

Definitions

“District-level committee” means the committee established under Education Code 11.251, or a comparable committee if the district is exempted (or has exempted itself) from this provision.

“Innovation plan committee” means a committee appointed by the board of trustees to develop the innovation plan in accordance with statutory requirements. The district-level committee may also serve in this role.

“Public hearing” means an open meeting held by the board of trustees that allows members of the public to hear facts about the proposed plan and designation and provides the opportunity for the public to give opinions and comments on the proposed actions.

“Public meeting” means an open meeting held by the board of trustees that allows members of the public to hear facts about the proposed plan and designation.

“Unacceptable academic performance rating” means a rating of Improvement Required or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual.

“Unacceptable financial accountability rating” means a Financial Integrity Rating System of Texas (FIRST) rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual.

19 TAC 102.1301

District of Innovation

A district is eligible for designation as a district of innovation if the district's most recent performance rating under Education Code 39.054 reflects at least acceptable performance.

A board may not vote on the final approval of the innovation plan if the district is assigned either a final or preliminary rating below acceptable performance. In the event the preliminary rating is changed, the board may then vote to become an innovation district.

Consideration of designation as a district of innovation may be initiated by a resolution adopted by the board or a petition signed by a majority of the members of the district-level committee [see BQA].

Education Code 12A.001; 19 TAC 102.1303

Public Hearing

After adopting a resolution or receiving a petition for consideration as a district of innovation, a board shall hold a public hearing as soon as possible, but not later than 30 days, to consider whether the district should develop a local innovation plan for the designation of the district as a district of innovation.

At the conclusion of the public hearing or within 30 days after conclusion of the public hearing, the board may decline to pursue designation of the district as a district of innovation or appoint a committee to develop a local innovation plan.

The board may outline the parameters around which the innovation plan committee may develop the plan.

Education Code 12A.002; 19 TAC 102.1305

Local Innovation Plan

A local innovation plan meeting all legal requirements must be developed for a district before the district may be designated as a district of innovation.

The local innovation plan must provide for a comprehensive educational program for the district, which program may include:

1. Innovative curriculum, instructional methods, and provisions regarding community participation, campus governance, and parental involvement;
2. Modifications to the school day or year [see EB, EC];
3. Provisions regarding the district budget and sustainable program funding;
4. Accountability and assessment measures that exceed the requirements of state and federal law; and
5. Any other innovations prescribed by the board of trustees.

The plan must also identify requirements imposed by the Education Code that inhibit the goals of the plan and from which the district should be exempted on adoption of the plan, subject to Education Code 12A.004. [See Exceptions, below]

The commissioner of education shall maintain a list of provisions from which designated districts of innovation are exempt. The commissioner shall notify the legislature of each provision from which districts enrolling a majority of students in this state are exempt.

Education Code 12A.003, .004(b); 19 TAC 102.1305(d)

Prohibited Exemptions

A local innovation plan may not provide for the exemption of a district designated as a district of innovation from the provisions listed in Education Code 12A.004 and 19 Administrative Code 102.1309.
Education Code 12A.004; 19 TAC 102.1309

An innovation district may not be exempted from the following sections of the Education Code and the rules adopted thereunder:

1. A state or federal requirement, imposed by statute or rule, applicable to an open-enrollment charter school operating under Education Code Chapter 12, Subchapter D, including, but not limited to, the requirements listed in Education Code 12.104(b), and:
 - a. Education Code Chapter 22, Subchapter B;
 - b. Education Code Chapter 25, Subchapter A, sections 25.001, .002, .0021, .0031, and .004;
 - c. Education Code Chapter 28, sections 28.002, .0021, .0023, .005, .0051, .006, .016, .0211, .0213, .0217, .025, .0254, .02541, .0255, .0258, .0259, and .026;
 - d. Education Code Chapter 29, Subchapter G;
 - e. Education Code Chapter 30, Subchapter A;
 - f. Education Code 30.104;
 - g. Education Code Chapter 34;
 - h. Education Code Chapter 37, sections 37.006(l), .007(e), .011, .012, .013, and .020; and
 - i. Education Code Chapter 39;
2. Education Code Chapter 11, Subchapters A, C, D, and E, except that a district may be exempt from Education Code 11.1511(b)(5) and (14) and 11.162;
3. Education Code Chapter 13;
4. Education Code Chapter 41;
5. Education Code Chapter 42;
6. Education Code Chapter 44, sections 44.0011, .002, .003, .004, .0041, .005, .0051, .006, .007, .0071, .008, .009, .011, .0312, .032, .051, .052, .053, and .054;
7. Education Code Chapter 45, sections 45.003, .0031, .005, .105, .106, .202, and .203; and
8. Education Code Chapter 46.

In addition to the prohibited exemptions specified above, an innovation district may not be exempted from:

1. A requirement of a grant or other state program in which the district voluntarily participates;

2. Duties that the statute applies to the execution of that power if a district chooses to implement an authorized power that is optional under the terms of the statute; and
3. Requirements imposed by provisions outside the Education Code, including requirements under Government Code Chapter 822.

19 TAC 102.1309; Education Code 12A.004

JW 6/28/19: 12A.004 still says Ch. 42 and not Ch. 48. Just noting here that I looked in sections affected and did not see a conforming change.

Adoption of Local Innovation Plan

The board may not vote on adoption of a proposed local innovation plan unless:

1. The final version of the proposed plan has been available on the district's website for at least 30 days;
2. The board has notified the commissioner of the board's intention to vote on adoption of the proposed plan; and
3. The district-level committee [see BQA] has held a public meeting to consider the final version of the proposed plan and has approved the plan by a majority vote of the committee members. The public meeting may occur at any time, including up to or on the same date at which the board intends to vote on final adoption of the proposed plan.

The board may adopt a proposed local innovation plan by an affirmative vote of two-thirds of the membership of the board.

On adoption of a local innovation plan, the district is designated as a district of innovation for the term specified in the plan, but no longer than five calendar years, and shall begin operation in accordance with the plan. In addition, the district is exempt from state requirements identified under Education Code 12A.003(b)(2). [See Local Innovation Plan, above]

The district shall notify the commissioner of approval of the plan along with a list of approved exemptions by completing the agency's form provided at 19 Administrative Code 102.1307(d).

A district's exemption under the plan includes any subsequent amendment or redesignation of an identified state requirement, unless the subsequent amendment or redesignation specifically applies to an innovation district.

The district shall ensure that a copy of the plan is posted on the district's website in accordance with Education Code 12A.0071, for the term of the designation as an innovation district.

Education Code 12A.005; 19 TAC 102.1307

Notice to TEA Not later than the 15th day after the date on which the board finalizes a local innovation plan either through adoption, amendment, or renewal, the district shall provide a copy of the current local innovation plan to TEA, which shall promptly post the current local innovation plan on the agency's website. *Education Code 12A.0071(b); 19 TAC 102.1307(g)*

Term The term of a district's designation as a district of innovation may not exceed five years and is effective upon district approval and notification of the plan to the Texas Education Agency (TEA). A district may only have one innovation plan at any given time. *Education Code 12A.006; 19 TAC 102.1311*

Amendment, Rescission, or Renewal of Local Innovation Plan A local innovation plan may be amended, rescinded, or renewed if the action is approved by a vote of the district-level committee [see BQA] and a two-thirds majority vote of the board of trustees.

An amendment to an approved plan does not change the date of the term of designation as an innovation district. Exemptions that were already formally approved are not required to be reviewed.

A district must notify TEA within five business days of rescission and provide a date at which time it will be in compliance with all sections of the Education Code, but no later than the start of the following school year.

During renewal, all sections of the plan and exemptions shall be reviewed and the district must follow all components outlined in 19 Administrative Code 102.1307 relating to Adoption of Local Innovation Plans.

The district shall notify the commissioner of any actions taken along with the associated exemptions and local approval dates.

Education Code 12A.007; 19 TAC 102.1313

Website Posting A district designated as a district of innovation shall ensure that a copy of the district's current local innovation plan is available to the public by posting and maintaining the plan in a prominent location on the district's Internet website. *Education Code 12A.0071(a); 19 TAC 102.1307(f)*

The district's innovation plan must be clearly posted on the district's website for the term of the designation as an innovation district. *19 TAC 102.1307(f)*

**Criminal History
Background Checks**

A prohibition, restriction, or requirement imposed by Education Code Chapter 22, Subchapter C (district employee and volunteer criminal history records), applies to the same extent to a district of innovation or other charter entity.

The failure of a district of innovation to provide information required under Education Code 22.0832 (National Criminal History Record Information Review of Certain ~~OEGS~~Open-Enrollment Charter School ~~e~~Employees) may result in termination of the district's designation as a district of innovation.

Education Code 22.0815

JW 6/28/19: HB 3, effective 9-1-2019. I still don't have a solution for all the internal ed code references.

Note: 21.006 defines "other charter entity." Do you think we should include this in the EL series? Or cross reference?

JW 7/22/19: Joy says to move this here.

**Termination by
Commissioner**

Discretionary
Termination

The commissioner may terminate a district's designation as a district of innovation if the district receives for two consecutive school years:

1. A final unacceptable academic performance rating under Education Code 39.054;
2. A final unacceptable financial accountability rating under Education Code 39.082; or
3. A final unacceptable academic performance rating under Education Code 39.054 for one of the school years and an unacceptable financial accountability rating under Education Code 39.082 for the other school year.

Instead of terminating a district's designation, the commissioner may permit the district to amend the local innovation plan to address concerns specified by the commissioner.

Education Code 12A.008(a)–(b); 19 TAC 102.1315(a)

The commissioner may terminate a district's designation as a district of innovation if the district fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under Education Code 12.1059. *Education Code 12A.008(b-1)* [See DBAA]

JW 6/28/19: HB 3, effective 9-1-2019. MT may put this in the D policy as well. He was unsure how it would fit. It might be fine to just exist in the AF policy.

Is the deleting this part of the statute too editorial? “applicable to the district under Education Code 12A.004(a)(1), 22.085 or Education Code 22.092.”

Education Code 12.1059 (criminal history record information and registry information requirements for charter school employees)

Education Code 12A.004(a)(1)(applicability of laws charter schools must follow)

Education Code 22.085 (applicability of Ch. 22, Subch. C to districts)

Education Code 22.092 (REGISTRY OF PERSONS NOT ELIGIBLE FOR EMPLOYMENT IN PUBLIC SCHOOLS)

JW 7/22/19: LRS/JOY say to not add the details, but to add an x-ref to the D section which will include the full explanation. Emailed MT to ensure the full explanation is in DBAA. CVC thinks the above provisions should be included in AF, but she might be okay with the x-ref.

Mandatory Termination

The commissioner shall terminate a district's designation as a district of innovation if the district receives for three consecutive school years:

1. A final unacceptable academic performance rating under Education Code 39.054;
2. A final unacceptable financial accountability rating under Education Code 39.082; or
3. Any combination of one or more unacceptable ratings Education Code 39.054 and one or more unacceptable ratings under Education Code 39.082.

Education Code 12A.008(c); 19 TAC 102.1315(b)

No Appeal

The commissioner’s decision to terminate a district’s designation as a district of innovation is final and may not be appealed. *Education Code 12A.008(d); 19 TAC 102.1315(d)*

JW 7/22/19: Content moved as per feedback from Joy/LRS.

A district may choose to operate under a home-rule charter. Adoption of a home-rule charter does not affect:

1. The district's boundaries.
2. Taxes or bonds of the district authorized before the effective date of the charter.

Education Code 12.0011, .011

Powers of Home-Rule District

A home-rule district has the powers and entitlements granted to school districts and school district boards, including taxing authority. A home-rule district is subject to federal and state laws and rules governing school districts except:

1. A home-rule district is subject to the Education Code only to the extent a provision of the Education Code specifically provides for the applicability to a home-rule district;
2. A home-rule district is subject to a rule adopted by the State Board of Education (SBOE) or the commissioner [of education](#) only if the code provision authorizing the rule specifically applies to a home-rule district; and
3. A home-rule district is subject to all requirements of federal law and applicable court orders relating to eligibility for and the provision of special education and bilingual programs.

Nondiscrimination

The above statements do not permit a home-rule district to discriminate against a student who has been diagnosed as having a learning disability, including dyslexia or attention deficit/hyperactivity disorder. Prohibited discrimination includes denial of placement in a gifted and talented program if the student would otherwise be qualified for the program but for the student's learning disability.

The above statements do not permit a home-rule district to, on the basis of race, socioeconomic status, learning disability, or family support status, place a student in a program other than the highest level program necessary to ensure the student's success.

Education Code 12.012(a), (c)

Charter Commission

A board shall appoint a charter commission to frame a home-rule school district charter if:

1. The board receives a petition requesting the appointment of a charter commission signed by at least five percent of the district's registered voters; or
2. At least two-thirds of the total membership of the board adopts a resolution ordering the appointment of a charter commission.

The board must appoint the commission by the 30th day after receipt of the petition or adoption of the resolution.

The commission must complete the proposed charter not later than the first anniversary of the date of the commission's appointment. After that date, the commission expires and the appointment of the commission is void.

Education Code 12.014, .015(a), (c)

Membership

The charter commission shall consist of 15 district residents. The membership must reflect the racial, ethnic, socioeconomic, and geographic diversity of a district. A majority of the commission members must be parents of school-age children attending public school. At least 25 percent of the commission must be classroom teachers selected by representatives of the professional staff as provided by the planning process under Education Code 11.251(e). [See BQ series] *Education Code 12.015(a)–(b)*

Governmental Body

The charter commission is considered a governmental body for purposes of Government Code Chapters 551 (Open Meetings Act) and 552 (Public Information Act). *Education Code 12.015(d)*

Content of Home-Rule Charter

The home-rule charter must:

1. Describe the educational program to be offered.
2. Provide that continuation of the charter is contingent on:
 - a. Acceptable student performance on assessment instruments.
 - b. Compliance with other applicable accountability provisions.
3. Specify any basis, in addition to a basis specified at Education Code Chapter 11, Subchapter B, on which the charter may be placed on probation or revoked.
4. Describe the governing structure of the district and campuses.
5. Specify any procedure or requirement, in addition to those at Education Code Chapter 38 [see FF series], the district will follow to ensure the health and safety of students and employees.
6. Describe the process by which the district will adopt an annual budget, including the use of program-weight funds.
7. Describe how the annual audit of the district's financial and programmatic operations will be conducted, including how the district will provide the necessary information to participate in

the Public Education Information Management System (PEIMS).

