, where state law permits, to have paid leave supplement workers’ compensation benefits.

If the health-care provider treating the employee for the workers’ compensation injury certifies that the employee is able to return to a “light duty job” but is unable to return to the same or equivalent job, the employee may decline Amigos Por Vida - Friends For Life Public Charter School’s offer of a “light duty job.” As a result, the employee may lose workers’ compensation payments, but is entitled to remain on unpaid FMLA leave until the employee’s FMLA leave entitlement is exhausted. As of the date workers’ compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or Amigos Por Vida - Friends For Life Public Charter School may require the use of accrued paid leave.

**f) *Maintenance of Health Benefits***

During any FMLA leave, Amigos Por Vida - Friends For Life Public Charter School must maintain the employee’s coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

An employee may choose not to retain group health plan coverage during FMLA leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as before taking leave without any qualifying period, physical examination, exclusion of pre-existing conditions, and the like.

i. *Payment of Premiums*

During FMLA leave, the employee must continue to pay his or her share of group health plan premiums. If premiums are raised or lowered, the employee would be required to pay the new premium rates.

ii. *Failure to Pay Premiums*

Unless Amigos Por Vida - Friends For Life Public Charter School has an established policy providing a longer grace period, Amigos Por Vida - Friends For Life Public Charter School obligations to maintain health insurance coverage cease if an employee's premium payment is more than 30 days late. In order to terminate the employee’s coverage, Amigos Por Vida - Friends For

Life Public Charter School must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. Coverage for the employee may be terminated at the end of the 30-day grace period, if the required 15-day notice has been provided.

Upon the employee's return from FMLA leave, Amigos Por Vida - Friends For Life Public Charter School must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. The employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

iii. *Recovery of Benefit Cost*

If an employee fails to return to work after FMLA leave has been exhausted or expires, Amigos Por Vida - Friends For Life Public Charter School may recover from the employee its share of health plan premiums during the employee's unpaid FMLA leave, unless the employee's failure to return is due to one of the reasons set forth in the regulations. Amigos Por Vida - Friends For Life Public Charter School may not recover its share of health insurance premiums for any period of FMLA leave covered by paid leave.

**g) *Right to Reinstatement***

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.

i. *Moonlighting During FMLA Leave*

The Superintendent and/or designee may develop a uniformly applied policy governing outside or supplemental employment during FMLA leave. If the Superintendent/and or designee does not develop such a policy, Amigos Por Vida - Friends For Life Public Charter School may not deny FMLA benefits on the basis of outside or supplemental employment unless the FMLA leave was fraudulently obtained.

ii. *Reinstatement*

The Superintendent and/or designee shall develop a policy governing the determination of how an employee is to be restored to “an equivalent position” upon return from FMLA leave. Such a policy must be in writing, must be made known to the employee before the taking of FMLA leave, must clearly explain the employee's restoration rights upon return from leave, and must provide substantially the same protections as provided in the FMLA.

iii. *Pay Increases and Bonuses*

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with Amigos Por Vida - Friends For Life Public Charter School policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave.

Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then an employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

iv. *Key Employees*

Amigos Por Vida - Friends For Life Public Charter School may deny job restoration to a key employee, as that term is defined in law, if such denial is necessary to prevent substantial and grievous economic injury to the operations of Amigos Por Vida - Friends For Life Public Charter School.

**Sec. 3. NOTICES AND MEDICAL CERTIFICATION**

a) *Required Notices*

The Superintendent shall ensure that a notice explaining the FMLA and containing information regarding the procedures for filing complaints with the Department of Labor's Wage and Hour Division is posted prominently at each campus where it is readily visible to employees and applicants for employment. The Superintendent shall also ensure that such notice is included in Amigos Por Vida - Friends For Life Public Charter School's Employee Handbook and distributed to each new employee upon hiring.

If a significant portion of Amigos Por Vida - Friends For Life Public Charter School's workforce is not literate in English, the Superintendent shall provide the general notice in a language in which the employees are literate.

