

Vantage Points

A Board Member's Guide to Update 102

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 thumbnail 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.**

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.

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.

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Update 102 addresses several recent changes in state and federal law, including amendments to the Texas Administrative Code on special education services, community and student engagement, and community-based fine arts programs. The update also encompasses a review of the legal and local policies addressing bonds and investments, as well as a reorganization of the DEA series of policies addressing compensation to focus the series on the primary component—the board-adopted compensation plan.

Accountability

At AIB(LEGAL), regarding district and campus performance reporting, new Commissioner rules provide guidance on the process for evaluating student and community engagement and for performance and compliance reporting. The rules clarify that a district must post the results of the performance and compliance evaluation on its website and require a local committee to determine the criteria to be used for the district's evaluation. Also added at AIB(LEGAL) is information related to the required dissemination of a federal report card. Review the policy and TEA's website at http://tea.texas.gov/About_TEA/Laws_and_Rules/NCLB_and_ESEA/NCLB-ESEA_Resources/Federal_Report_Card/ for more information.

Bonds and Investments

TASB Policy Service engaged an outside law firm with expertise in the area of investments and bond issues to ensure that the policy manual continues to address all relevant legal material. Changes at CCA(LEGAL), addressing bond issues, include a reference to the 50 cent debt test, additional details about bond elections, and references to existing state and federal law relating to the issuance of bonds. At CDA(LEGAL), addressing investments, changes include clarification regarding required quarterly reports and the board's ability to specify if any of the statutorily authorized investments are not suitable for the district.

CDA(LOCAL) POLICY CONSIDERATIONS

Based on the review by the outside law firm, several recommendations are being made regarding this policy on authorized investments. New provisions are recommended to address quality and capability of investment management and to highlight the statutory requirements for the board to annually review and audit the district's investments. Recommended revisions to existing text are to clarify the primary goals of a district's investment program, to more closely mirror terms used in statute, and to conform to industry best practices.

Personnel Issues

Compensation

The D section table of contents has been modified due to the reorganization of the series of legal and local policies dealing with employee compensation. Policy code DEA has been renamed Compensation Plan, with subtitled policies on Incentives and Stipends at DEAA and Wage and Hour Laws at DEAB. The legally referenced policy at DEA now houses various salary and compensation provisions previously at DEAB(LEGAL), while text formerly at DEA(LEGAL) regarding wage and hour laws has been moved to the newly retitled DEAB(LEGAL). No changes were made to the text at DEAA(LEGAL) regarding incentives and stipends, with the exception of the updated title to reflect the reorganization of the DEA series.

DEA, DEAA, AND DEAB (LOCAL) POLICY CONSIDERATIONS

Several revisions are recommended at DEA(LOCAL) and DEAA(LOCAL), in addition to a new recommended policy at DEAB(LOCAL), to coincide with the reorganization and renaming of these policy codes.

DEA(LOCAL) places more emphasis on the district's compensation plan and focuses on the board's and the administration's roles regarding compensation. Recommended changes clarify that the board reviews and approves the annual compensation plan and outline the superintendent's role in implementing and establishing procedures to administer the plan. Additional revisions include clarifying language regarding when a contract employee's pay can be increased after performance on the contract has begun.

For districts that address annualized pay of salaried employees at DEA(LOCAL), recommended revisions simplify that text; detailed provisions regarding how salaried employees will be paid when they are not employed for a full 12-month period are recommended for deletion, as these provisions are no longer required by IRS rules. For districts that do not currently address annualized pay, text is recommended to reflect the common practice of paying salaried employees over 12 months regardless of the number of months that employees are expected to work.

To avoid an improper use of public funds, new text at DEA(LOCAL) is recommended—for districts that do not currently address the issue—to explain that if the board chooses to pay employees during an emergency closure, the board must authorize the action by resolution or other board action that reflects the public purpose served by the expenditure. A sample resolution from TASB is structured to authorize payments during future closings once the board has adopted the resolution. See the Explanatory Notes for more information regarding your district's specific policy.

In addition to a change in title, recommended revisions at DEAA(LOCAL) concern the interrelationship between incentives and stipends and the

district's compensation plan. Due to lack of funding, provisions on master teacher stipends are recommended for deletion.

Recommended for inclusion in the manual is a new policy at DEAB(LOCAL), regarding wage and hour laws. Much of the text included in this recommended policy was moved and revised from provisions formerly at DEA(LOCAL). The policy revisions clarify payment provisions for nonexempt salaried employees who work less than a 40-hour workweek and the accrual and use of compensatory time earned by nonexempt employees.

DFFA(LOCAL) POLICY CONSIDERATIONS

As a result of the reorganization of material in the DEA series, we have adjusted two cross-references in this policy addressing reduction in force due to financial exigency.

Employee Leave

DBB(LOCAL) POLICY CONSIDERATIONS

Because state law requires a district's policy to allow an employee to present testimony or other information to the board when the board places an employee on involuntary temporary disability leave, changes are recommended for this local policy to explicitly state that employees are to follow the complaint process in DGBA in these circumstances. If the district expands eligibility for temporary disability to employees not eligible by law, the district should review DEC(LOCAL) to ensure that the text addressing eligible employees is accurate.