8. Include any other provision the charter commission considers necessary.

Education Code 12.016

**Review by
Commissioner of
Education**

The charter commission shall submit the proposed charter to the commissioner of education. The commissioner shall review the charter for compliance with applicable laws and recommend any necessary modifications. If the commissioner does not act within 30 days after the date the commissioner receives the proposed charter, the charter is approved. *Education Code 12.018*

Charter Elections

As soon as practicable after the commissioner approves the charter, a board shall order an election on the proposed charter. The election shall be held on the first uniform election date that occurs at least 45 days after the date the board orders the election.

At least three copies of the proposed charter must be available in the office at each school campus and at the district's central administrative office between the date of the election order and election day. Notice of the election must include a statement of where and how copies may be obtained or viewed. A summary of the proposed charter shall be attached to each copy. The summary shall also be made available to district employees, parents, community members, and the media.

The ballot shall be written to permit voting for or against the proposition: "Whether the (name of district) shall be governed under the home-rule district charter, which is proposed by a charter commission appointed by the board and under which only certain laws and rules apply to the district."

Education Code 12.019

**Minimum Voter
Turnout**

An election on the adoption of a proposed home-rule charter has no effect unless at least 25 percent of the registered voters of the district vote in the election.

If the required number of voters does not vote in the election, the board shall order another election to be held on the first uniform election date:

1. That occurs at least 45 days after the election is ordered, and
2. On which one or more elections are to be held, the combination of which covers all the territory of the district.

If the required number of voters does not vote in the election, a board may continue to order elections until the required minimum is achieved.

Education Code 12.022

**Charter
Amendments**

A home-rule charter may be amended pursuant to Education Code 12.020 and .022(b).

**Adoption of Charter
or Amendment**

Subject to Education Code 12.022 (minimum voter turnout), the proposed charter or amendment is adopted if approved by a majority of the qualified voters of the district voting in the election. The charter or amendment shall specify an effective date and takes effect according to its terms when the board enters an order declaring the charter or amendment adopted. The board shall enter the order not later than the tenth day after the date the canvass of the election returns is completed.

As soon as practicable after a district adopts the charter or amendment, the board shall notify the commissioner of the outcome of the election.

Education Code 12.021

**Certification of
Charter**

As soon as practicable after the charter or amendment is adopted, the board president shall certify to the secretary of state a copy of the charter or amendment showing voter approval. The secretary of state shall file and record the certification. A recorded charter or amendment is a public act. A court shall take judicial notice of a recorded charter or amendment and proof is not required of its provisions. *Education Code 12.023, .024*

**Governance of
Home-Rule District**

A home-rule district may adopt and operate under any governing structure. The home-rule district may create offices, determine the time and method for selecting officers, and prescribe the qualifications and duties of officers. The term of any officer shall be three or four years, as determined under Education Code 11.059. *Education Code 12.025*

Change in
Governing Body

If the adoption, amendment, or revocation of a home-rule school district charter changes the structure of the board, the members serving on the date the adoption, amendment, or revocation takes effect shall continue in office until their successors have been chosen and have qualified for office. *Education Code 12.026*

**Requirements Under
Education Code**

A home-rule district is subject to:

1. Provisions of the Education Code establishing a criminal offense.

2. Provisions of the Education Code relating to limitations on liability.
3. Prohibitions, restrictions, or requirements relating to:
 - a. PEIMS, as determined by the commissioner.
 - b. Educator certification under Education Code Chapter 21 and educator rights under Education Code 21.407, .408, and 22.001. [See CFEA, DGA]
 - c. Criminal history records under Education Code Chapter 22, Subchapter C. [See DBAA]
 - d. Student admissions under Education Code 25.001. [See FD]
 - e. School attendance under Education Code 25.085–~~258~~.087. [See FEA]

~~e.~~ **JW 7/9/19: BBT found. 7.9.2019. Citation correction.**

- f. Interdistrict transfers under Education Code Chapter 25, Subchapter B. [See FDA]
- g. Elementary class-size limits, in the case of any campus that fails to satisfy any standard under Education Code 39.054(e). [See EEB]
- h. High school graduation under Education Code 28.025. [See EIF]
- i. Special education programs under Education Code Chapter 29, Subchapter A. [See EHBA series]
- j. Bilingual education under Education Code Chapter 29, Subchapter B. [See EHBE]
- k. Prekindergarten programs under Education Code Chapter 29, Subchapter E. [See EEL, EHBG]
- l. Safety provisions relating to the transportation of students under Education Code 34.002–.004 and .008. [See CNA, CNB, CNC]
- m. Computation and distribution of state aid under Education Code Chapters 31, ~~432~~, and ~~438~~.
- n. Extracurricular activities under Education Code 33.081. [See FM]
- o. Health and safety under Education Code Chapter 38. [See FF series]

- p. Public school accountability under Education Code Chapter 39, Subchapters B, C, D, and J, and Chapter 39A. [See AI series]
- q. ~~Equalized wealth level~~ [Options for local revenue levels in excess of entitlement](#) under Education Code Chapter ~~49~~4.
- r. Bonds or other obligations or tax rates under Education Code Chapters ~~43~~2, ~~45~~3, and ~~45~~8.
- s. Purchasing under Education Code Chapter 44. [See CH]

Education Code 12.013(b)

[JW 6/28/19: HB 3, page 250-252, effective 9-1-2018.](#)

Employees of Home-Rule Districts

An employee who qualifies for membership in the Teacher Retirement System shall be covered in the same manner and to the same extent as a qualified employee employed by an independent school district. *Education Code 12.012(b)*

Rescission of Charter

A board shall order an election on the question of rescinding the home-rule school district charter if:

1. The board receives a petition requesting a rescission election signed by at least five percent of the registered voters of the district; or
2. At least two-thirds of the board adopts a resolution ordering the election.

Rescission of a home-rule charter does not affect:

1. District boundaries.
2. Taxes or bonds of the district authorized before the effective date of the rescission.

Education Code 12.030(b), (h)

Probation or Revocation of Charter

The SBOE may place a home-rule charter on probation or revoke the charter. *Education Code 12.027, [.0271](#), .028; 19 TAC 100.201*

Material Violation

[A home-rule district commits a material violation of the district's charter if the district fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under Education Code 22.085 or Education Code 22.092. *Education Code 12.027\(a\)* \[See DBAA\]](#)

JW 6/28/19: HB 3 adds .0271 and additional related details on .027. I don't think it's necessary to include all of these additional details here.

Sec. 12.0271. FAILURE TO DISCHARGE OR REFUSE TO HIRE CERTAIN EMPLOYEES OR APPLICANTS. A home-rule school district commits a material violation of the school district's charter if the school district fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under Section 22.085 or 22.092.

JW 7/23/19: At Joy and LRS's request, I added this information here. Note that we still don't include details on probation or revocation of charter like we do in the EL series.

Status of District in Case of Annexation or Consolidation

If a district is annexed to another district under Education Code Chapter 13, and only one of the districts is a home-rule district, the status of the receiving district shall be the status of both districts following annexation. The petition under Education Code 13.003 must state the status for the consolidated district. *Education Code 12.029*

District Annual Report

The board shall publish an annual report describing the educational performance of the district and of each campus in the district that includes uniform student performance and descriptive information as determined under rules adopted by the commissioner of education. *Education Code 39.306(a)*

Texas Academic Performance Report (TAPR)

The performance report provided by the Texas Education Agency (TEA) under Education Code 39.306 shall be termed the Texas Academic Performance Report (TAPR). The intent of the TAPR is to inform the public about the educational performance of the district and of each campus in the district in relation to the district, the state, and a comparable group of schools. The TAPR will present the campus performance information as well as the student, staff, and financial information required by statute. It will also include any explanations and additional information deemed appropriate to the intent of the report.

The district may not alter the report provided by TEA. However, the district may concurrently provide additional information to the public that supplements or explains information in the TAPR.

19 TAC 61.1022(a)–(b), (e); Education Code 39.306(d)

Other Annual Report Information

The annual report must also include:

1. Campus performance objectives established under Education Code 11.253 and the progress of each campus toward those objectives, which shall be available to the public;
2. Information indicating the district's accreditation status and identifying each district campus awarded a distinction designation or considered an unacceptable campus under Education Code Chapter 39A;
3. The district's current special education compliance status with the agency;
4. A statement of the number, rate, and type of violent or criminal incidents that occurred on each district campus, to the extent permitted under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g);
5. Information concerning school violence prevention and violence intervention policies and procedures that the district is using to protect students;
6. The findings that result from evaluations conducted under the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. 7101 et seq.); ~~and~~

7. Information received under Education Code 51.403(e) for each high school campus in the district, presented in a form determined by the commissioner; and.

~~7-8.~~ Progress of the district and each campus in the district toward meeting the goals set in the district's early childhood literacy and mathematics proficiency plans and college, career, and military readiness plans [Ssee EA].

Education Code 39.306(a)

JW 6/30/19: HB 3, section 2.035, effective 6/12/2019. Applies 2019-20 school year.

EA is a new policy.

The report must include a statement of the amount, if any, of the school district's unencumbered surplus fund balance as of the last day of the preceding fiscal year and the percentage of the preceding year's budget that the surplus represents. *Education Code 39.306(g)*

The report must also include the number of school counselors providing counseling services at each campus. *Education Code 39.306(d-1)*

The report may include the following information:

1. Student information, including total enrollment, enrollment by ethnicity, socioeconomic status, and grade groupings and retention rates;
2. Financial information, including revenues and expenditures;
3. Staff information, including number and type of staff by sex, ethnicity, years of experience, and highest degree held; teacher and administrator salaries; and teacher turnover;
4. Program information, including student enrollment by program, teachers by program, and instructional operating expenditures by program; and
5. The number of students placed in a disciplinary alternative education program (DAEP) under Education Code Chapter 37.

Education Code 39.306(e)

Supplemental information to be included in the reports shall be determined by the board. *Education Code 39.306(b)*

Public Hearing	<p>The board shall hold a hearing for public discussion of the report. The board shall give notice of the hearing to property owners in the district and parents of and other persons standing in parental relation to a district student. The notice of hearing must include notice to a newspaper of general circulation in the district and notice to electronic media serving the district. <i>Education Code 39.306(c)</i></p> <p>A board shall hold a hearing for public discussion of the TAPR within 90 days after the report is received from TEA. The hearing may take place during a regularly scheduled or special meeting of the board. <i>19 TAC 61.1022(c)</i></p>
Publication	<p>The TAPR must be published within two weeks after the public hearing, in the same format as it was received from TEA. <i>19 TAC 61.1022(d)</i></p> <p>The board shall disseminate the report by posting it on the district website and in public places, such as each school office, local businesses, and public libraries. <i>Education Code 39.306(c); 19 TAC 61.1022(f)</i></p>
Report Uses	<p>The information in the annual report shall be a primary consideration in district and campus planning. It shall also be a primary consideration of the board in the evaluation of the performance of the superintendent, and of the superintendent in the evaluation of the performance of campus principals. <i>Education Code 39.307</i></p>
Campus Performance Report	<p>Each school year, TEA shall prepare and distribute to each district a report card for each campus. The campus report card distributed by TEA shall be termed the "school" report card (SRC). The intent of the SRC is to inform each student's parents or guardians about the school's performance and characteristics. The SRC will present the student, staff, financial, and performance information required by statute, as well as any explanations and additional information deemed appropriate to the intent of the report.</p>
Distribution	<p>The district must disseminate each SRC within six weeks after the SRC is received from TEA. The school may not alter the report provided by TEA; however, it may concurrently provide additional information to the parents or guardians that supplements or explains information in the SRC.</p> <p>The SRC must be distributed to the parent, guardian, conservator, or other person having lawful control of each student at the campus. On written request, a district shall provide a copy of the SRC to any other party.</p> <p>The campus administration may provide the SRC in the same manner it would normally transmit official communications to parents and guardians, such as including the SRC in a weekly folder</p>

sent home with each student, mailing it to the student's residence, providing it at a teacher-parent conference, enclosing it with the student report card, or sending it via electronic mail.

Education Code 39.305; 19 TAC 61.1021

Website Notices

Not later than the tenth day after the first day of instruction of each school year, a district that maintains an internet website shall make the following information available:

1. The information in the most recent campus report card for each campus in the district;
2. The information contained in the most recent performance report for the district;
3. The most recent accreditation status and performance rating of the district; and
4. A definition and explanation of each accreditation status, based on commissioner rule.

Education Code 39.362

Student Performance Report

Each year, TEA shall report to a district whether each student fell below, met, or exceeded the necessary target for improvement necessary to be prepared to perform satisfactorily on, as applicable, the grade five assessments, the grade eight assessments, and the end-of-course assessments required for graduation. *Education Code 39.034, .302*

Notice to Parents

The district a student attends shall provide a record of the annual improvement information from TEA in a written notice to the student's parent or other person standing in parental relationship. If a student failed to perform satisfactorily on a state assessment, the district shall include in the notice specific information relating to access to online educational resources at the appropriate assessment instrument content level, including educational resources and assessment instrument questions and released answers. *Education Code 39.303*

Notice to Teachers and Students

A district shall prepare a report of the annual improvement information and provide the report at the beginning of the school year to:

1. Each teacher for all students, including incoming students, who took a state assessment; and
2. All students who were provided instruction by that teacher in the subject for which the assessment instrument was administered.

The report shall indicate whether the student performed satisfactorily or, if the student did not perform satisfactorily, whether the student met the standard for annual improvement.

Education Code 39.304

**Quality of Learning
Indicators**

The commissioner shall also adopt indicators of the quality of learning for the purpose of preparing performance reports. Performance on the indicators shall be evaluated in the same manner provided for evaluation of the achievement indicators under Education Code 39.053(c) [see Achievement Indicators, AIA].