The Superintendent may use Department of Labor form WHD 1420 or another form of notice, so long as the notice includes, at a minimum, all of the information contained in form WHD 1420.

i. Eligibility Notice

When an employee requests FMLA leave, or when Amigos Por Vida - Friends For Life Public Charter School learns that an employee's leave may be for an FMLA-qualifying reason, the employee's immediate supervisor shall notify the employee of his or her eligibility to take FMLA leave. For purposes of this policy, the immediate supervisor of a teacher and assistant principal shall be the Principal. If the employee is not eligible for FMLA leave, the notice must explain why the employee is not eligible.

The employee's immediate supervisor shall provide the eligibility notice within five business days, absent extenuating circumstances. Amigos Por Vida - Friends For Life Public Charter School shall translate the notice in any situation in which it is required to translate the general notice.

ii. Rights and Responsibilities Notice

Amigos Por Vida - Friends For Life Public Charter School shall provide a written notice of rights and responsibilities each time an eligibility notice is provided to an employee. This notice must include the information required by 29 CFR 825.300(c)(1). The notice may be distributed electronically if it meets the other requirements of this section. Amigos Por Vida - Friends For Life Public Charter School shall translate the notice in any situation in which it is required to translate the general notice.

iii. Designation Notice

When Amigos Por Vida - Friends For Life Public Charter School has enough information to determine whether leave is being taken for an FMLA-qualifying reason, Amigos Por Vida - Friends For Life Public Charter School must notify the employee whether the leave will be designated as FMLA leave. If Amigos Por Vida - Friends For Life Public Charter School determines that the leave will not be designated as FMLA-qualifying, Amigos Por Vida - Friends For Life Public Charter School must notify the employee of that determination. Absent extenuating circumstances, the designation notice must be provided within five business days. The notice must include the information required by 29 CFR 825.300(d)(1), (d)(3), and (d)(6). Amigos Por Vida - Friends For Life Public Charter School shall translate the notice in any situation in which it is required to translate the general notice.

iv. Retroactive Designation

Amigos Por Vida - Friends For Life Public Charter School may retroactively designate leave as FMLA leave, with appropriate notice to the employee, if Amigos Por Vida - Friends For Life Public Charter School's failure to timely designate leave does not cause harm or injury to the employee. Amigos Por Vida - Friends For Life Public Charter School and an employee may also agree that leave will retroactively be designated as FMLA leave.

**b) *Requests for FMLA Leave***

An employee giving notice of the need for FMLA leave must state a qualifying reason for the leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave, as described below. The employee need not expressly assert rights under the Act or even mention the FMLA.

Employees should request FMLA leave by notifying the Director of Human Resources or designee, and must complete the Department of Labor's form WH-380-E (or WH-380-F as appropriate) made available from the Department of Labor or Amigos Por Vida - Friends For Life Public Charter School's administrative offices. Completed forms should be returned to the Director of Human Resources.

i. *Foreseeable Leave*

An employee must provide his or her immediate supervisor at least 30 days' advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered service member. If 30 days' notice is not practicable, the employee must give notice as soon as practicable, generally on the same day as or next business day after the reason for the leave is known. For leave due to a qualifying exigency, the employee must provide notice as soon as practicable regardless of how far in advance the leave is foreseeable.

When planning medical treatment, the employee must consult with his or her immediate supervisor and make a reasonable effort to schedule the treatment so as not to disrupt unduly Amigos Por Vida - Friends For Life Public Charter School operations, subject to the approval of the health-care provider.

ii. *Unforeseeable Leave*

When the approximate timing of leave is not foreseeable, an employee must provide notice to his or her immediate supervisor as soon as practicable under the facts and circumstances of the particular case. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied.



iii. *Compliance with Amigos Por Vida - Friends For Life Public Charter School Requirements*

Amigos Por Vida - Friends For Life Public Charter School may require an employee to comply with its usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied.

c) *Certification of Leave*

Amigos Por Vida - Friends For Life Public Charter School may require that an employee's FMLA leave be supported by certification, as described below. Amigos Por Vida - Friends For Life Public Charter School shall give notice of a requirement for certification each time certification is required. At the time Amigos Por Vida - Friends For Life Public Charter School requests certification, Amigos Por Vida - Friends For Life Public Charter School must advise the employee of the consequences of failure to provide adequate certification.

