

Vantage Points

A Board Member's Guide to Update 111

Please note: *Vantage Points* is an executive summary, prepared specifically for board members, of the TASB Localized Update. The topic-by-topic outline and the brief descriptions focus attention on key issues to assist local officials in understanding changes found in the policies. The description of policy changes in *Vantage Points* is highly summarized and should not substitute for careful attention to the more detailed, district-specific Explanatory Notes and the policies within the localized update packet.

We welcome your comments or suggestions for improving *Vantage Points*. Please write to us at TASB Policy Service, P.O. Box 400, Austin, TX 78767-0400, e-mail us at policy.service@tasb.org, or call us at 800-580-7529 or 512-467-0222.

For more information about Policy Service, visit our website at <http://policy.tasb.org>.

This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional adviser. Consult with your attorney or professional adviser to apply these principles to specific fact situations.

© 2018 Texas Association of School Boards, Inc. All rights reserved.



Update 111 focuses on updating (LEGAL) policies that were affected by changes in law from the 85th Legislative Session and recent administrative rule changes. Several (LOCAL) policies have been updated to better align with changes in law or administrative rules or for organizational and restructuring purposes.

**Innovation
Districts**

Policy AF(LEGAL) has been updated to include provisions from revised Administrative Code rules that address the laws from which an innovation district may not be exempted and clarify a district's posting and notification responsibilities regarding an innovation plan.

Accountability

Additional provisions from the Every Student Succeeds Act (ESSA) have been included in AID(LEGAL) to address the requirements for the district's plan that must be in place to receive certain Title I funds, the identification of schools needing support and improvement, and the district's required actions when schools in the district are identified for support and improvement.

**District
Governance**

Significant changes have been made at BBD(LEGAL) to reflect revised Administrative Code rules, including:

Board Training

- Information addressing the State Board of Education (SBOE) commendations for board-superintendent teams that effectively implement the commissioner's trustee improvement and evaluation tool or any other tool approved by the commissioner;
- Clarification that team building must be at least three hours in length and that the local orientation can occur one year before or 120 days after the board member's election or appointment; and
- Stemming from Senate Bill 1566 (85th Legislative Session), the new requirement that each board member must complete a three-hour continuing education training every two years on evaluating student performance.

The administrative rules also specify that the report on board members' continuing education must occur at the last regular board meeting before the board election and that this information must be reflected in the board meeting minutes. If a board member is deficient in continuing education credit as of the anniversary of his or her joining the board, in addition to the deficiency being announced during the board meeting, the deficiency must be posted on the district's website within ten business days of the meeting and must remain posted until the trustee meets the requirements.

See TASB Legal Services' eSource on TASB.org for [detailed information about the new reporting requirements.](#)

BBD(LOCAL) POLICY CONSIDERATIONS

The changes in the administrative rules have also been addressed at BBD(LOCAL). As a best practice to promote transparency, the recommended text provides that the board president will annually announce the status of a board member's continuing education credit at the last regular board meeting before the district's regular uniform election date, even if an election is not scheduled or held. If the district will have a different practice, a policy adjustment will be needed.

Superintendent

Revisions have been made to several policies addressing the superintendent's employment, including BJCE(LEGAL) to remove a reference to an outdated Fifth Circuit court case and BJCG(LEGAL) to align the policy text with statute. The text now included in BJC(LEGAL) is existing statutory text permitting the board to amend the terms of a superintendent contract on the basis of a declared financial exigency.

Similar to the revision at BJCE(LEGAL), references to the outdated court case have been deleted from DCE(LEGAL) and DFBA(LEGAL).

Reports

The list of reports at BR(LEGAL) has been updated to include the report on board member continuing education training and to remove the requirement for a district not participating in TRS ActiveCare to file a compliance report with TRS, although the district must still prepare a compliance report.

Finances

Policy CBB(LEGAL) has been significantly reworked to provide more thorough coverage of the relevant laws on retirement and insurance contributions and the Education Department General Administrative Regulations (EDGAR).

Federal Funds

Financial Reports

Revisions to CFA(LEGAL), the policy on financial reports and statements, incorporate new administrative rules that address the district's annual local debt report.