The quality of learning indicators must include:

1. The percentage of graduating students who meet the course requirements for the foundation high school program, the distinguished level of achievement under the foundation high school program, and each endorsement described by Education Code 28.025(c-1) [see EIF];
2. The results of the SAT, ACT, and certified workforce training programs;
3. For students who have failed to satisfy the state standard on an assessment, the performance of those students on subsequent assessments, aggregated by grade level and subject area;
4. For each campus, the number of students, disaggregated by major student subpopulations, who take courses under the foundation high school program and take additional courses to earn an endorsement, disaggregated by type of endorsement;
5. The percentage of students, aggregated by grade level, provided accelerated instruction under after unsatisfactory performance on a state assessment; the results of assessment instruments administered under the accelerated instruction program; the percentage of students promoted through the grade placement committee process; the subject of the assessment instrument on which each student failed to perform satisfactorily under each performance standard; and the performance of those students in the school year following that promotion on the state assessments;
6. The percentage of students of limited English proficiency exempted from the administration of an assessment;
7. The percentage of students in a special education program assessed through alternative assessment instruments;

8. The percentage of students who satisfy the college readiness measure;
9. The measure of progress toward dual language proficiency for students of limited English proficiency;
10. The percentage of students who are not educationally disadvantaged;
11. The percentage of students who enroll and begin instruction at an institution of higher education in the school year following high school graduation; and
12. The percentage of students who successfully complete the first year of instruction at an institution of higher education without needing a developmental education course.

Education Code 39.301

**High School
Allotment Annual
Performance Review**

~~At an open meeting of the board of trustees, each district must establish annual performance goals for programs, activities, and strategies implemented with high school allotment funds related to the following performance indicators:~~

- ~~1. Percentage of students graduating from high school;~~
- ~~2. Enrollment in advanced courses, including College Board advanced placement courses, International Baccalaureate courses, and dual or college credit courses; and~~
- ~~3. Percentage of "College-Ready Graduates," as defined by 19 Administrative Code 61.1094(2).~~

~~Annually, the board of trustees of a district must review its progress in relation to the performance indicators specified above. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.~~

~~A district must ensure that decisions about the continuation or establishment of programs, activities, and strategies implemented with high school allotment funds are based on:~~

- ~~1. State assessment results and other student performance data;~~
- ~~2. Standards for success and cost-effectiveness as established by the commissioner under Education Code 39.233(a)(1); and~~
- ~~3. Guidance for improving high school completion and success and college readiness programs as established by the commissioner under Education Code 39.233(a)(2).~~

~~19 TAC 61.1099~~

JW 6/14/19: Note that HB 3 and SB 688 repeal TEC 39.233. Should we leave this TAC provision? Or just delete this whole section? I'm leaning towards delete.

JW 7/12/19: TEA has proposed the repeal of this bill in light of HB 3. Proposed in the July 12th Texas Register. Volume 44 Number 28, Pages 3479-3594.

<https://www.sos.state.tx.us/texreg/archive/July122019/Proposed%20Rules/19.EDUCATION.html#20>

Performance-Based Monitoring Analysis System

In accordance with Education Code 7.028(a), the purpose of the Performance-Based Monitoring Analysis System (PBMAS) is to report annually on the performance of districts in selected program areas: bilingual education/English as a Second Language, career and technical education, special education, and certain Title programs under federal law. The performance of a district is reported through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner. *19 TAC 97.1005; Education Code 7.028(a)*

Federal Report Card

A district that receives Title I funding shall prepare and disseminate an annual federal report card that includes information on the district as a whole and each school within the district.

Implementation

The federal report card shall be concise; presented in an understandable and uniform format, and to the extent practicable, in a language that parents can understand; and accessible to the public, which shall include placing the report card on the district's website. If the district does not operate a website, the information in the report card must be provided to the public in another manner determined by the district.

Minimum Requirements

The federal report card shall include the information required in the annual state report card described at 20 U.S.C. 6311(h)(1)(C), as applied to the district and each school served by the district, including:

1. In the case of the district, information that shows how students served by the district achieved on state academic assessments compared to students in the state as a whole;
2. In the case of a school, information that shows how the school's students' achievement on state academic assessments compared to students served by the district and the state as a whole; and

3. Any other information that the district determines is appropriate and will best provide parents, students, and other members of the public with information regarding the progress of each public school served by the district, whether or not such information is included in the annual state report card.

20 U.S.C. 6311(h)(2)

**District Data on
Academic
Achievement**

On request by the board, TEA shall create a website that members of the board may use to review campus and district academic achievement data. The website must also be made available to campuses in a similar manner that access is provided to the board.

The website must:

1. Include district information, disaggregated by campus, grade, sex, race, academic quarter or semester, as applicable, and school year, regarding the following:
 - a. Student academic achievement and growth;
 - b. Teacher and student attendance; and
 - c. Student discipline records; and
2. Be updated at least once each quarter of the school year.

The commissioner shall provide information that permits a board member to compare the district's academic performance with the academic performance of other districts of similar size and racial and economic demographics.

A district must provide requested information to the commissioner for the creation of the website. Confidential information received by the commissioner remains confidential. The commissioner shall design the website to ensure that public information is made available to the public, and information submitted by districts noted as confidential is not made available to the public.

A request for public information under this provision shall be submitted to the district that provides the agency with the information. TEA may not release information submitted by a district that is noted as confidential information.

Education Code 11.1516

JW 7/22/19: Source data information deleted.

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**Interventions and
Sanctions for School
Districts**

Grounds for
Commissioner
Action

The commissioner of education shall take any of the actions authorized by Education Code, Chapter 39A, Subchapter A, to the extent the commissioner determines necessary if:

1. A district does not satisfy:
 - a. The accreditation criteria under Education Code 39.052 [see AIA];
 - b. The academic performance standards under Education Code 39.053 or 39.054 [see AIA]; or
 - c. Any financial accountability standard as determined by commissioner rule [see CFA]; or
2. The commissioner considers the action to be appropriate on the basis of a special accreditation investigation under Education Code 39.057.

Education Code 39A.001

*Authorized
Commissioner
Actions*

If a district is subject to commissioner action, the commissioner may:

1. Issue public notice of the deficiency to the board;
2. Order a hearing to be conducted by the board to notify the public of:
 - a. The insufficient performance;
 - b. The improvements in performance expected by the Texas Education Agency (TEA); and
 - c. The interventions and sanctions that may be imposed if the performance does not improve;
3. Order the preparation of a student achievement improvement plan that addresses each academic achievement indicator under Education Code 39.053(c) for which the district's performance is insufficient, the submission of the plan to the commissioner for approval, and the implementation of the plan;
4. Order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board and the district's superintendent shall appear and explain the district's low performance, lack of improvement, and plans for improvement;
5. Arrange a monitoring review of the district;
6. Appoint a TEA monitor to participate in and report to TEA on the activities of the board or superintendent;

7. Appoint a conservator to oversee the operations of the district; ~~or~~
8. Appoint a management team to direct the operations of the district in areas of insufficient performance or require the district to obtain certain services under a contract with another person; ~~or~~
- ~~8-9.~~ [Authorize the district to enter into a memorandum of understanding with an institution of higher education that provides for the assistance of the institution of higher education in improving the district's performance.](#)

Education Code 39A.002

JW 6/30/19: HB 4170, effective 9-1-2019.

Regardless of whether the commissioner lowers a district's status or rating, the commissioner may take action under Education Code Chapters 39 and 39A or 19 Administrative Code 97.1057 if the commissioner determines that the action is necessary to improve any area of performance by the district or campus.

Subject to 19 Administrative Code 97.1057(h)–(k), once the commissioner takes action under 19 Administrative Code Subchapter EE (regarding accreditation status, standards, and sanctions), the commissioner may impose on the district or campus any other sanction under Education Code Chapter 39 or 39A, or Subchapter EE, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in 19 Administrative Code 97.1053.

19 TAC 97.1057(c), (e)

In making a determination to impose district and campus accreditation sanctions under 19 Administrative Code Chapter 97, Subchapter EE, the commissioner shall meet the requirements of 19 Administrative Code 97.1059. *19 TAC 97.1059*

Conservator or
Management Team

The commissioner shall clearly define the powers and duties of a conservator or management team appointed to oversee the operations of a district.

At least every 90 days, the commissioner shall review the need for the conservator or management team and shall remove the conservator or management team unless the commissioner determines that continued appointment is necessary for effective governance of the district or delivery of instructional services.

A conservator or management team, if directed by the commissioner, shall prepare a plan for the implementation of the appointment of a board of managers or the revocation of accreditation.

The conservator or management team may:

1. Direct an action to be taken by the principal of a campus, the superintendent of the district, or the board; and
2. Approve or disapprove any action of the principal of a campus, the superintendent of the district, or the board.

The conservator or management team may not:

1. Take any action concerning a district election, including ordering or canceling an election or altering the date of or the polling places for an election;
2. Change the number of or method of selecting the board;
3. Set a tax rate for the district; and
4. Adopt a budget for the district that provides for spending a different amount, exclusive of required debt service, from that previously adopted by the board.

Education Code 39A.003

Regardless of whether a district has satisfied the accreditation criteria, if for two consecutive school years, including the current school year, a district has had a conservator or management team assigned, the commissioner may appoint a board of managers, a majority of whom must be residents of the district, to exercise the powers and duties of the board of trustees. For purposes of this subsection, a school year begins on the first day of instruction and includes any portion of the school year. *19 TAC 97.1057(d); Education Code 39A.006(b)*

Board of Managers

The commissioner may appoint a board of managers to exercise the powers and duties of a district's board if the district is subject to commissioner action and:

1. Has a current accreditation status of accredited-warned or accredited-probation;
2. Fails to satisfy any standard under Education Code 39.054(e); or
3. Fails to satisfy financial accountability standards as determined by commissioner rule.

Education Code 39A.004

Revocation of
Accreditation

The commissioner may revoke the accreditation of a district if the district is subject to commissioner action, and for two consecutive school years, including the current school year, the district has:

1. Received an accreditation status of accredited-warned or accredited-probation;
2. Failed to satisfy any standard under Education Code 39.054(e); or
3. Failed to satisfy financial accountability standards as determined by commissioner rule.

In addition to revoking a district's accreditation, the commissioner may:

1. Order closure of the district and annex the district to one or more adjoining districts under Education Code 13.054; or
2. In the case of a home-rule school district, order closure of all programs operated under the district's charter.

Education Code 39A.005

Intervention to
Improve High
School Completion
Rate

If a district is subject to commissioner action and the district has failed to satisfy any standard under Education Code 39.054(e) because of the district's dropout rates, the commissioner may impose sanctions against a district designed to improve high school completion rates, including:

1. Ordering the development of a dropout prevention plan for approval by the commissioner;
2. Restructuring the district or appropriate campuses to improve identification of and service to students who are at risk of dropping out of school, as defined by Education Code 29.081;
3. Ordering lower student-to-counselor ratios on campuses with high dropout rates; and
4. Ordering the use of any other intervention strategy effective in reducing dropout rates, including mentor programs and flexible class scheduling.

Education Code 39A.007

**Campus Intervention
Team and Targeted
Improvement Plan**

Actions Based on
Campus
Performance

If the performance of a campus is below any standard under Education Code 39.054(e), the commissioner shall:

1. Take actions, to the extent the commissioner determines necessary, as provided by Education Code, Chapter 39A; and
2. Assign a campus intervention team.

To the extent the commissioner determines necessary, the commissioner may:

1. Order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board, the superintendent, and the campus principal shall appear and explain the campus's low performance, lack of improvement, and plans for improvement; or
2. Establish a school community partnership team composed of members of the campus-level planning and decision-making committee and additional community representatives as determined appropriate by the commissioner.

Education Code 39A.051

Texas
Accountability
Intervention System

If a campus's performance is below any standard under Education Code 39.054(e), the campus shall engage in the Texas Accountability Intervention System (TAIS) continuous improvement process. The commissioner shall assign members to a campus intervention team as outlined in 19 Administrative Code 97.1063 and Education Code 39.106.

If a campus is assigned an unacceptable rating under Education Code 39.054(e) for a fifth consecutive year, the commissioner shall order the appointment of a board of managers to govern the district or the closure of the campus.

19 TAC 97.1061

Campus
Intervention Team

The campus intervention team shall follow the requirements of 19 Administrative Code 97.1061 and Education Code 39.106.

A campus intervention team assigned by the commissioner may include teachers, principals, other educational professionals, and superintendents recognized for excellence in their roles and appointed by the commissioner to serve as members of a team.

Education Code 39A.052

A campus intervention team must include a professional service provider (PSP) and a district coordinator of school improvement (DCSI). The DCSI must submit qualifications to TEA for approval.

19 TAC 97.1063

*On-Site Needs
Assessment*

A campus intervention team shall:

1. Conduct, with the involvement and advice of the school community partnership team, if applicable:
 - a. If the commissioner determines necessary, a comprehensive on-site needs assessment; or
 - b. A targeted on-site needs assessment relevant to an area of insufficient performance of the campus; and
2. Recommend appropriate actions as provided by Education Code 39A.054.

An on-site needs assessment must determine the factors resulting in the campus's low performance and lack of progress, including the contributing education-related factors.

In conducting a comprehensive on-site needs assessment, the campus intervention team shall use each of the guidelines and procedures at Education Code 39A.053(c).

In conducting a targeted on-site needs assessment, the campus intervention team shall use the appropriate guidelines and procedures described above relevant to each area of insufficient performance.

Education Code 39A.053

Recommendations

On completing the on-site needs assessment, the campus intervention team shall, with the involvement and advice of the school community partnership team, if applicable, recommend actions relating to any area of insufficient performance, including:

1. Reallocation of resources;
2. Technical assistance;
3. Changes in school procedures or operations;
4. Staff development for instructional and administrative staff;
5. Intervention for individual administrators or teachers;
6. Waivers from state statutes or rules;
7. Teacher recruitment or retention strategies and incentives provided by the district to attract and retain appropriately certified and experienced teachers; or
8. Other actions the campus intervention team considers appropriate.