i. *Timing*

In most cases, the employee's immediate supervisor will request certification at the time the employee gives notice of the need for leave or within five business days thereafter or, in the case of unforeseen leave, within five business days after the leave commences. Amigos Por Vida - Friends For Life Public Charter School may request certification at a later date if Amigos Por Vida - Friends For Life Public Charter School later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to his or her immediate supervisor within 15 calendar days after Amigos Por Vida - Friends For Life Public Charter School's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

ii. *Incomplete or Insufficient Certification*

Amigos Por Vida - Friends For Life Public Charter School shall advise an employee if it finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. Amigos Por Vida - Friends For Life Public Charter School must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent, good faith efforts) to cure any such deficiency.

A certification is "incomplete" if one or more of the applicable entries have not been completed. A certification is "insufficient" if it is complete, but the information provided is vague, ambiguous, or non-responsive. A certification that is not returned to Amigos Por Vida - Friends For Life Public

Charter School is not considered incomplete or insufficient, but constitutes a failure to provide certification.

iii. *Medical Certification of Serious Health Condition*

When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, Amigos Por Vida - Friends For Life Public Charter School may require the employee to obtain medical certification from a health-care provider. Amigos Por Vida - Friends For Life Public Charter School may use the U.S. Department of Labor (“DOL”) optional form WH-380-E when the employee needs leave due to the employee’s own serious health condition and optional form WH-380-F when the employee needs leave to care for a family member with a serious health condition. Amigos Por Vida - Friends For Life Public Charter School may not require information beyond that specified in the FMLA regulations.

An employee may choose to comply with the certification requirement by providing Amigos Por Vida - Friends For Life Public Charter School with an authorization, release, or waiver allowing Amigos Por Vida - Friends For Life Public Charter School to communicate directly with the health-care provider.

For the definition of “health-care provider,” see 29 CFR 825.125.

iv. *Genetic Information*

When requesting medical certification, Amigos Por Vida - Friends For Life Public Charter School shall comply with all requirements for requesting medical information under the Genetic Information Nondiscrimination Act (“GINA”) as contained in 29 CFR 1635.8(b)(1)(i)(A).

v. *Authentication and Clarification*

If an employee submits a complete and sufficient certification signed by the health-care provider, Amigos Por Vida - Friends For Life Public Charter School may not request additional information from the health-care provider. However, Amigos Por Vida - Friends For Life Public Charter School may contact the health-care provider for purposes of clarification and authentication of the certification after Amigos Por Vida - Friends For Life Public Charter School has given the employee an opportunity to cure any deficiencies, as set forth above. To make such contact, Amigos Por Vida - Friends For Life Public Charter School must use a health-care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances may the employee's direct supervisor contact the employee’s health-care provider.

“Authentication” means providing the health-care provider with a copy of the certification and requesting verification that the information on the form was completed and/or authorized by the health-care provider who signed the document; no additional medical information may be requested.

“Clarification” means contacting the health-care provider to understand the handwriting on the certification or to understand the meaning of a response. Amigos Por Vida - Friends For Life Public Charter School may not ask the health-care provider for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (“HIPAA”) Privacy Rule must be satisfied when individually identifiable health information of an employee is shared with Amigos Por Vida - Friends For Life Public Charter School by a HIPAA-covered health-care provider.

vi. Second and Third Opinions

If Amigos Por Vida - Friends For Life Public Charter School has reason to doubt the validity of a medical certification, Amigos Por Vida - Friends For Life Public Charter School may require the employee to obtain a second opinion at Amigos Por Vida - Friends For Life Public Charter School’s expense. If the opinions of the employee’s and Amigos Por Vida - Friends For Life Public Charter School’s designated health-care providers differ, Amigos Por Vida - Friends For Life Public Charter School may require the employee to obtain certification from a third health-care provider, again at Amigos Por Vida - Friends For Life Public Charter School’s expense.