Investments

The definition of "business organization" has been moved in CDA(LEGAL) to clarify that it only applies to the provisions on sellers of investments, which require a district to provide a written copy of its investment policy to any business organization offering to engage in an investment with the district.

Financial Ethics

CAA(LOCAL) POLICY CONSIDERATIONS

CAA(LOCAL) addresses fraud and financial impropriety. Local policy language is recommended to clarify that fraud reports may be made to any person with authority to investigate the alleged activity, including to any of the other individuals currently listed in the policy. This aligns the policy text

with state law, which prohibits a district from requiring an employee to report only to certain persons a crime witnessed at the school.

Safety and Security

Criminal History

Effective November 29, 2017, Administrative Code rules addressing criminal history of service contractors were repealed, which prompted revisions throughout CJA(LEGAL). Provisions have been reorganized for consistency with the criminal history requirements for certain public contractors, and existing statutory provisions were added to address the district's authority to obtain Department of Public Safety (DPS) criminal history record information.

CJA(LOCAL) POLICY CONSIDERATIONS

Policy CJA(LOCAL) includes provisions as permitted by state law that authorize the district employee in charge of a facility to determine whether an employee of a contracting or subcontracting entity, who does not have the required criminal history review or who has a disqualifying conviction, will be permitted to enter a district facility in an emergency accompanied by district staff.

Regarding employees, DBAA(LEGAL) has been revised to include amended administrative rules specifying that the State Board for Educator Certification (SBEC) may sanction an educator who hires an applicant even if the educator knew that applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.

Security Personnel

Revisions at CKE(LEGAL), addressing security personnel, include a reference to a court case regarding complaints against district peace officers. Additional details from administrative rules on the school marshal program were added, which permit the district to pay for required marshal training and address required reports to the Texas Commission on Law Enforcement (TCOLE).

Firearms

DH(LOCAL) AND GKA(LOCAL) POLICY CONSIDERATIONS

Most districts' policies at DH(LOCAL) and GKA(LOCAL) provide that the district's prohibition against firearms on district property is not violated when a Texas handgun license holder, whether an employee or a non-employee, stores a handgun or other firearm in a locked vehicle in a district parking area, provided the handgun or other firearm is not loaded and is not in plain view. However, the interplay of state and federal law would permit a district to revise this policy to allow such a person to have a loaded handgun or firearm under these circumstances. If the board would

like to revise these policies to permit loaded firearms, have your superintendent contact the district's policy consultant.

**District
Operations**

The integrated pest management program (IPM) provisions have been updated in CLB(LEGAL) as a result of new administrative rules effective January 9, 2018. The revisions include new definitions, more details on the required parental notifications regarding application of pesticides [also added at FD(LEGAL)], and new provisions to address emergency exceptions to the notice requirements and potential waivers from inspections.

**Pest
Management**

**Facility
Standards**

Significant revisions have been made to CS(LEGAL), the policy on facility standards, to provide more complete coverage of relevant laws, to include a recent attorney general opinion regarding application of the International Energy Conservation Code to public school buildings, and to better match statutory wording.

**Other District
Operations**

Other legally referenced policies addressing district operations have also been updated, including:

- The deletion of outdated administrative rules in CQA(LEGAL) that required the district to post locally determined performance ratings and compliance status on the district's website.
- Minor revisions to CNB(LEGAL) to better reflect statute regarding district vehicles.
- The removal of a state law provision in CO(LEGAL), regarding food services, that was no longer aligned with federal law.

**Curriculum and
Instruction**

EHAD(LEGAL) has been revised to include current administrative requirements for a driver education course.

Instruction

Provisions addressing dual credit programs have been revised in EHDD(LEGAL) to reflect amended administrative rules, which require dual-credit partnership agreements to address defined sequences of courses where applicable.

**Instructional
Materials**

Policy EFB(LEGAL) has been updated to include the revised standards for school library programs adopted by the Texas State Library and Archives Commission. A district must consider the standards in developing, implementing, or expanding its library services.