Education Code 39A.054

*Targeted
Improvement
Plan*

In addition to the duties relating to the on-site needs assessment, the campus intervention team shall:

1. Assist the campus in developing a targeted improvement plan;
2. Conduct a public meeting at the campus with the campus principal, the members of the campus-level planning and decision-making committee, parents of students attending the campus, and community members residing in the district to review the campus performance rating and solicit input for the development of the targeted improvement plan [see Notice of Public Meeting, below];
3. Assist the campus in submitting the targeted improvement plan to the board for approval and presenting the plan in a public hearing [see Public Hearing, below]; and
4. Assist the commissioner in monitoring the progress of the campus in executing the targeted improvement plan.

Education Code 39A.055

Notice of Public
Meeting

The campus intervention team must provide written notice of the public meeting to the parents of students attending the campus and post notice of the meeting on the campus's internet website. The notice must include the date, time, and place of the meeting.
Education Code 39A.056

Public Hearing

After a targeted improvement plan or an updated targeted improvement plan is submitted to the board, the board shall conduct a hearing to:

1. Notify the public of:
 - a. The insufficient performance of the campus;
 - b. The improvements in performance expected by TEA; and
 - c. The intervention measures or sanctions that may be imposed under Education Code, Chapter 39A if the performance does not improve within a designated period; and
2. Solicit public comment on the targeted improvement plan or updated targeted improvement plan.

The board must post the targeted improvement plan on the district's internet website before the hearing.

The board may conduct one hearing relating to one or more campuses subject to a targeted improvement plan or an updated targeted improvement plan.

Education Code 39A.057

Submission to
Commissioner

The board shall submit the targeted improvement plan or updated targeted improvement plan to the commissioner for approval. The campus intervention team shall assist the campus in submitting the targeted improvement plan to the commissioner. *Education Code 39A.058*

Executing Plan

In executing the targeted improvement plan, the campus intervention team shall, if appropriate:

1. Assist the campus in implementing research-based practices for curriculum development and classroom instruction, including bilingual education and special education programs, and financial management;
2. Provide research-based technical assistance, including data analysis, academic deficiency identification, intervention implementation, and budget analysis, to strengthen and improve the instructional programs at the campus; and
3. Require the district to develop a teacher recruitment and retention plan to address the qualifications and retention of the teachers at the campus.

Education Code 39A.059

*Continuing Duties
of the Campus
Intervention
Team*

For each year a campus is assigned an unacceptable performance rating, the campus intervention team shall:

- ~~1. Continue to work with the campus until the campus satisfies all the performance standards under Education Code 39.054(e) for a two-year period or the campus satisfies all performance standards for a one-year period and the commissioner determines that the campus is operating and will continue to operate in a manner that improves student achievement;~~
- 2.1. Assist in updating the targeted improvement plan to identify and analyze areas of growth and areas that require improvement; and
- 3.2. Submit each updated targeted improvement plan to the board.

Education Code 39A.060

JW 6/30/19: HB 4170, conforming changes. Effective 9-1-2019.

Needs Improvement
Rating

If a district or campus is assigned an overall or domain performance rating of D:

1. The commissioner shall order the district or campus to develop and implement a targeted improvement plan approved by the board; and
2. The interventions and sanctions provided by Education Code, Chapter 39A based on failure to satisfy performance standards under Education Code 39.054(e) apply to the district or campus only as provided below.

The interventions and sanctions based on failure to satisfy performance standards under Education Code 39.054(e) apply to a district or campus ordered to develop and implement a targeted improvement plan if the district or campus is assigned:

1. An overall or domain performance rating of F; or
2. An overall performance rating of D as provided below.

If a district or campus is assigned an overall performance rating of D for a school year after the district or campus is ordered to develop and implement a targeted improvement plan, the commissioner shall implement interventions and sanctions that apply to an unacceptable campus and those interventions and sanctions shall continue for each consecutive school year thereafter in which the campus is assigned an overall performance rating of D.

Education Code 39.101 [Acts of the 85th Legislative Session, House Bill 22, amended former Education Code, Chapter 39, Subchapter E, by adding Section 39.101]A.0545

JW 6/30/19: HB 4170 (page 41) fixed this issue from the prior legislative session. Effective 9-1-2019.

Campus Planning
and Site-Based
Decision-Making

The commissioner may authorize a school community partnership team established under Education Code 39A.051 to supersede the authority of and satisfy the requirements of establishing and maintaining a campus-level planning and decision-making committee.

The commissioner may authorize a targeted improvement plan or an updated targeted improvement plan to supersede the provisions of and satisfy the requirements of developing, reviewing, and revising a campus improvement plan.

Education Code 39A.061

Submission of Campus Improvement Plan	If the performance of a campus satisfies performance standards under Education Code 39.054(e) for the current school year but would not satisfy the performance standards if the standards to be used for the following school year were applied to the current school year, on the request of the commissioner, the campus-level planning and decision-making committee shall revise and submit to the commissioner the portions of the campus improvement plan that are relevant to those areas for which the campus would not satisfy performance standards. The revised portions of the improvement plan must be submitted in an electronic format. <i>Education Code 39A.062</i>
Compliance Through Federal Accountability	Notwithstanding the provisions of Education Code Chapter 39A, if the commissioner determines that a campus subject to interventions or sanctions has implemented substantially similar intervention measures under federal accountability requirements, the commissioner may accept the substantially similar intervention measures as measures in compliance with Education Code Chapter 39A. <i>Education Code 39A.063</i>
Campus Turnaround Plan	If a campus has been identified as unacceptable for two consecutive school years, the commissioner shall order the campus to prepare and submit a campus turnaround plan.
Updated Targeted Improvement Plan	<p>A campus intervention team shall assist the campus in:</p> <ol style="list-style-type: none">1. Developing an updated targeted improvement plan, including a campus turnaround plan to be implemented by the campus;2. Submitting the updated targeted improvement plan to the board for approval and presenting the plan in a public hearing as provided by Education Code 39A.057;3. Obtaining approval of the updated plan from the commissioner; and4. Executing the updated plan on approval by the commissioner. <p>The updated targeted improvement plan submitted to the board must include all plans and details that are required to execute the campus turnaround plan without any additional action or approval by the board.</p> <p><i>Education Code 39A.101</i></p>
Public Notice	Within 60 days of receiving a campus's preliminary accountability rating, the district must notify parents, community members, and stakeholders that the campus received an unacceptable rating for two consecutive years and request assistance in developing the

campus turnaround plan in accordance with 19 Administrative Code 97.1064.

Upon approval of the board, the district must submit the campus turnaround plan electronically to TEA by March 1 unless otherwise specified. A campus may implement, modify, or withdraw its campus turnaround plan with board approval if the campus receives an academically acceptable rating for the school year following the development of the campus turnaround plan.

19 TAC 97.1064(d), (g)–(h); Education Code 39A.103–.104

Required Contents

A campus turnaround plan must include:

1. Details on the method for restructuring, reforming, or reconstituting the campus;
2. A detailed description of the academic programs to be offered at the campus, including:
 - a. Instructional methods;
 - b. Length of school day and school year;
 - c. Academic credit and promotion criteria; and
 - d. Programs to serve special student populations;
3. If a district charter is to be granted for the campus under Education Code 12.0522:
 - a. The term of the charter; and
 - b. Information on the implementation of the charter;
4. Written comments from:
 - a. The campus-level committee established under Education Code 11.251, if applicable;
 - b. Parents; and
 - c. Teachers at the campus;
5. A detailed description of the budget, staffing, and financial resources required to implement the plan, including any supplemental resources to be provided by the district or other identified sources; and
6. A detailed description for developing and supporting the oversight of academic achievement and student performance by the board of trustees under Education Code 11.1515.

Education Code 39A.105 [Acts of the 85th Legislative Session, Senate Bill 1566, amended former Education Code 39.107(b-1) to include the information provided at Subsection (6)]

JW 6/30/19: I don't think HB 4170 fixed our problem. What do we do with item (6) (added by SB 1566 in 2017)?

Page 45: Chapter 472 (H.B. 2263), Acts of the 85th Legislature, Regular Session, 2017, which amended Sections 39.106(e) and 39.107, Education Code, is repealed.

HB 4205 amends 39A.105 and does not include item 6.

JW 7/22/19: CVC and Joy/LRS say to leave item (6) in and maybe just cite to rules in the future.

Implementing
Entities

A campus ordered to prepare a campus turnaround plan shall implement the updated targeted improvement plan as approved by the commissioner.

The commissioner may appoint a monitor, conservator, management team, or board of managers to the district to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan.

In making appointments, the commissioner shall consider individuals who have demonstrated success in managing campuses with student populations similar to the campus at which the individual appointed will serve.

Education Code 39A.102, .108

Effective Date

A campus turnaround plan must take effect not later than the school year following the third consecutive school year that the campus has received an unacceptable performance rating. *Education Code 39A.106*

Commissioner
Approval or
Rejection

Not later than June 15 of each year, the commissioner shall, in writing, either approve or reject any campus turnaround plan prepared and submitted to the commissioner by a district. If the commissioner rejects a campus turnaround plan, the commissioner must also send the district an outline of the specific concerns regarding the turnaround plan that resulted in the rejection. *Education Code 39A.107-(a-1)*~~*Acts of the 85th Legislative Session,*~~

House Bill 2263, added Subsection (b-10) to former Education Code 39.107]

If the commissioner rejects a campus turnaround plan, the district must create a modified plan with assistance from TEA staff and submit the modified plan to the commissioner for approval not later than the 60th day after the date the commissioner rejects the campus turnaround plan. The commissioner shall notify the district in writing of the commissioner's decision regarding the modified plan not later than the 15th day after the date the commissioner receives the modified plan. Education Code 39A.107(a-2)

The commissioner may approve a campus turnaround plan only if the commissioner determines that the campus will satisfy all student performance standards required under Education Code 39.054(e) not later than the second year the campus receives a performance rating following the implementation of the campus turnaround plan.

Education Code 12.0522(b) does not apply to a district charter approved by the commissioner. An approved district charter may be renewed or continue in effect after the campus is no longer subject to the commissioner's order under Education Code 39A.101.

If the commissioner does not approve a campus turnaround plan, the commissioner shall order:

1. Appointment of a board of managers to govern the district;
2. Alternative management of the campus; or
3. Closure of the campus.

Education Code 39A.107; 19 TAC 97.1065

~~3. _____~~

~~If the commissioner rejects a campus turnaround plan, the district must create a modified plan with assistance from TEA staff and submit the modified plan to the commissioner for approval not later than the 60th day after the date the commissioner rejects the campus turnaround plan. The commissioner shall notify the district in writing of the commissioner's decision regarding the modified plan not later than the 15th day after the date the commissioner receives the modified plan.~~

Education Code 39A.107 [Acts of the 85th Legislative Session, House Bill 2263, added Subsection (b-11) to former Education Code 39.107]; 19 TAC 97.1065 JW 6/30/19; HB 4170, effective 9-1-2019. I moved the material at (a-2) closer to (a-1). It also makes more sense there.

Implementation Following approval of a campus turnaround plan by the commissioner, the district, in consultation with the campus intervention team, may take any actions needed to prepare for the implementation of the plan. *Education Code 39A.108*

Assistance and Partnerships A district may:

1. Request that a regional education service center provide assistance in the development and implementation of a campus turnaround plan; or
2. Partner with an institution of higher education to develop and implement a campus turnaround plan.

Education Code 39A.109

Change in Campus Performance Rating If a campus for which a campus turnaround plan has been ordered receives an acceptable performance rating for the school year following the order, the board may:

1. Implement the campus turnaround plan;
2. Implement a modified version of the campus turnaround plan; or
3. Withdraw the campus turnaround plan.

A district required to implement a campus turnaround plan may modify the plan if the campus receives an acceptable performance rating for two consecutive school years following implementation of the plan.

Education Code 39A.110

Continued Unacceptable Performance Rating If a campus is considered to have an unacceptable performance rating for three consecutive school years after the campus is ordered to submit a campus turnaround plan, the commissioner shall order:

1. Appointment of a board of managers to govern the district; or
2. Closure of the campus.

Education Code 39A.111; 19 TAC 97.1065(a)(2)

Parent Petition for Action

"Parent" means the parent who is indicated on the student registration form at that campus and the signature of only one parent of a student is required.

If the commissioner is presented, in the time and manner specified by commissioner rule, with a written petition signed by the parents of a majority of the students enrolled at a campus with an unacceptable performance rating for three consecutive school years,

specifying an authorized action that the parents request the commissioner to order, the commissioner shall order the specific action requested.

If the board presents to the commissioner, in the time and manner specified by commissioner rule, a written request that the commissioner order specific authorized action other than the specific action requested in the parents' petition and a written explanation of the basis for the board's request, the commissioner may order the action requested by the board.

Education Code 12.051, 39A.112; 19 TAC 97.1065(d)

Repurposing of
Closed Campus

If the commissioner orders the closure of a campus, that campus may be repurposed to serve students at that campus location only if the commissioner finds that the repurposed campus offers a distinctly different academic program and approves a new campus identification number for the repurposed campus. A campus may be repurposed if the campus:

~~1. Finds that the repurposed campus:~~

~~a. Offers a distinctly different academic program; and~~

~~1. Serves a majority of grade levels not served at the original campus; or; and~~

2. Is operated under a contract, approved by the school board, with a nonprofit organization exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986 that:

a. Has a governing board that is independent of the district;

b. Has a successful history of operating school district campuses or open-enrollment charter schools:

(1) That cumulatively serve 10,000 or more students; and

(2) A majority of which have been assigned an overall performance rating of B or higher under Education Code 39.054 for the preceding school year; and

c. Has been assigned an overall performance rating of B or higher under ~~Section~~ Education Code 39.054 for the preceding school year.

Student Enrollment
and Assignment

Any student assigned to a campus that has been closed must be allowed to transfer to any other campus in the district that serves that student's grade level and on request must be provided transportation to the other campus.

The commissioner may grant an exemption allowing students assigned to a closed campus to attend the repurposed campus if there is no other campus in the district at which the students may enroll.

Noncontracted
Repurposed
Campus

The majority of students assigned to a campus that has been closed and repurposed may not have attended that campus in the previous school year if the campus was repurposed to serve a majority of grade levels not served at the original campus.