vii. Foreign Medical Certification

If the employee or a family member is visiting another country, or a family member resides in another country, and a serious health condition develops, Amigos Por Vida - Friends For Life Public Charter School shall accept medical certification as well as second and third opinions from a health-care provider who practices in that country. If the certification is in a language other than English, the employee must provide Amigos Por Vida - Friends For Life Public Charter School with a written translation of the certification upon request.

viii. Recertification

Amigos Por Vida - Friends For Life Public Charter School may request recertification no more often than every 30 days and only in connection with an absence by the employee, except as set forth in the FMLA regulations. Amigos Por Vida - Friends For Life Public Charter School must allow at least 15 calendar days for the employee to provide recertification.

As part of the recertification for leave taken because of a serious health condition, Amigos Por Vida - Friends For Life Public Charter School may provide the health-care provider with a record of the employee's absence pattern and ask the health-care provider if the serious health condition and need for leave is consistent with such a pattern.

ix. Certification—Qualifying Exigency Leave

The first time an employee requests leave because of a qualifying exigency, Amigos Por Vida - Friends For Life Public Charter School may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service.

Amigos Por Vida - Friends For Life Public Charter School may also require that the leave be supported by a certification that addresses the information at 29 CFR 825.309(b). Amigos Por Vida - Friends For Life Public Charter School may use DOL optional form WH-384, or another form containing the same basic information, for this certification. Amigos Por Vida - Friends For Life Public Charter School may not require information beyond that specified in the regulations.

x. *Certification—Military Caregiver Leave*

When an employee takes military caregiver leave, Amigos Por Vida - Friends For Life Public Charter School may require the employee to obtain a certification completed by an authorized health-care provider of the covered servicemember. In addition, Amigos Por Vida - Friends For Life Public Charter School may request that the employee and/or covered servicemember address in the certification the information at 29 CFR 825.310(c). Amigos Por Vida - Friends For Life Public Charter School may also require the employee to provide confirmation of a covered family relationship to the seriously injured or ill servicemember.

Amigos Por Vida - Friends For Life Public Charter School may use DOL optional form WH-385, or another form containing the same basic information, for this certification. Amigos Por Vida - Friends For Life Public Charter School may not require information beyond that specified in the regulations. Amigos Por Vida - Friends For Life Public Charter School must accept as sufficient certification "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill servicemember at his or her bedside.

Amigos Por Vida - Friends For Life Public Charter School may seek authentication and/or clarification of the certification under the procedures described above. Second and third opinions, and recertifications, are not permitted for leave to care for a covered servicemember.

**d) *Intent to Return to Work***

The Superintendent may develop a uniformly applied policy or practice that requires an employee on FMLA leave to report periodically on the employee's status and intent to return to work. Such a policy may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

i. *Fitness for Duty Certification*

The Superintendent may develop a uniformly applied policy or practice that requires all similarly situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health-care provider that the employee is able to resume work. The Superintendent may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job.

ii. *Failure to Provide Certification*

If the employee fails to provide Amigos Por Vida - Friends For Life Public Charter School a complete and sufficient certification, despite the opportunity to cure, or fails to provide any certification, Amigos Por Vida - Friends For Life Public Charter School may deny the taking of FMLA leave. This provision applies in any case where Amigos Por Vida - Friends For Life Public Charter School requests a certification, including any clarifications necessary to determine if certifications are authentic and sufficient.

**Sec. 4. MISCELLANEOUS PROVISIONS**

a) ***Record Maintenance***

The Superintendent and/or designee shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act (“FLSA”) and the FMLA regulations. Amigos Por Vida - Friends For Life Public Charter School shall keep these records for no less than three years and make them available for inspection, copying, and transcription by representatives of the Department of Labor upon request. Such records may be kept in computer form, so long as they are made available for transcription or copying.