The changes at CMD(LEGAL) regarding instructional materials have been made to more closely match statutory provisions.

Campus Charters ELA(LLEGAL) is a new legally referenced policy that includes material on partnership charters. The new administrative rules provide significant guidance for districts that choose to contract with a partner to operate a district campus to receive accountability and financial benefits in accordance with state law. With the addition of this new legally referenced policy, all provisions addressing partnership charters have been removed from EL(LLEGAL).

School Calendar Effective with the 2018–19 school year, House Bill 2442 (85th Legislative Session) impacted two legally referenced policies, EB(LLEGAL) and EC(LLEGAL).

Policy EB(LLEGAL) has been revised to clarify that the required 75,600 minutes are for operation, not just instruction. Provisions also permit the commissioner to reduce funding to a district providing fewer than 75,600 minutes of operation. New provisions also allow exemptions from the minimum minutes of operation for certain instructional programs.

Removed from EC(LLEGAL) is the provision requiring a school day to be at least seven hours long and a day of instruction to include 420 minutes of instruction, since this requirement has been deleted from statute.

A similar revision has been made at FOCA(LLEGAL) to remove the requirement that a school day at a disciplinary alternative education placement (DAEP) program be between seven and ten hours long.

State Assessments At EKB(LLEGAL), the policy addressing state assessments, the list of conduct that violates the security and confidentiality of a state assessment has been updated to match the *2018 Test Security Supplement*. The list of penalties has also been updated to permit the imposition of additional conditions or restrictions upon an SBEC certificate to aid in the rehabilitation and professional development of the educator who violated test security or confidentiality or to protect students, parents, school officials, or personnel. EKBA(LLEGAL) has been revised to remove outdated provisions associated with the repeal of administrative rules and the removal of inapplicable language related to the Texas Assessment of Knowledge and Skills (TAKS).

Special Education Legally referenced policies addressing special education services have been updated to reflect:

- Current Administrative Code rules on transition planning [see EHBAB(LLEGAL) and EHBAD(LLEGAL)]; and
- Appropriate legal citations and additional details in existing law regarding the transfer of rights to adult students [see EHBAE(LLEGAL)].

Special Programs

Outdated provisions that capped the percentage of compensatory education funds that could be used for DAEP expenditures and that addressed the development of college preparatory courses for the 2014–15 school year have been removed from EHBC(LEGAL).

EHBD(LEGAL), addressing Title I funds, has been revised to include additional provisions on fiscal requirements, including maintenance of effort, the use of funds to supplement state and local funds, and prohibited uses of funds.

Graduation

Provisions regarding notification about automatic admission requirements have been added to EIC(LEGAL) in response to administrative rule changes.

At EIF(LEGAL), in addition to adjusting the school years for applicable provision and including references to relevant Administrative Code provisions, we have added new administrative rules implementing Senate Bill 463 (85th Legislative Session). The new rules permit a district to award a diploma to an individual who entered grade 9 before the 2011–12 school year and who has completed the applicable curriculum requirements, but who has not successfully passed the relevant exit-level assessment required for graduation after at least three tries. To graduate, the student must meet the alternative requirements for graduation in the Administrative Code or the local alternative requirements approved by the board. Information to assist districts in developing these requirements for board approval was e-mailed to superintendents, administrative assistants, and policy contacts on April 30, 2018.

Employment

Amended administrative rules are reflected at DF(LEGAL), the policy that addresses termination of an employee. The new rules specify that SBEC can sanction an educator who does not discharge an employee if the educator knew that the employee had been adjudicated for or convicted of having an inappropriate relationship with a minor. [See also DBAA for information on sanctions against an educator who does not refuse to hire an applicant with the same criminal history described here.]

Policy DC(LEGAL), addressing employment of retirees, has been revised based on amended administrative rules to describe additional employment relationships with retirees that are considered “employment relationships” for purposes of the limits on employment after retirement. Additional revisions have been made regarding the required monthly certified statement of employment.

A minor change at DBA(LEGAL) is from amended administrative rules and permits an employee to verify rather than sign his or her original service record.