Enrollment
Provision in
Contract

~~2. Approves a new campus identification number for the repurposed campus.~~ A contract approved by the school board with a nonprofit organization must provide that a student residing in the attendance zone of the campus immediately before the campus was repurposed shall be admitted for enrollment at the repurposed campus.

~~The majority of students assigned to a campus that has been closed and repurposed may not have attended that campus in the previous school year.~~

~~Any student assigned to a campus that has been closed must be allowed to transfer to any other campus in the district that serves that student's grade level and on request must be provided transportation to the other campus.~~

~~The commissioner may grant an exemption allowing students assigned to a closed campus to attend the repurposed campus if there is no other campus in the district at which the students may enroll.~~

Education Code 39A.113

JW 6/30/19: HB 4205, effective 6-10-2019.

I'm not sure about the language in the last paragraph. Is this the clearest way to say this?

JW 7/26/19: JOY/LRS suggested margin notes, but I'm not sure that it works. I'm still open to suggestions here.

JW 8/9/19: Removed the margin notes in the list.

Targeted Technical
Assistance

If the commissioner determines that the basis for the unacceptable performance of a campus for more than two consecutive school years is limited to a specific condition that may be remedied with targeted technical assistance, the commissioner may require the

district to contract for the appropriate technical assistance. *Education Code 39A.114*

Commissioner
Authority

[A decision by the commissioner under the campus turnaround plan subchapter of the Education Code is final and may not be appealed. Education Code 39A.116](#)

JW 6/30/19: HB 4205, effective 6-10-2019.

**Alternative
Management**

The commissioner shall appoint a monitor, conservator, management team, or board of managers whenever such action is required, as determined by 19 Administrative Code 1073. Action under any other section of 19 Administrative Code Chapter 97, Subchapter EE is not a prerequisite to acting under this section. *19 TAC 97.1073*

Solicitation of
Proposals

If the commissioner orders alternative management of a campus, the commissioner shall solicit proposals from qualified nonprofit entities to assume management of the campus or appoint a school district as provided below. The commissioner may solicit proposals from qualified for-profit entities if a nonprofit entity has not responded to the commissioner's request for proposals.

The commissioner may appoint a school district to assume management of the campus if the district:

1. Is not the district in which the campus is located; and
2. Is located within the boundaries of the same regional education service center as the campus.

If a school district is appointed, the district shall assume management of the campus in the same manner as a qualified entity or in accordance with commissioner rule.

The commissioner may annually solicit proposals for the alternative management of a campus. The commissioner shall notify a qualified entity that has been approved as a provider under this section.

Education Code 39A.151

Qualifications of
Managing Entity

To qualify for consideration as a managing entity, the entity must submit a proposal that provides information relating to the entity's management and leadership team that will participate in management of the campus under consideration, including information relating to individuals who have:

1. Documented success in whole school interventions that increased the educational and performance levels of students in campuses considered to have an unacceptable performance rating;

2. A proven record of effectiveness with programs assisting low-performing students;
3. A proven ability to apply research-based school intervention strategies;
4. A proven record of financial ability to perform under the management contract; and
5. Any other experience or qualifications the commissioner determines necessary.

In selecting a managing entity, the commissioner shall give preference to a qualified entity that:

1. Meets any of the commissioner's qualifications; and
2. Has documented success in educating students from similar demographic groups and with similar educational needs as the students who attend the campus to be operated by the managing entity.

Education Code 39A.152

Contract with
Managing Entity

If the commissioner has ordered alternative management of a campus, the district shall execute a contract with an approved provider to serve as a managing entity for the campus. The term of the contract may not exceed five years with an option to renew the contract. The district must execute the contract and relinquish control of the campus before January 1 of the school year.

The management contract must include:

1. A provision describing the district's responsibilities in supporting the operation of the campus; and
2. Provisions approved by the commissioner requiring the managing entity to demonstrate improvement in campus performance, including negotiated performance measures.

Performance measures must be consistent with the priorities of Education Code Chapters 39 and 39A.

The management contract must be approved by the commissioner before the contract is executed. As appropriate, the commissioner may require the district, as a term of the contract, to support the campus in the same manner as the district was required to support the campus before the execution of the contract.

Education Code 39A.153; 19 TAC 97.1067

*Extension of
Management
Contract*

The commissioner may require a district to extend the term of a management contract with a managing entity if the commissioner determines that extending the contract on expiration of the initial term is in the best interest of the students attending the campus. The terms of the contract must be approved by the commissioner. *Education Code 39A.154*

*Evaluation of
Managing Entity*

The commissioner shall evaluate a managing entity's performance on the first and second anniversaries of the date of the management contract.

If the evaluation fails to demonstrate improvement as negotiated under the management contract by the first anniversary of the date of the contract, the district may:

1. Terminate the contract, with the commissioner's consent, for nonperformance or breach of contract; and
2. Select another provider from an approved list provided by the commissioner.

If the evaluation fails to demonstrate significant improvement, as determined by the commissioner, by the second anniversary of the date of the management contract, the district shall:

1. Terminate the contract; and
2. Select another provider from an approved list provided by the commissioner or resume operation of the campus if approved by the commissioner.

If the commissioner approves the district's resumed operation of the campus, the commissioner shall assign a technical assistance team to assist the campus.

Education Code 39A.155

*Cancellation of
Management
Contract*

If a campus receives an unacceptable performance rating for two consecutive school years after a managing entity assumes management of the campus, the commissioner shall cancel the contract with the managing entity. *Education Code 39A.156*

Return of
Management to
District

Unless a campus has an unacceptable performance rating for three consecutive school years [see Continued Unacceptable Performance Rating, above], at the end of a management contract term or on the cancellation of a management contract, the board shall resume management of the campus. *Education Code 39A.157*

Applicability of Accountability Provisions	Each campus operated by a managing entity is subject to Education Code Chapters 39 and 39A in the same manner as any other campus in the district. <i>Education Code 39A.158</i>
Funding	The funding for a campus operated by a managing entity may not be less than the funding of the other campuses in the district on a per student basis so that the managing entity receives at least the same funding the campus would otherwise have received. <i>Education Code 39A.159</i>
Open Meetings and Public Information	With respect to the management of a campus by a managing entity: <ol style="list-style-type: none">1. A managing entity is considered to be a governmental body for purposes of the Texas Open Meetings Act and Public Information Act; and2. Any requirement in the Texas Open Meetings Act or Public Information Act that applies to a school district or the board of trustees of a district applies to a managing entity. <p><i>Education Code 39A.160</i></p>
Board of Managers General Powers and Duties	A board of managers may exercise all of the powers and duties assigned to a board of trustees of a school district by law, rule, or regulation. A board of managers appointed by the commissioner is required to take appropriate actions to resolve the conditions that caused a campus to be subject to the commissioner's order, including amending the district's budget, reassigning staff, or relocating academic programs. The commissioner may adopt rules necessary to implement this subsection. <i>Education Code 39A.201</i>
Board of Managers of District	If the commissioner appoints a board of managers to govern a district: <ol style="list-style-type: none">1. The powers of the board are suspended for the period of the appointment; and2. The commissioner shall appoint a district superintendent. <p>A board of managers appointed to govern a school district may amend the budget of the district.</p> <p>Education Code Chapter 39A applies to a school district governed by a board of managers in the same manner it applies to any other district.</p> <p><i>Education Code 39A.202</i></p>

Board of Managers
of Campus

If the commissioner appoints a board of managers to govern a campus:

1. The powers of the board of trustees of the school district in relation to the campus are suspended for the period of the appointment; and
2. The commissioner shall appoint a campus principal.

A board of managers appointed to govern a campus may submit to the commissioner for approval amendments to the budget of the school district for the benefit of the campus. If the commissioner approves the amendments, the board of trustees of the school district shall adopt the amendments.

Education Code 39A.203

Composition of
Board of Managers

A board of managers appointed by the commissioner must, if possible, include community leaders, business representatives who have expertise in leadership, and individuals who have knowledge or expertise in the field of education. *Education Code 39A.204*

Training of Board of
Managers

The commissioner must provide each individual appointed to a board of managers with training in effective leadership strategies. *Education Code 39A.205*

The training in effective leadership strategies shall be provided by TEA-approved authorized providers of board training to each individual appointed by the commissioner to a board of managers, and, following the expiration of the appointment of the board of managers, to the board of trustees of the school district. *19 TAC 97.1073(h)*

[JW 7/9/19: We don't include the details of 19 TAC 97.1073\(i\), amended to be effective February 4, 2019, 44 TexReg 477. I excluded it in U113, but I don't remember why. Do you think we should add more detail here?](#)

[\(i\)A board of trustees member appointed under subsection \(g\)\(4\) of this section must complete the training required in subsection \(h\) of this section prior to or within 10 days of the appointment. Failure to do so may result in the removal of the board of trustees member from the board of managers.](#)

[https://texreg.sos.state.tx.us/public/regviewer\\$ext.RegPage?sl=R&app=8&p_dir=&p_rloc=358618&p_tloc=&p_ploc=&pg=1&p_reg=358618&ti=19&pt=2&ch=97&rl=1073&issue=11/09/2018](https://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=R&app=8&p_dir=&p_rloc=358618&p_tloc=&p_ploc=&pg=1&p_reg=358618&ti=19&pt=2&ch=97&rl=1073&issue=11/09/2018)

JW 7/22/19: Consider adding when we redo AIC (as per CVC's suggestion).

Compensation	<p>The commissioner may authorize payment of a board of managers from TEA funds.</p> <p>A conservator or a member of a management team appointed to serve on a board of managers may continue to be compensated as determined by the commissioner.</p> <p><i>Education Code 39A.206</i></p>
Replacement of Member of Board of Managers	<p>The commissioner may at any time replace a member of a board of managers. The commissioner may adopt rules necessary to implement this section. <i>Education Code 39A.207</i></p>
Expiration of Appointment	<p>A board of managers shall, during the period of the appointment, order the election of members of the board of trustees of the school district in accordance with the law. The members of the board of trustees do not assume any powers or duties after the election until the appointment of the board of managers expires.</p> <p>Not later than the second anniversary of the date the board of managers of a school district was appointed, the commissioner shall notify the board of managers and the board of trustees of the date on which the appointment of the board of managers will expire. Following each of the last three years of the period of the appointment, one-third of the members of the board of managers shall be replaced by the number of members of the board of trustees who were elected at an election that constitutes, as closely as possible, one-third of the membership of the board of trustees.</p> <p>If, before the second anniversary of the date the board of managers of a school district was appointed, the commissioner determines, after receiving local feedback, that insufficient progress has been made toward improving the academic or financial performance of the district, the commissioner may extend the authority of the board of managers for a period of up to two additional years.</p> <p>On the expiration of the appointment of the board of managers, the board of trustees assumes all of the powers and duties assigned to a board of trustees by law, rule, or regulation.</p> <p>Following the expiration of the period of appointment of a board of managers for a school district, the commissioner shall provide training in effective leadership strategies to the board of trustees.</p> <p><i>Education Code 39A.208; 19 TAC 97.1073</i></p>

Removal of Board
of Managers

The commissioner may remove a board of managers appointed to govern a school district only if the campus that was the basis for the appointment of the board of managers receives an acceptable performance rating for two consecutive school years.

If a campus that was the basis for the appointment of a board of managers receives an unacceptable performance rating for two additional consecutive years following the appointment of the board of managers, the commissioner may remove the board of managers and, in consultation with the local community, may appoint a new board of managers to govern the district.

Following the removal of a board of managers, or at the request of a managing entity to oversee the implementation of alternative management, the commissioner may appoint a conservator or monitor for the district to ensure district-level support for low-performing campuses and to oversee the implementation of the updated targeted improvement plan.

Education Code 39A.209; 19 TAC 97.1073

**Challenge of
Intervention or
Sanction**

A district that challenges the commissioner's decision to close the district or a campus or to pursue alternative management of a campus must appeal the decision as provided below.

Review of
Sanctions by State
Office of
Administrative
Hearings

A challenge is under the substantial evidence rule [see Government Code, Chapter 2001, Subchapter G]. The commissioner shall adopt procedural rules for a challenge under this section.

Notwithstanding other law:

1. The State Office of Administrative Hearings (SOAH) shall conduct an expedited review of a challenge;
2. The administrative law judge shall issue a final order not later than the 30th day after the date on which the hearing is finally closed;
3. The decision of the administrative law judge is final and may not be appealed; and
4. The decision of the administrative law judge may set an effective date for an action under this section.

Education Code 39A.301

Annual Review

The commissioner shall annually review the performance of a district or campus subject to intervention and sanction to determine the appropriate actions to be implemented.

The commissioner must review at least annually the performance of a district for which the accreditation status or performance rating

has been lowered due to insufficient student performance and may not raise the accreditation status or performance rating until the district has demonstrated improved student performance.

If the review reveals a lack of improvement, the commissioner shall increase the level of state intervention and sanction unless the commissioner finds good cause for maintaining the current status.

Education Code 39A.901

Increasing Intensity

If a district or campus does not exhibit improvement in student performance, the commissioner may increase the intensity of intervention and sanction that would otherwise be required by statute or rule, including ordering campus closure, district annexation, or appointment of a board of managers.

For purposes of this section, improvement means an increase in the scaled score for the overall academic performance rating under Education Code Chapter 39.