If the GINA is applicable, records and documents created for purposes of FMLA leave that contain family medical history or genetic information shall be maintained in accordance with the confidentiality requirements of GINA, which permit such information to be disclosed consistent with the requirements of the FMLA. If the Americans with Disabilities Act (“ADA”) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements, except as excepted by the FMLA.

b) ***Prohibition Against Discrimination and Retaliation***

Amigos Por Vida - Friends For Life Public Charter School shall not interfere with an employee’s rights under the FMLA, or with legal proceedings or inquiries relating to an employee’s rights. Specifically, Amigos Por Vida - Friends For Life Public Charter School shall not:

1. Interfere with, restrain, or deny the exercise of (or attempts to exercise) any rights provided by the FMLA.

2. Discharge or in any other way discriminate against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the FMLA.
3. Discharge or in any other way discriminate against any person (whether or not an employee) because that person has:
  - a. Filed any charge, or has instituted (or caused to be institute) any proceeding under or related to the FMLA;
  - b. Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the FMLA; and/or
  - c. Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA.

**Sec. 4.28.1. INTRODUCTION**

It is the policy of Amigos Por Vida - Friends For Life Public Charter School to:

- (a) Prevent user access over its computer network to, or transmission of, inappropriate material via Internet, electronic mail, or other forms of direct electronic communications;
- (b) Prevent unauthorized access and other unlawful online activity;
- (c) Prevent unauthorized online disclosure, use, or dissemination of personal identification information of minors; and
- (d) Comply with the Children’s Internet Protection Act (“CIPA”), the Neighborhood Children’s Internet Protection Act (“NCIPA”), and the Protecting Children in the 21st Century Act, to the extent such laws are applicable to Amigos Por Vida - Friends For Life Public Charter School.<sup>1</sup>
- (e) Establish a cybersecurity program and comply with applicable law regarding cybersecurity breach notifications and data breach notifications, to the extent such laws are applicable to Amigos Por Vida - Friends For Life Public Charter School.

It is the goal of this policy not only to prevent and protect, but also to educate employees, students, parents and the Amigos Por Vida - Friends For Life Public Charter School community in Internet safety. The CIPA guidelines for an Internet Safety Policy have also been incorporated by Amigos Por Vida - Friends For Life Public Charter School into its Acceptable Use Policy and/or Acceptable Use Agreement(s). All limitations and penalties set forth in the Acceptable Use Policy and/or Acceptable Use Agreement(s) are deemed to be incorporated into this policy. Terms used in this policy and that also appear in CIPA have the meanings defined in CIPA.

**Sec. 4.28.3. INTERNET SAFETY, COMPLIANCE WITH THE REQUIREMENTS OF CIPA**

**Sec. 4.28.3.1. Technology Protection Measures**

A Technology Protection Measure is a specific technology that blocks or filters Internet access.<sup>2</sup> It must protect against access by adults and minors to visual depictions that are obscene, involve

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<sup>1</sup> CIPA requires recipients of federal technology funds to comply with certain Internet filtering and policy requirements. Schools and libraries receiving funds for Internet access and/or internal connection services must also meet the Internet safety policies of the NCIPA that addresses the broader issues of electronic messaging, disclosure of personal information of minors, and unlawful online activities. The Protecting Children in the 21st Century Act adds an additional Internet Safety Policy requirement covering the education of minors about appropriate online behavior.

<sup>2</sup> As defined by CIPA, the term “technology protection measure” means a specific technology that blocks or filters Internet access to visual depictions that are:

- 1. Obscene, as that term is defined in section 1460 of title 18, United States Code;
- 2. Child Pornography, as that term is defined in section 2256 of title 18, United States Code; or
- 3. Harmful to minors.

child pornography, or are harmful to minors. Amigos Por Vida - Friends For Life Public Charter School utilizes a sophisticated content filtering system that is compliant with CIPA and NCIPA on all computers that access the Internet.

**Sec. 4.28.3.1. Access to Inappropriate Material**

To the extent practical, Technology Protection Measures (or “Internet filters”) shall be used to block or filter Internet, or other forms of electronic communication, access to inappropriate information. Specifically, as required by CIPA, blocking shall be applied to visual and textual depictions of material deemed obscene or child pornography, or to any material deemed harmful to minors. Subject to administrative approval, technology protection measures may be disabled or, in the case of minors, minimalized only for bona fide research or other lawful purposes.