Insurance

CRG(LEGAL), addressing annuities, has been revised to align with amended administrative rules and reorganized for a more appropriate flow. The revisions at CRD(LEGAL) have been made to incorporate other changes to administrative rules and to better match statute.

Compensation

DEA(LOCAL) POLICY CONSIDERATIONS*

*The changes to this policy will only be applicable to districts that currently have language in their policy authorizing pay to employees during emergency closings or that have text addressing premium pay for employees required to work during an emergency closure.

We have revised this local policy to clarify the district's current policy provision on compensation payments to employees during emergency closings. The revised text creates a default for the board to pay employees for their regular duty schedule during a closing, but provides the board flexibility to decide otherwise through board action. In addition, the text requires the board, following a closure, to adopt a resolution or take other board action to establish the purpose and parameters for such payments.

For those districts with policies permitting premium pay during disasters, the text has been aligned with the current Federal Emergency Management Agency (FEMA) Public Assistance Program and Policy Guide (PAPPG). The PAPPG provides that FEMA determines eligibility for public assistance funding for overtime, premium pay, and compensatory time costs based on the district's written policy in place before the disaster, provided the local policy:

- Does not make the wage payments contingent on federal funding;
- Is applied uniformly regardless of whether there has been a presidential declaration of a disaster; and
- Has nondiscretionary criteria for when the district activates various pay types.

Based on that guidance, the policy revisions recommended in this update replace text limiting premium pay to a federally declared disaster and instead authorize premium pay during an emergency closing for a broader set of disasters, to include a disaster declared by a federal, state, or local official or the board.

Please note that the availability of funds for reimbursement after a disaster includes a case-by-case determination by FEMA based on all of the eligibility requirements in the PAPPG and law.

Employee Conduct

Additional provisions from the federal Drug-Free Workplace Act were included at DH(LEGAL) to provide a more complete explanation of the requirements.

DI(LOCAL) POLICY CONSIDERATIONS

With the changes at DH(LEGAL) described above and those made to DH(LOCAL) in Update 109, we recommend the deletion of DI(LOCAL), which addresses the drug-free awareness program.

DHE(LOCAL) POLICY CONSIDERATIONS

The recommended revisions in DHE(LOCAL), which addresses searches and alcohol/drug testing of employees, are to clarify that a district may remove from duty and require testing of an employee if there is reasonable suspicion that the employee is under the influence of alcohol or drugs used in violation of district policy. The new text also addresses consequences for an employee's refusal to comply with testing and for violation of the district's drug and alcohol policy.

Recent changes to SBEC rules prompted revisions to DHB(LEGAL) to clarify reportable employee misconduct and to require the report to address current employment status, including pending actions and whether law enforcement or another agency is involved.

**Counseling /
Academic
Guidance**

Provisions on academic counseling have been moved from EJ(LEGAL) to FFEA(LEGAL), which will now result in all counselor-related duties being housed in one code. Provisions on transcript and diploma notations that were previously at EJ(LEGAL) have been moved to EI(LEGAL).

Certification

Provisions on principal certification have been updated to provide a more complete explanation of the requirements.

Student Issues

Attendance

FEA(LOCAL) POLICY CONSIDERATIONS

A recommended revision to this local policy on compulsory attendance requires the district to excuse a student who is 17 years of age or older for up to four days during the student's enrollment in high school in order for the student to pursue enlistment in the armed services.

At FEB(LEGAL), the policy on attendance accounting, revisions have been made to better align the text with statute and to add appropriate cross-references.

**Physical
Examinations /
Immunizations**

Legally referenced policies on wellness and health services have been revised as follows:

- Spinal screening provisions have been updated at FFAA(LEGAL); and
- Provisions at FFAB(LEGAL) regarding immunization records have been revised to more accurately reflect current statute.

Student Conduct

To facilitate locating the appropriate policy when circumstances warrant, a note has been added to FFH(LEGAL), the legally referenced policy on sexual harassment, to provide a reference to FB(LEGAL), which addresses discrimination on the basis of disability, sex, and other protected characteristics.

FOF(LEGAL) includes additional information on requirements when expelling a student with a disability.