19 TAC 97.1070(a)–(b)

**Special
Accreditation
Investigations**

The commissioner may authorize a special accreditation investigation:

1. When excessive numbers of absences of students eligible to be tested on state assessment instruments are determined;
2. When excessive numbers of allowable exemptions from the required state assessment are determined;
3. In response to complaints to TEA of alleged violations of civil rights or other requirements imposed on the state by federal law or court order;
4. In response to established compliance reviews of the district's financial accounting practices and state and federal reporting requirements;
5. When extraordinary numbers of student placements in disciplinary alternative education programs, other than placements under Education Code 37.006 and 37.007, are determined;
6. In response to an allegation involving a conflict between members of the board or between the board and the district administration if it appears that the conflict involves a violation of a role or duty of the board members or the administration clearly defined by the Education Code. If TEA's findings indicate the board has observed a lawfully adopted policy, TEA may not substitute its judgment for that of the board;

7. When excessive numbers of students in special education programs are assessed through modified assessment instruments;
8. In response to an allegation regarding, or an analysis using a statistical method result indicating, a possible violation of an assessment instrument security procedure;
9. When a significant pattern of decreased academic performance has developed as a result of the promotion in the preceding two school years of students who did not perform satisfactorily on the state assessments;
10. When excessive numbers of students eligible to enroll fail to complete an Algebra II course or any other advanced course as determined by the commissioner;
11. When resource allocation practices indicate a potential for significant improvement in resource allocation;
12. When a disproportionate number of students of a particular demographic group is graduating with a particular endorsement;
13. When an excessive number of students is graduating with a particular endorsement;
14. When a school district for any reason fails to produce, at the request of TEA, evidence or an investigation report relating to an educator who is under investigation by the State Board for Educator Certification;
15. In response to a complaint with respect to alleged inaccurate data that is reported through PEIMS or through other reports required by state or federal law or rule or court order and that is used by TEA to make a determination relating to public school accountability, including accreditation, under Education Code Chapter 39;
16. In response to repeated complaints concerning imposition of excessive paperwork requirements on classroom teachers; or
17. As the commissioner otherwise determines necessary.

Education Code 39.057(a)–(c)

TEA shall adopt written procedures for conducting special accreditation investigations, including procedures that allow TEA to obtain information from district employees in a manner that prevents a district or campus from screening the information. *Education Code 39.058(a); 19 TAC 102.1401*

Commissioner
Action

Based on the results of a special accreditation investigation, the commissioner may:

1. Take appropriate action under Education Code Chapter 39A, [see Interventions and Sanctions for School Districts, above];
2. Lower the district's accreditation status or a district's or campus's performance rating; or
3. Take action under both items 1 and 2 above.

Regardless of whether the commissioner lowers the accreditation status or a district's or campus's performance rating, the commissioner may impose one of the district- or campus-level interventions or sanctions under Education Code 39A.002 [see Interventions and Sanctions for School Districts, above].

Education Code 39.057(d), (e)

**Miscellaneous
Provisions**

Acquisition of
Professional
Services

In addition to other authorized interventions and sanctions, the commissioner may order a district or campus to acquire professional services at the expense of the district or campus to address the applicable financial, assessment, data quality, program, performance, or governance deficiency. The commissioner's order may require the district or campus to:

1. Select or be assigned an external auditor, data quality expert, professional authorized to monitor district assessment instrument administration, or curriculum or program expert; or
2. Provide for or participate in the appropriate training of district staff or board members in the case of a district, or campus staff, in the case of a campus.

Education Code 39A.902

Costs Paid by
District

The costs of providing a monitor, conservator, management team, campus intervention team, technical assistance team, managing entity, or service provider shall be paid by the district. If the district fails or refuses to pay the costs in a timely manner, the commissioner may:

1. Pay the costs using amounts withheld from any funds to which the district is otherwise entitled; or
2. Recover the amount of the costs in the manner provided for recovery of an over allocation of state funds under Education Code 42.272~~58~~.

Education Code 39A.903

JW 6/30/19: HB 3, effective 9-1-2019.

Monitoring Reviews
and On-Site
Investigations

Except as provided by Education Code 7.028(a), ~~the~~ commissioner may direct TEA to conduct monitoring reviews and random on-site visits of a district at any time, as authorized by Education Code 7.028, only as necessary to ensure:

1. Compliance with federal law and regulations;
2. Financial accountability, including compliance with grant requirements; and
3. Data integrity for purposes of:
 - a. The Public Education Information Management System (PEIMS); ~~and~~
 - b. Accountability under Education Code Chapter 39 and 39A; and-
4. Qualification for funding under Chapter 48.

JW 6/30/19: HB 3, section 2.001. Art. 2 takes effect 6/12/2019 and applies beginning the 2019-20 school year.

I did not add the “except as provided by” details listed in the original statute and HB 3. I did add the “except as provided by” language that refers the reader to look at the statute for the list. The statute included limitations prior to this legislative session.

If I had more time, I would chunk this into smaller citations and distinguish the content that is coming from TEC 39.056.

~~b.~~ SB 2075 also amended the list of exclusions under 7.028(a), but it shouldn’t effect the way this is written.

A monitoring review may include desk reviews and on-site visits, including random on-site visits. In conducting a monitoring review, TEA may obtain information from administrators, other district employees, parents of students enrolled in the district, and other persons as necessary.

The commissioner may at any time convert a monitoring review to a special accreditation investigation under Education Code 39.057, provided the commissioner promptly notifies the district of the conversion. TEA shall give written notice to the superintendent and the board of any impending monitoring review.

TEA shall report in writing to the superintendent and president of the board and shall make recommendations concerning any necessary improvements or sources of aid such as regional education service centers. A district that takes action with regard to the recommendations provided by TEA shall make a reasonable effort to

seek assistance from a third party in developing an action plan to improve district performance using improvement techniques that are goal-oriented and research-based.

Education Code 7.028, 39.056

Immunity from Civil Liability

An employee, volunteer, or contractor acting on behalf of the commissioner, or a member of a board of managers appointed by the commissioner, is immune from civil liability to the same extent as a professional employee of a district under Education Code 22.051.

Education Code 39A.904

Campus Name Change Prohibited

In reconstituting, repurposing, or imposing any other intervention or sanction on a campus, the commissioner may not require that the name of the campus be changed. *Education Code 39A.905*

Transitional Interventions and Sanctions

For a campus that received an unacceptable performance rating for the 2013–14, 2014–15, and 2015–16 school years, the commissioner may apply the interventions and sanctions authorized by Chapter 39 as that chapter existed on January 1, 2015, to the campus.

If a campus receives an unacceptable performance rating for the 2016–17 and 2017–18 school years, the commissioner shall apply the interventions and sanctions authorized when a campus has an unacceptable performance rating for three consecutive school years under current law.

For a campus that received an acceptable performance rating for the 2013–14 school year and an unacceptable performance rating for the 2014–15 and 2015–16 school years, the commissioner shall apply interventions and sanctions in current law to the campus. If the campus receives an unacceptable performance rating for the 2016–17, 2017–18, and 2018–19 school years, the commissioner shall apply the interventions and sanctions authorized when a campus has an unacceptable performance rating for three consecutive school years under current law.

These transition provisions expire September 1, 2020.

Education Code 39A.906

Special Program Performance: Intervention Stages

The commissioner shall assign a district to an intervention stage based on performance levels under 19 Administrative Code 97.1005 (relating to Performance-Based Monitoring Analysis System) [see AIB] according to the criteria and requirements in 19 Administrative Code 97.1071.

Intervention actions taken under this section are intended to assist the district in raising its performance and/or achieving compliance

under 19 Administrative Code 97.1005 and do not preclude or substitute for a sanction under another provision of Chapter 97, Subchapter EE.

19 TAC 97.1071

Intervention Pause

Except as otherwise provided by 19 Administrative Code 97.1062 and unless extended by the commissioner, TEA will cease to enforce the interventions under Education Code 39A.101-39A.111 until conclusion of the second consecutive school year of operation under:

1. A partnership as defined by 19 Administrative Code 97.1077(a)(2), (b), or (c) of this title [see ELA]; or
2. Designation as a mathematics innovation zone under Education Code 28.020 and applicable rules.

Any intervention or sanction not covered by the provision above shall continue.

If a campus ceases to qualify for the intervention pause at any point during a school year, TEA will resume previously ordered interventions and sanctions, order interventions and sanctions based on the rating from that school year, and count that rating for purposes of consecutive years of performance.

19 TAC 97.1062

Failure to Submit
EOP

If TEA receives notices from the Texas School Safety Center of a district's failure to submit a multihazard emergency operations plan [see CKC], the commissioner may appoint a conservator for the district under Education Code Chapter 39A. The conservator may order the district to adopt, implement, and submit a multihazard emergency operations plan. If a district fails to comply with a conservator's order to adopt, implement, and submit a multihazard emergency operations plan within the time frame imposed by the commissioner, the commissioner may appoint a board of managers under Education Code Chapter 39A to oversee the operations of the district. Education Code 37.1082(a)-(b)

JW 7/26/19: Suggested by Jov. SB 11, effective 6.6.2019.

Note: The following provisions apply to a district with a central administrative office that is located in a county with a population of more than two million and that has a student enrollment that is more than 125,000 and less than 200,000, and that is operating under a turnaround plan.

Student Board
Member

Notwithstanding Education Code 11.051(b) (regarding number of trustees on a school board), the board may adopt a resolution establishing as a nonvoting member a student trustee position. If a board adopts such a resolution, the board shall adopt a policy addressing the topics specified in statute. *Education Code 11.0511*

Please Note: This manual does not have policies in all codes. The coding structure is common to all TASB manuals and is designed to accommodate expansion of both (LEGAL) and (LOCAL) policy topics and administrative regulations.

SECTION B: LOCAL GOVERNANCE

BA	BOARD LEGAL STATUS
BAA	Powers and Duties
BB	BOARD MEMBERS
BBA	Eligibility/Qualifications
BBB	Elections
BBBA	Conducting Elections
BBBB	Post-election Procedures
BBBC	Campaign Finance
BBBD	Campaign Ethics
BBC	Vacancies and Removal From Office
BBD	Training and Orientation
BBE	Authority
BBF	Ethics
BBFA	Conflict of Interest Disclosures
BBFB	Prohibited Practices
BBG	Compensation and Expenses
BBH	Conventions, Conferences, and Workshops
BBI	Technology Resources and Electronic Communications
BC	BOARD MEMBERSHIPS
BD	BOARD INTERNAL ORGANIZATION
BDA	Officers and Officials
BDAA	Duties and Requirements of Board Officers
BDAE	Duties and Requirements of Depository
BDAF	 Selection and Duties of Chief Tax Officials
BDB	Internal Committees
BDD	Attorney
BDE	Consultants
BDF	Citizen Advisory Committees
BE	BOARD MEETINGS
BEC	Closed Meetings
BED	Public Participation
BEE	News Coverage
BEF	Staff Participation
BF	BOARD POLICIES
BG	BOARD SELF-EVALUATION
BI	ADMINISTRATIVE GOALS AND OBJECTIVES

Please Note: This manual does not have policies in all codes. The coding structure is common to all TASB manuals and is designed to accommodate expansion of both (LEGAL) and (LOCAL) policy topics and administrative regulations.

SECTION B: LOCAL GOVERNANCE

BJ	SUPERINTENDENT
BJA	Qualifications and Duties
BJB	Recruitment and Appointment
BJC	Contract
BJCA	Travel
BJCB	Professional Development
BJCC	Consulting
BJCD	Evaluation
BJCE	Suspension/Termination During Contract
BJCF	Nonrenewal
BJCG	Resignation
BK	ADMINISTRATIVE ORGANIZATION
BKA	Organization Charts
BKB	Line and Staff Relations
BM	ADMINISTRATIVE COUNCILS, CABINETS, AND COMMITTEES
BP	ADMINISTRATIVE REGULATIONS
BQ	PLANNING AND DECISION-MAKING PROCESS
BQA	District-Level
BQB	Campus-Level
BR	REPORTS

Note: This policy addresses the powers and duties of the board set forth in Education Code Chapter 11, Subchapter D. For other powers and duties of the board not listed below, see the applicable policy codes.

The trustees as a body corporate have the exclusive power and duty to govern and oversee the management of the public schools of the district. The trustees may adopt rules and bylaws necessary to carry out these powers and duties.

All powers and duties not specifically delegated by statute to [the Texas Education Agency](#) ~~TEA~~ or the State Board of Education are reserved for the board.

Education Code 11.151(b), (d)

Mandatory Powers and Duties

A board shall:

1. Seek to establish working relationships with other public entities to make effective use of community resources and to serve the needs of public school students in the community.
2. Adopt a vision statement and comprehensive goals for the district and the superintendent, and monitor progress toward those goals. [See AE]
3. Establish performance goals for the district concerning the academic and fiscal performance indicators under Education Code Chapter 39, Subchapters C, D, and J, and any performance indicators adopted by the district. [See AI series]
4. Provide oversight regarding student academic achievement and strategic leadership for maximizing student performance. *Education Code 11.1515* [See AIB]
5. Ensure that the superintendent is accountable for achieving performance results, recognizes performance accomplishments, and takes action as necessary to meet performance goals. [See BJA]
6. Collaborate with the superintendent as set forth at Education Code 11.1512(b). [See BJA]
7. Adopt a policy to establish a district- and campus-level planning and decision-making process as required under Education Code 11.251. [See BQ series]
8. Publish an annual educational performance report as required under Education Code 39.306. [See AIB, BQ series]

9. Adopt an annual budget for the district as required under Education Code 44.004. [See CE]
10. Adopt a tax rate each fiscal year as required by Tax Code 26.05. [See CCG]
11. Monitor district finances to ensure that the superintendent is properly maintaining the district's financial procedures and records. [See CF series]
12. Ensure that district fiscal accounts are audited annually as required by Education Code 44.008. [See CFC]
13. Publish an end-of-year financial report for distribution to the community. [See CFA]
14. Conduct elections as required by law. [See BBB series]
15. By rule, adopt a process through which district personnel, students or the parents or guardians of students, and members of the public may obtain a hearing from the district administrators and the board regarding a complaint. [See DGBA, FNG, and GF]
16. Make decisions relating to terminating the employment of district employees employed under a contract to which Education Code Chapter 21 applies, including terminating or not renewing an employment contract to which that chapter applies. [See DF series]
17. Select the internal auditor if a district employs an internal auditor. The internal auditor shall report directly to the board. *Education Code 11.170* [See DC]
18. Adopt a policy providing for the employment and duties of district personnel. *Education Code 11.1513* [See BJ series, DC series, and DEA series]
- [19.](#) Limit redundant requests for information and the number and length of written reports that a classroom teacher is required to prepare. The board shall review paperwork requirements imposed on classroom teachers and transfer to existing non-instructional staff a reporting task that can reasonably be accomplished by that staff. *Education Code 11.164* [See DLB]
- [20.](#) [Adopt a cybersecurity policy. Education Code 11.175](#) [See CQB]

[KGC 6/29/19: SB 820, effective 9.1.19.](#)

- [21. Adopt early childhood literacy and mathematics proficiency plans. *Education Code 11.185* \[See EA\]](#)
- [22. Adopt college, career, and military readiness plans. *Education Code 11.186* \[See EA\]](#)

19. [kgc 7/7/19: HB 3, generally effective 9.1.19 \(but I think these are in Article 2, which is effective 6.12.19.\) Please confirm xref & the effective date with whatever JW said for these reqts.](#)

- [23. Conduct an efficiency audit before seeking voter approval to adopt a tax rate for the maintenance and operations of the district at an election held for that purpose. *Education Code 11.184* \[See CCG\]](#)

[kgc 8/8/19: HB 3, this provision is effective 1.1.20. I just realized that it is in Ed. Code Ch. 11, subch. D. INCLUDE in ALL versions EXCEPT MS & ST.](#)

- ~~20-24.~~ Carry out other powers and duties as provided by the Education Code or other law.