Any attempt to bypass, defeat, or circumvent the Technology Prevention Measures is punishable as a violating of this policy and of the Acceptable Use Policies.

**Sec. 4.28.3.1. Inappropriate Network Usage**

To the extent practical, steps shall be taken to promote the safety and security of users of Amigos Por Vida - Friends For Life Public Charter School’s online computer network when using electronic mail, chat rooms, blogging, instant messaging, online discussions and other forms of direct electronic communications. Without limiting the foregoing, access to such means of communication is strictly limited by the Acceptable Use Policies.

Specifically, as required by CIPA, prevention of inappropriate network usage includes:

1. unauthorized access, including so-called “hacking” and other unlawful activities; and
2. unauthorized disclosure, use, and dissemination of personal identification information regarding minors.

**Sec. 4.28.3.1. Supervision and Monitoring**

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The term “harmful to minors” means any picture, image, graphic image file, or other visual depiction that:

1. Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
2. Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
3. Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

The terms “sexual act” and “sexual contact” have the meanings given such terms in section 2256 of title 18, United States Code.



It shall be the responsibility of all professional employees (pedagogical and administrative staff) to supervise and monitor usage of Amigos Por Vida – Friends For Life Public Charter School’s computers, computer network and access to the Internet in accordance with this policy, the Acceptable Use Policies, and CIPA. Procedures for the disabling or otherwise modifying any technology protection measures shall be the responsibility of each Principal or designee.

#### **Sec. 4.28.3.1. Education**

Amigos Por Vida - Friends For Life Public Charter School will advocate and education employees, students, parents and [SCHOOL NAME]Amigos Por Vida - Friends For Life Public Charter School community on Internet safety and “cyber-bullying.” Education will be provided through such means as professional development training and materials to employees, PTO/PTA presentations, and the [SCHOOL NAME]Amigos Por Vida - Friends For Life Public Charter School website.

Additionally, the Principal or designee will provide age-appropriate training for students who use Amigos Por Vida - Friends For Life Public Charter School’s Internet facilities. The training provided will be designed to promote [SCHOOL NAME]Amigos Por Vida - Friends For Life Public Charter School’s commitment to:

1. The standards and acceptable use of Internet services as set forth in the Acceptable Use Policies.
2. Student safety with regard to:
  - a. safety on the Internet;
  - b. appropriate behavior while online, on social networking Web sites, and in chat rooms; and
  - c. cyberbullying awareness and response.
3. Compliance with the E-rate requirements of CIPA.

Following receipt of this training, the student will acknowledge that he/she has received the training, understood it, and will follow the provisions of the Acceptable Use Policy and/or Acceptable Use Agreement(s).

#### **Sec. 4.28.3.1. Cyberbullying**

The Acceptable Use Policies include provisions intended to prohibit and establish penalties for inappropriate and oppressive conduct, including cyber-bullying.

Amigos Por Vida - Friends For Life Public Charter School is a place of tolerance and good manners. Students may not use the network or any Amigos Por Vida - Friends For Life Public Charter School computer facilities for hate mail, defamatory statements, statements intended to injure or humiliate others by disclosure of personal information (whether true or false), personal

attacks on others, and statements expressing animus towards any person or group by reason of race, color, religion, national origin, gender, sexual orientation or disability.

Network users may not use vulgar, derogatory, or obscene language. Network users also may not post inappropriate anonymous messages or forge e-mail or other messages.

Furthermore, Amigos Por Vida - Friends For Life Public Charter School computers and network facilities may not be used for any activity, or to transmit any material, that violates United States, State of Texas, or local laws. This includes, but is not limited to, any threat or act of intimidation or harassment against another person.

#### **Sec. 4.28.4.1. CYBERSECURITY**

##### **Sec. 4.28.4.1. Cybersecurity Policy**

Amigos Por Vida - Friends For Life Public Charter School shall adopt a cybersecurity policy<sup>3</sup> to:

1. Secure school cyberinfrastructure against cyber-attacks and other cybersecurity incidents; and
2. Determine cybersecurity risk and implement mitigation planning.