Expense Reimbursement

DEE(LEGAL), addressing expense reimbursement, has been revised to remove outdated references to the Administrative Code reflecting the classroom supply reimbursement program. The statutory provision from the Education Code, however, remains.

DEE(LOCAL) POLICY CONSIDERATIONS

For districts that specifically referenced a per diem practice of expense reimbursement for meals associated with overnight travel not related to a grant, this local policy is included in the update to offer TASB-recommended

language for the board's consideration. The update does not include recommendations for this policy if the district's policy currently requires receipts for all expenses, including meals.

Searches and Alcohol/Drug Testing

Existing provisions from the federal Department of Transportation (DOT) rules have been added for clarification at DHE(LEGAL), addressing employee searches and drug and alcohol testing. For employees subject to DOT testing, the added text explains that the district has the option of permitting an employee to return to work after a failed drug or alcohol test if the employee follows the protocols required by the rules. The district's decision should be reflected at DHE(LOCAL).

DHE(LOCAL) POLICY CONSIDERATIONS

Several revisions are being recommended for this local policy on searches and drug and alcohol testing of employees.

For districts with employees who are subject to DOT testing, the recommended revisions to this policy focus on the distinction between the federal DOT testing program and district-imposed consequences, as required by DOT guidance. In addition to reordering existing provisions and deleting others that are no longer relevant for local policy, we have added an affirmative statement regarding whether or not the district allows for return-to-duty testing after a failed drug or alcohol test. This statement is based on the existing language a district has in its local policy.

For districts that considered a drug violation to be *any level* of alcohol concentration, revisions are recommended since a concentration below 0.02 is considered a negative result by DOT rules and, further, many breath testing devices used for DOT testing do not measure concentrations below 0.02.

If your district has employees subject to DOT testing but your current DHE(LOCAL) does not have any language regarding DOT testing, the district should contact its TASB policy consultant for assistance.

Unrelated to the DOT testing provisions, we recommend the addition of a statement near the beginning of the policy that reasonable suspicion searches that reveal a violation of the district's standards of conduct may result in disciplinary action as outlined at DH(LOCAL).

Student Issues

Students Receiving Special Education Services

Revisions to the EHBA series of policies, addressing special education, were prompted by revised State Board of Education (SBOE) and Commissioner rules, both effective January 1, 2015. The changes include revised descriptions by the SBOE on instructional arrangements at EHBA(LEGAL); streamlining identification, evaluation, and eligibility for special education services at EHBA(LEGAL); admission, review, and dismissal (ARD) committee responsibilities at EHBA(LEGAL); transition planning requirements at EHBA(LEGAL); and notice requirements and dispute resolution options at EHBA(LEGAL).

Graduation

At EIF(LEGAL), provisions regarding graduation have been revised based on recently effective Commissioner rules related to student eligibility for community-based fine arts programs. In addition, significantly revised in this policy are the graduation options for students with disabilities receiving special education services. The Commissioner rules prompting these changes, effective January 1, 2015, clarify graduation options under the foundation program for students receiving special education services. Of note is that the rules specify that to earn an endorsement under the foundation program, a student who receives special education services must not have received any modified curriculum in the endorsement area and must pass all relevant state assessments. The rules related to graduation for students receiving special education services prior to the 2014–15 school year did not change substantively.

EJ(LEGAL), addressing the academic guidance program, has been revised to reflect the current statutory requirements for counselors to provide information on postsecondary opportunities to students each year of high school.

Discipline

Revised Commissioner rules prompted changes at FOF(LEGAL) to require that disciplinary actions for students with disabilities be determined in accordance with certain federal and state laws and to clarify how the use of confinement, seclusion, and time-out provisions from the Education Code apply to peace officers.

FNC AND FO (LOCAL) POLICY CONSIDERATIONS

Related to the changes at FOF(LEGAL) mentioned above, an important revision regarding the use of physical restraint is recommended at FO(LOCAL), addressing student discipline. A new recommended sentence clarifies that a district employee may restrain a student who receives special education services only in accordance with the specific laws that apply to these students. Other recommended changes reorganize the material to group the general provisions regarding the Student Code of Conduct and extracurricular standards of behavior at the beginning of the policy and to

emphasize that discipline must be applied in a nondiscriminatory manner. If the district uses corporal punishment as a disciplinary management technique and the guidelines associated with this use are reflected in policy, the district is encouraged to review these guidelines to confirm that the policy still reflects district practice.

FNC(LOCAL), addressing student conduct, is recommended for deletion at this update. The material in this local policy is either already addressed in more detail at other codes, or, as in the case of provisions related to rules of conduct, is recommended for relocation to FO(LOCAL).

More Information

For further information on these and other policy changes, refer to the policy-by-policy Explanatory Notes—customized for each district's policies—and the policies themselves, found in your district's localized update packet.