Education Code 11.1511(b), except as noted

**Discretionary
Powers and Duties**

A board may:

1. Issue bonds and levy, pledge, assess, and collect an annual ad valorem tax to pay the principal and interest on the bonds as authorized under Education Code 45.001 and 45.003. *Education Code 11.1511(c)(1)* [See CCA]
2. Levy, assess, and collect an annual ad valorem tax for maintenance and operation of a district as authorized under Education Code 45.002 and 45.003. *Education Code 11.1511(c)(2)* [See CCG]
3. Employ a person to assess or collect the district's taxes as authorized under Education Code 45.231. *Education Code 11.1511(c)(3)* [See [BDAFCCG](#)]
4. Require a district's chief business official or curriculum director or a person holding an equivalent position to appear at an executive session of the board or to testify at a public hearing held by the board. *Education Code 11.1511(d)* [See BJA regarding prohibition of superintendent interference]
5. Enter into contracts as authorized under the Education Code or other law and delegate contractual authority to a superintendent as appropriate. *Education Code 11.1511(c)(4)*

6. Sue and be sued in the name of the district. *Education Code 11.151(a)*
7. Receive bequests and donations or other moneys or funds coming legally into its hands in the name of the district. A conveyance, devise, or bequest of property for the benefit of the public schools, if not otherwise directed by the donor, vests the property in the board or their successors in office. *Education Code 11.151(a), .156* [See CDC]
8. Contract with a public or private entity for that entity to provide educational services for the district. *Education Code 11.157* [See EEL]
9. Charge fees as set forth at Education Code 11.158. *Education Code 11.158* [See FP]
10. Change the name of the district. *Education Code 11.160* [See AB]
11. Adopt rules that require students at a school in the district to wear school uniforms as set forth at Education Code 11.162. *Education Code 11.162* [See FNCA]
12. Adopt rules to keep school campuses, including school libraries, open for recreational activities, latchkey programs, and tutoring after school hours. *Education Code 11.165*
13. Operate a school or program or hold a class on the campus of an institution of higher education as set forth at Education Code 11.166. *Education Code 11.166* [See GNC]
14. Operate a school or program, including an extracurricular program, or hold a class outside the boundaries of the district. *Education Code 11.167* [See GNA]
15. Use the board evaluation tool developed by the commissioner of education. *Education Code 11.182* [See BG]

~~14.~~ kgc 8/8/19: Added per discussion with CVC. ADD TO ALL VERSIONS.

~~Establish before-school or after-school programs for students enrolled in elementary or middle school grades. *Education Code 33.9031*~~

kgc 8/8/19: deleted per email from CVC; will be added elsewhere (E or F) in a later update. REMOVE FROM ALL VERSIONS.

~~15.~~ kgc 8/8/19: This shouldn't be here because it isn't Ed Code ch 11, subch D. It was my error in U109. It should be deleted when we find a better placement.

District Property

A board may acquire and hold real and personal property in the name of the district. All rights and titles to the school property of a district, whether real or personal, shall be vested in the trustees and their successors in office. *Education Code 11.151(a), (c)* [See CHG]

The board may, by resolution, authorize the sale of any property, other than minerals, held in trust for public school purposes. The trustees may, in any appropriate manner, dispose of property that is no longer necessary for the operation of the district. *Education Code 11.151(c), .154(a)* [See CI]

The board may, by resolution, authorize the donation of real property and improvements formerly used as a school campus to a municipality, county, state agency, or nonprofit organization as provided at Education Code 11.1541. *Education Code 11.1541* [See CDB]

Minerals in land belonging to the district may be sold to any person. The sale must be authorized by a resolution adopted by majority vote of the board. *Education Code 11.153* [See CDB]

**Restrictions on
Board Powers and
Duties**

A board may not:

~~1. Enter into an agreement authorizing the use of district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district, except as provided at Education Code 45.109. *Education Code 11.168* [See CE]~~

~~16. Impose taxes; issue bonds; use or authorize the use of district employees; use or authorize the use of district property, money, or other resources; or acquire property for the design, construction, renovation, or operation of a hotel. *Education Code 11.178* [See CE]~~

Note: For restrictions on a board's authority to use district resources for certain purposes, see CE(LEGAL).

kgc 8/8/19: per discussion with CVC to eliminate duplication.

~~2.~~ This change will be made to ALL versions.

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Eligibility

To be eligible to be a candidate for, or elected or appointed to, the office of school board member, a person must:

1. Be a United States citizen.
2. Be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable.
3. Have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote.
4. Have not been ~~finally~~ convicted of a felony ~~from which the person has not been pardoned or otherwise released from the resulting disabilities.~~
5. Have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date:
 - a. For an independent candidate, the date of the regular filing deadline for a candidate's application for a place on the ballot.
 - b. For a write-in candidate, the date of the election at which the candidate's name is written in.
 - c. For an appointee to an office, the date the appointment is made.
6. Be registered to vote in the territory from which the office is elected on the date described at item 5, above.

Election Code 1.020, 141.001(a); [Education Code 11.066](#); Gov't Code 601.009; [Brown v. Patterson](#), 609 S.W.2d 287 (Tex. Civ. App.—Dallas 1980, no writ); Tex. Const. Art. XVI, Sec. 14

KGC 6/20/19: SB 2283, effective 9.1.19, makes a person ineligible TO SERVE (not to run) as a school board trustee. The eligibility TO RUN is from the Election Code as set out above before revision, but I don't think it makes sense to include this language here because if they

qualify to run but can't take the office, that just wastes district time and resources.

There may be confusion bc the SOS form will still have the language about pardon, etc., but I don't think that warrants leaving it here.

Qualified Voter

A person may not be elected trustee of an independent school district unless the person is a qualified voter. *Education Code 11.061(b)*

“Qualified voter” means a person who:

1. Is 18 years of age or older;
2. Is a United States citizen;
3. Has not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote;
4. Has not been finally convicted of a felony [see also Atty. Gen. Op. LO 96-114 (1996) (concluding that caveat at Election Code 11.002 does not mitigate blanket prohibition in Election Code 141.001, above at Eligibility)];
5. Is a resident of this state; and
6. Is a registered voter.

Election Code 1.020, 11.002

Residency

“Residence”
Defined

“Residence” means domicile, one’s home and fixed place of habitation to which one intends to return after any temporary absence; one does not lose one’s residence status by leaving to go to another place for temporary purposes only. A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home. Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by the Election Code. *Election Code 1.015*

Note: The issue of whether a candidate has satisfied residency requirements should be judicially determined. *State v. Fischer, 769 S.W.2d 619 (Tex. App.—Corpus Christi 1989, writ dismiss’d w.o.j)*

Intent to Return

For purposes of satisfying the continuous residency requirement, a person who claims an intent to return to a residence after a temporary absence may establish ~~their~~ that intent only in accordance with

Election Code 141.001(a-1), which does not apply to a person displaced from the person's residence due to a declared local, state, or national disaster. ~~Election Code 141.001(a-1)–(a-2)~~

kgc 7/7/19: I think we should move the note up before this provision. I'm torn about including this at all; however, I'd rather have it here in this context with the note than not include it and have someone show up with the statute (and no note) demanding that the district enforce it.

KGC 6/20/19: This is from HB 831, effective 1.1.20. I suggest presenting it this way AND leaving the note below. This should lead people to call for guidance. At a minimum, they have to look up the statute. I almost didn't include "only," but I think it's necessary. Here's the statutory language:

(a-1) For purposes of satisfying the continuous residency requirement of Subsection (a)(5), a person who claims an intent to return to a residence after a temporary absence may establish that intent **only** if the person:

(1) has made a reasonable and substantive attempt to effectuate that intent; and

(2) has a legal right and the practical ability to return to the residence.

(a-2) Subsection (a-1) does not apply to a person displaced from the person's residence due to a declared local, state, or national disaster.

Of course I haven't included the provision about the authority who accepts applications for the general primary election bc that has no application to us.

Single-Member
Districts

A candidate for board member representing a single-member district must be a resident of the district the candidate seeks to represent. *Education Code 11.052(g)*

~~**Note:** The issue of whether a candidate has satisfied residency requirements should be judicially determined. *State v. Fischer, 769 S.W.2d 619 (Tex. App.—Corpus Christi 1989, writ dismissed w.o.j.)*~~

Ineligibility

A person is ineligible to serve as a member of the board of a district if the person has been convicted of a felony or an offense under Penal Code 43.02(b) (regarding prostitution). *Education Code 11.066*

KGC 6/20/19: I've added the felony language from SB 2283, effective 9.1.19, here for the sake of presenting the full statute, but I've cited this statute above at the list of eligibility requirements.

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Membership

The board consists of the number of members that the district had on September 1, 1995. *Education Code 11.051(b)*

Increase in
Membership

A board that has three or five members may by resolution increase the membership to seven. A board that votes to increase its membership must consider whether the district would benefit from also adopting a single-member election system under Education Code 11.052. [See Single-Member Districts, below.]

A resolution increasing the number of trustees takes effect with the second regular election of trustees that occurs after the adoption of the resolution. The resolution must provide for a transition in the number of trustees so that when the transition is complete, trustees are elected as provided by Education Code 11.059 (regarding terms).

Education Code 11.051(c)

Terms

A trustee of a district serves a term of three or four years.

Elections for trustees with three-year terms shall be held annually. The terms of one-third of the trustees, or as near to one-third as possible, expire each year.

Elections for trustees with four-year terms shall be held biennially. The terms of one-half of the trustees, or as near to one-half as possible, expire every two years.

Board policy must state the schedule on which specific terms expire.

Education Code 11.059

Note: [For website posting requirements regarding trustee information, see CQA.](#)

kgc 7/6/19: HB 963, effective 6.14.19

**Uniform Election
Dates**

Each general or special election of board members shall be on one of the following dates:

BOARD MEMBERS
ELECTIONS

BBB
(LEGAL)

1. The first Saturday in May.
2. The first Tuesday after the first Monday in November.

Election Code 41.001(a)

Joint Elections

Required

A district trustee election shall be held on the same date as:

1. The election for the members of the governing body of a municipality located in the district;
2. The general election for state and county officers, which is held on the first Tuesday after the first Monday in November in even-numbered years under Election Code 41.002;
3. The election for the members of the governing body of a hospital district, if the school district:
 - a. Is wholly or partly located in a county with a population of less than 40,000 that is adjacent to a county with a population of more than three million; and
 - b. Held its election for board members jointly with the election for the members of the governing body of the hospital district before May 2007; or
4. The election for the members of the governing board of a public junior college district in which the school district is wholly or partly located.

Elections held on the same date as provided above shall be held as a joint election under Election Code Chapter 271, and the voters shall be served by common polling places consistent with Election Code 271.003(b).

Education Code 11.0581(a)–(c)

A board may enter into an agreement with another political subdivision holding an election on the same day in all or part of the same county to hold the elections jointly. The terms of a joint election agreement must be stated in an order, resolution, or other official action adopted by the board. *Election Code 271.002*

**Methods of
Election—Options**

At Large

In a district in which the positions of trustees are not designated by number or in which the trustees are not elected from single-member trustee districts, the candidates receiving the highest number of votes shall fill the positions the terms of which are normally expiring. *Education Code 11.057(b)*

Position or Place

The positions on the board shall be designated by number in any district in which the board by resolution orders that all candidates for trustee be voted on and elected separately for positions on the

board and that all candidates be designated on the official ballot according to the number of the positions for which they seek election.

Not later than the 60th day before the date of an election, the board must make the resolution and number the positions on the board in the order in which the terms of office expire. Once a board has ordered the election of trustees by numbered positions, neither the board nor their successors may rescind the action.

Education Code 11.058(c)–(f)

Single-Member
Districts

*On Board's
Motion*

Except as provided below, the board, on its own motion, may order that trustees of the district are to be elected from single-member districts or that not fewer than 70 percent of the members of the board are to be elected from single-member districts with the remaining board members to be elected from the district at large.

If a majority of the area of a district is located in a county with a population of less than 10,000, a board, on its own motion, may order that trustees of the district are to be elected from single-member districts or that not fewer than 50 percent of the members of the board are to be elected from single-member districts with the remaining board members to be elected from the district at large.

Before adopting an order, a board must:

1. Hold a public hearing at which registered voters of a district are given an opportunity to comment on whether or not they favor the election of trustees in the manner proposed by the board; and
2. Publish notice of the hearing in a newspaper that has general circulation in the district, not later than the seventh day before the date of the hearing.

An order adopted by the board must be entered not later than the 120th day before the date of the first election at which all or some of the trustees are elected from single-member districts authorized by the order.