##### **Sec. 4.28.4.1. Cybersecurity Coordinator**

The superintendent shall designate a cybersecurity coordinator to serve as a liaison between the school and the Texas Education Agency (TEA) in cybersecurity matters and as required by law report to TEA breaches of system security.<sup>4</sup>

##### **Sec. 4.28.4.1. Report to TEA**

Amigos Por Vida - Friends For Life Public Charter School's cybersecurity coordinator shall report to TEA, or, if applicable, the entity that administers a system developed by the TEA and the Texas Department of Information Resource (DIR) to coordinate the anonymous sharing of information concerning cyber attacks or other cybersecurity incidents between schools and the state, any cyber attack or other cybersecurity incident against the school cyberinfrastructure that constitutes a breach of system security as soon as practicable after the discovery of the attack or incident.<sup>5</sup>

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<sup>3</sup> A cybersecurity policy is not required by law for open-enrollment charter schools, but is recommended as best practice. A sample Information Security Policy Template is provided <https://d1yqpar94jqbqm.cloudfront.net/documents/InformationSecurityPolicyTemplate.docx>. This template originated from Texas Gateway and has been slightly revised to address open-enrollment charter schools. It contains suggested policy templates. Additional resources concerning cybersecurity can be found at <https://texasgateway.org/resource/cybersecurity-tools-and-resources>.

<sup>4</sup> A designed cybersecurity coordinator is not required by law for open-enrollment charter schools, but is recommended as best practice.

<sup>5</sup> Texas Education Code §11.175(e).

#### **Sec. 4.28.4.1. Report to Parent**

The School's cybersecurity coordinator shall provide notice to a parent of or person standing in parental relation to a student enrolled in the School of an attack or incident for which a report is required to TEA involving the student's information.<sup>6</sup>

#### **Sec. 4.28.4.1. Definitions**

For purposes of this section, the following definitions apply:

"Breach of system security" means an incident in which student information that is sensitive, protected, or confidential, as provided by state or federal law, is stolen or copied, transmitted, viewed, or used by a person unauthorized to engage in that action.<sup>7</sup>

"Cyber attack" means an attempt to damage, disrupt, or gain unauthorized access to a computer, computer network, or computer system.<sup>8</sup>

"Cybersecurity" means the measures taken to protect a computer, computer network, or computer system against unauthorized use or access.<sup>9</sup>

#### **Sec. 4.28.4.1. Cybersecurity Training**

Each School employee and Board member shall annually complete a cybersecurity training program designated by the School. Additionally, the School shall complete periodic audits to ensure compliance with the cybersecurity training requirements.<sup>10</sup>

#### **Sec. 4.28.4.1. SECURITY BREACH NOTIFICATION**

##### **Sec. 4.28.4.1. To Individuals**

A School that owns, licenses, or maintains computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made without unreasonable delay and in each case not later than the 60th day after the date on which the School determines that the breach occurred, except as provided at Criminal Investigation Exception,

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<sup>6</sup> Texas Education Code §11.175(f).

<sup>7</sup> Texas Education Code §11.175(a).

<sup>8</sup> Texas Education Code §11.175(a).

<sup>9</sup> Texas Education Code §11.175(a).

<sup>10</sup> This is not required by law for open-enrollment charter schools, but is recommended as best practice. Texas Gateway provides information on cybersecurity training programs and free cybersecurity training through Cybrary: <https://www.texasgateway.org/resource/cybersecurity-tips-and-tools>

below, or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.<sup>11</sup>

**Sec. 4.28.4.1. Resident of Other State**

If the individual whose sensitive personal information was or is reasonably believed to have been acquired by an unauthorized person is a resident of a state that requires a person that owns or licenses computerized data to provide notice of a breach of system security, the notice of the breach of system security required under Notice, below, may be provided under that state's law or under Notice, below.<sup>12</sup>

**Sec. 4.28.4.1. To the Owner or License Holder**

A School that maintains computerized data that includes sensitive personal information not owned by the School shall notify the owner or license holder of the information of any breach of system security immediately after discovering the breach, if the sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person.<sup>13</sup>

**Sec. 4.28.4.1. Notice**

Upon discovering or receiving notification of a breach of system security, Amigos Por Vida - Friends For Life Public Charter School shall disclose the breach to affected persons or entities in accordance with the time frames established by law and this policy.

**Sec. 4.28.4.** Amigos Por Vida - Friends For Life Public Charter School shall give notice by using one or more of the following methods in compliance with applicable law<sup>14</sup>:Sec. 4.28.4.

1. Written notice.
2. Electronic mail, if Amigos Por Vida - Friends For Life Public Charter School has electronic mail addresses for the affected persons.
3. Conspicuous posting on Amigos Por Vida - Friends For Life Public Charter School's website.
4. Publication through broadcast media.

The School's cybersecurity coordinator shall disclose a breach involving sensitive, protective, or confidential student information to TEA and parents in accordance with applicable law.

**Sec. 4.28.4.1. Information Security Policy**

A School that maintains its own notification procedures as part of an information security policy for the treatment of sensitive personal information that complies with the timing requirements for

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<sup>11</sup> Tex. Bus. & Com. §521.053(b).

<sup>12</sup> Tex. Bus. & Com. §521.053(b-1).

<sup>13</sup> Tex. Bus. & Com. §521.053(c).

<sup>14</sup> Tex. Bus. & Com. §521.053(e), (f).

notice described above complies with the notice requirements if the School notifies affected persons in accordance with that policy.<sup>15</sup>

**Sec. 4.28.4.1. To the Attorney General<sup>16</sup>**

A School that is required to disclose or provide notification of a breach of system security under these provisions shall notify the attorney general of that breach not later than the 60th day after the date on which the School determines that the breach occurred if the breach involves at least 250 residents of this state. The notification must include:

1. A detailed description of the nature and circumstances of the breach or the use of sensitive personal information acquired as a result of the breach;
2. The number of residents of this state affected by the breach at the time of notification;
3. The number of affected residents that have been sent a disclosure of the breach by mail or other direct method of communication at the time of notification;
4. The measures taken by the School regarding the breach;
5. Any measures the School intends to take regarding the breach after the notification described at Notice, above; and
6. Information regarding whether law enforcement is engaged in investigating the breach.

**Sec. 4.28.4.1. To a Consumer Reporting Agency**

If the School is required to notify at one time more than 10,000 persons of a breach of system security, the School shall also notify each consumer reporting agency, as defined by 15 U.S.C. 1681a, that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices. The School shall provide the notice without unreasonable delay.<sup>17</sup>

**Sec. 4.28.4.1. Criminal Investigation Exception**

A School may delay providing the required notice to individuals or the owner or license holder at the request of a law enforcement agency that determines that the notification will impede a criminal investigation. The notification shall be made as soon as the law enforcement agency determines that the notification will not compromise the investigation.<sup>18</sup>

**Sec. 4.28.4.1. Definitions**

For purposes of security breach notifications, the following definitions apply:

“Breach of system security” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an

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<sup>15</sup> Tex. Bus. & Com. §521.053(g).

<sup>16</sup> Tex. Bus. & Com. §521.053(i).

<sup>17</sup> Tex. Bus. & Com. §521.053(h).

<sup>18</sup> Tex. Bus. & Com. §521.053(d).

employee or agent of the person for the purposes of the person is not a breach of system security unless the person uses or discloses the sensitive personal information in an unauthorized manner.<sup>19</sup>

“Sensitive personal information”<sup>20</sup> means:

1. An individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:

- a. Social security number;
- b. Driver’s license number or government-issued identification number; or
- c. Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual’s financial account; or

2. Information that identifies an individual and relates to:

- a. The physical or mental health or condition of the individual;
- b. The provision of health care to the individual; or
- c. Payment for the provision of health-care to the individual.

“Sensitive personal information” does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

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<sup>19</sup> Tex. Bus. & Com. §521.053(a).

<sup>20</sup> Tex. Bus. & Com. §521.053(a)(2),(b).