Education Code 11.052(a)–(d)

By Voter Petition

If at least 15 percent or 15,000 of the registered voters of the district, whichever is less, sign and present to the board a petition requesting submission to the voters of the proposition that trustees be elected in a specific manner, which must be generally described on the petition and which must be a manner of election the board could have ordered on its own motion, the board shall order that

BOARD MEMBERS
ELECTIONSBBB
(LEGAL)

the appropriate proposition be placed on the ballot at the first regular election of trustees held after the 120th day after the date the petition is submitted to the board. The proposition must specify the number of trustees to be elected from single-member districts. Beginning with the first regular election of trustees held after an election at which a majority of the registered voters voting approve the proposition, trustees shall be elected in the manner prescribed by the approved proposition. *Education Code 11.052(e)*

*Board Member
Districts*

If single-member districts are adopted or approved by either method described above, the board shall divide the district into the appropriate number of trustee districts, based on the number of members that are to be elected from single-member districts, and shall number each trustee district. The trustee districts must be compact and contiguous and must be as nearly as practicable of equal population. In a district with 150,000 or more students in average daily attendance, the boundary of a trustee district shall not cross a county election precinct boundary except at a point at which the district boundary crosses the county election precinct boundary. Trustee districts must be drawn not later than the 90th day before the date of the first election of trustees from those districts. *Education Code 11.052(f)*

*Residency for
First Election*

Residents of each trustee district are entitled to elect one trustee to the board. A trustee elected to represent a trustee district at the first election of members must be a resident of the district the trustee represents not later than the 90th day after the date election returns are canvassed, or the 60th day after the date of a final judgment in an election contest filed concerning that trustee district. A trustee vacates the office if the trustee fails to move into the district the trustee represents within the time provided. [For more information on residency, see BBA and BBC.] *Education Code 11.052(g)*

*Number and
Term*

At the first election at which some or all of the trustees are elected from single-member trustee districts and after each redistricting, all positions on a board shall be filled. The trustees then elected shall draw lots for staggered terms as provided by Education Code 11.059 (regarding terms). *Education Code 11.052(h)*

Redistricting

Not later than the 90th day before the date of the first regular board election at which trustees may officially recognize and act on the last preceding federal census, a board shall redivide a district into the appropriate number of trustee districts if the census data indicates that the population of the most populous district exceeds the population of the least populous district by more than ten percent. Redivision of a district shall be in the manner provided above at Board Member Districts. *Education Code 11.052(i)*

Phase-in Option

The board of a district that adopts a redistricting plan may provide for the trustees in office when the plan is adopted or the district is redistricted to serve for the remainder of their terms in accordance with this provision. The trustee district and any at-large positions provided by the district's plan shall be filled as the staggered terms of trustees then in office expire. Not later than the 90th day before the date of the first election from trustee districts and after each re-districting, a board shall determine the order in which the positions will be filled. *Education Code 11.053*

**Boundary Change
Notice**

A district that changes its boundaries or the boundaries of districts used to elect members to the board shall not later than the 30th day after the date the change is adopted:

1. Notify the voter registrar of the county in which the area subject to the boundary change is located of the adopted boundary change; and
2. Provide the voter registrar with a map of an adopted boundary change in a format that is compatible with the mapping format used by the registrar's office.

Election Code 42.0615

**Methods of Voting—
Options**

Plurality

Except as otherwise provided at Majority, below, to be elected to a public office, a candidate elected at large, at large by position, or by single-member districts must receive more votes than any other candidate for the office. *Education Code 11.057(a), (b); Election Code 2.001*

Cumulative

The board of a district that elects its trustees at large or at large by position may order that elections for trustees be held using the cumulative voting procedure.

If a board adopts an order requiring the use of cumulative voting, only the board member positions that were scheduled to be filled at the election are filled through the use of cumulative voting.

At an election at which more than one board member position is to be filled, all of the positions that are to be filled at the election shall be voted on as one race by all the voters of a district. Each voter is entitled to cast a number of votes equal to the number of positions to be filled at the election.

A voter may cast one or more of the specified number of votes for any one or more candidates in any combination. Only whole votes may be cast and counted. If a voter casts more than the number of votes to which the voter is entitled in the election, none of the voter's votes may be counted in that election. If a voter casts fewer

votes than entitled, all of the voter's votes are counted in that election.

The candidates who are elected are those, in the number to be elected, receiving the highest number of votes.

A district that adopts an order requiring the use of cumulative voting may not elect its members by position as provided by Education Code 11.058.

Education Code 11.054

Majority

The board of a district in which the positions of trustees are designated by number or in which the trustees are elected from single-member districts may provide by resolution, not later than the 180th day before the date of an election, that a candidate must receive a majority of the votes cast for a position or in a trustee district, as applicable, to be elected.

The resolution is effective until rescinded by a subsequent resolution adopted not later than the 180th day before the date of the first election to which the rescission applies.

Education Code 11.057(c)

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Notice of Polling Place

Any written notice of a polling place location must state the building name, if any, and the street address, including the suite or room number, if any, of the polling place. *Election Code 1.021*

KGC 6/20/19: Added by HB 1242, effective September 1, 2019. It doesn't seem like it really goes here at m1, but polling places are listed in the order and notice, so I want to be sure districts see it before that info.

Election Order

The board shall order an election. An election to be held on a uniform election date shall be ordered not later than the 78th day before election day. *Election Code 3.004, .005*

Each election order must state:

1. The date of the election;
2. The offices or measures to be voted on;
3. The early voting clerk's official mailing address;
4. The location of the main early voting polling place;
5. The dates and hours for early voting; and
6. The dates and hours of any Saturday and Sunday early voting.

Election Code 3.006, 83.010, 85.004, .007

A board shall preserve the election order for the period for preserving the precinct election records. The date and nature of each election shall be entered in the official records of the board. For an election on a measure, the entry must include a description of the measure. *Election Code 3.008*

Failure to Order an Election

Failure to order a general election does not affect the validity of the election. *Election Code 3.007*

Election Notice

Contents

Notice of the election must state:

1. The nature and date of the election;
2. The location of each polling place;

3. The hours the polls will be open;
4. The early voting clerk's official mailing address;
5. The location of the main early voting polling place; and
6. The dates and hours for early voting, including the dates and hours of any Saturday and Sunday early voting.

Election Code 4.004(a), 83.010, 85.004, .007

Notice of Special Election The notice of a special election must also state each office to be filled or the proposition stating each measure to be voted on. *Election Code 4.004(b)*

Publication Notice of the election shall be published at least once, not earlier than the 30th day or later than the tenth day before election day, in a newspaper published within the district's boundaries or in a newspaper of general circulation in the district if none is published within the district's boundaries. The board shall retain a copy of the published notice that contains the name of the newspaper and the date of publication. *Election Code 4.003(a)(1), (c), .005(a)*

Posting In addition to the notice described above, not later than the 21st day before election day, ~~the district~~ a county shall post a copy of ~~the~~ notice of election provided to the county ~~{see Notice to County Clerk and Voter Registrar, below}~~, which must include the location of each polling place, on the county's internet website, if the county maintains a website. A district may post a copy of the notice on the bulletin board used for posting notices of the meetings of the board. If a county does not maintain a website, the district shall post a copy of the notice of the election on the bulletin board used for posting notice of meetings of the board. The notice must remain posted continuously through election day. The person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the board after the last posting is made. *Election Code 4.003(b), .005(b)*

kgc 7/7/19: HB 933, effective 9.1.19

A district that maintains a website must post the notice described above on the internet website of the district. *Election Code 85.007(d)*

Note: [For additional website posting requirements regarding the date and location of the next election, see CQA.](#)

kgc 7/6/19: I considered setting out the relevant part of HB 305, effective 9.1.19, here, but I don't want to duplicate bits of it out of context in at least 3 or 4 different locations here and in BE. At a minimum, that would complicate future updating. I'd rather have this note, which still may require updating if the statute changes, but we don't risk having an out-of-date statute in the policy.

Notice to County
Clerk and Voter
Registrar

The board shall deliver notice of the election, [including the location of each polling place](#), to the county clerk and voter registrar of each county in which the district is located not later than the 60th day before election day. [The county clerk shall post notice of the election, including the location of each polling place, on the county's internet website, if the county maintains a website, as provided by Election Code 4.003\(b\). Election Code 4.008\(a\) \[See Posting, above\]](#)

kgc 7/8/19: HB 933, effective 9.1.19

Notice to Election
Judge

Not later than the 15th day before election day or the seventh day after the date the election is ordered, whichever is later, the board shall deliver to the presiding judge of each election precinct in which the election is to be held in the district a written notice of:

1. The nature and date of the election;
2. The location of the polling place for the precinct served by the judge;
3. The hours that the polls will be open;
4. The judge's duty to hold the election in the precinct specified by the notice; and
5. The maximum number of clerks that the judge may appoint for the election.

Election Code 4.007

Failure to Give
Notice of Election

Failure to give notice of a general election does not affect the validity of the election. *Election Code 4.006*

Filing Information

Notice to
Candidates

A district shall post notice of the dates of the filing period in a public place in a building in which the district has an office not later than the 30th day before the first day on which a candidate may file an application for a place on the ballot. *Election Code 141.040*

Note: [For additional website posting requirements regarding the requirements and deadline for filing for candidacy of board member, see CQA.](#)

kgc 7/6/19: I considered setting out the relevant part of HB 305, effective 9.1.19, here, but I don't want to duplicate bits of it out of context in at least 3 or 4 different locations here and in BE. At a minimum, that would complicate future updating. I'd rather have this note, which still may require updating if the statute changes, but we don't risk having an out-of-date statute in the policy.

Application

A candidate application for a place on the ballot must:

1. Be in writing;
2. Be signed and sworn to before a person authorized to administer an oath in this state by the candidate and indicate the date that the candidate swears to the application;
3. Be timely filed with the appropriate authority; and
4. Include all statutorily required information.

Election Code 31.0021, 141.031, .039

Deadline

An application for a place on the ballot may not be filed earlier than the 30th day before the date of the filing deadline.

An application must be filed not later than 5:00 p.m. of the 78th day before the date of the election for an election to be held on a uniform election date.

Education Code 11.055(a); Election Code 144.005(a), (d)

Death of
Candidate

If a candidate dies on or before the deadline for filing an application for a place on the ballot:

1. The authority responsible for preparing the ballots may choose to omit the candidate from the ballot; and
2. If the authority omits the candidate's name under ~~paragraph-~~ item 1, the filing deadline for an application for a place on the ballot for the office sought by the candidate is extended until the fifth day after the filing deadline.

Election Code 145.098(b)

KGC 6/20/19: This is from HB 1067, effective 5.24.19. I probably would not have included this ballot preparation provision EXCEPT that it can affect the filing deadline.

Write-in Candidate

A declaration of write-in candidacy must be filed not later than 5:00 p.m. of the 74th day before election day for an election to be held on a uniform election date. *Education Code 11.056(b); Election Code 146.054*

Special Election	<p>An application for a place on a special election ballot may not be filed before the election is ordered.</p> <p>An application must be filed not later than:</p> <ol style="list-style-type: none">1. 5:00 p.m. of the 62nd day before election day if election day is on or after the 70th day after the election is ordered; or2. 5:00 p.m. of the 40th day before election day if election day is on or after the 46th day and before the 70th day after the date the election is ordered.
<i>Exception</i>	<p>For a special election to be held on the date of the general election for state and county officers (the first Tuesday after the first Monday in November in even-numbered years under Election Code 41.002), the day of the filing deadline is 6 p.m. of the 75th day before election day.</p>
<i>Write-in Candidate</i>	<p>A declaration of write-in candidacy for a special election must be filed not later than the filing deadline.</p> <p><i>Election Code 201.054</i></p>
Delivery or Submission of Documents	<p>Under the Election Code, delivery, submission, or filing of an application, notice, report, or other document or paper with an employee of the district at the district's usual place for conducting official business constitutes filing with the district. The district may accept the document or paper at a place other than the district's usual place for conducting official business.</p> <p>A delivery, submission, or filing of a document or paper under the Election Code may be made by personal delivery, mail, telephonic facsimile machine, or any other method of transmission.</p> <p><i>Election Code 1.007</i></p>
Election of Unopposed Candidate	<p>The board may declare each unopposed candidate elected to office in accordance with the provisions below. <i>Election Code 2.053(a)</i></p> <p>A special election is considered to be a separate election with a separate ballot from a general election for board members or another special election held at the same time. <i>Election Code 2.051(a)</i></p>
Single-Member Districts	<p>If any members of a board are elected from single-member districts, the procedures to declare unopposed candidates elected apply to the election in a particular single-member district if each candidate for an office that is to appear on the ballot in that single-member district is unopposed and no opposed at-large race is to appear on the ballot. <i>Election Code 2.051(b)</i></p>

Procedure for
Canceling Election

The authority responsible for having the official ballot prepared shall certify in writing that a candidate is unopposed for election to an office if, were the election held, only the votes cast for that candidate in the election for that office may be counted. The certification shall be delivered to the board as soon as possible after the filing deadlines for placement on the ballot and list of write-in candidates.

A certification may be made following the filing of a withdrawal request by a candidate after the deadline prescribed by Election Code 145.092 if:

1. The withdrawal request is valid except for the untimely filing;
2. Ballots have not been prepared; and
3. The other conditions for certification are met.

A certification under these circumstances shall be delivered to the board as soon as possible.

Election Code 2.052

On receipt of the certification, the board by order may declare each unopposed candidate elected to office. If a declaration is made, no election is held.

If no election is to be held by the district on election day, a copy of the order shall be posted on election day at each polling place used or that would have been used in the election.

The ballots used at a separate election held at the same time as an election that would have been held if the candidates were not declared elected shall include the offices and names of the candidates declared elected listed separately after the measures or contested races in the separate election under the heading "Unopposed Candidates Declared Elected." The candidates shall be grouped in the same relative order prescribed for the ballot generally. No votes are cast in connection with the unopposed candidates.

Election Code 2.053

[See BBBB regarding issuance of a certificate of election to an unopposed candidate declared elected and qualification for office.]

Ballot

The ballot shall be prepared in accordance with Election Code Chapter 52.

Drawing

The district shall conduct a drawing to determine the order of the candidates' names in an election at which the names of more than one candidate for the same office are to appear on the ballot. The

district shall post notice of the date, hour, and place of the drawing. The notice must remain posted in the district's office continuously for 72 hours immediately preceding the scheduled drawing. The district shall mail written notice of the date, hour, and place of the drawing to each candidate not later than the fourth day before the date of the drawing. Each candidate affected by a drawing is entitled to be present or have a representative present at the drawing. *Election Code 52.093–.094* [\[See BBBB for regarding Bballot Order in a runoff election or election to resolve a tie\]](#)

Ballots for an election by position must clearly show the position for which each person is a candidate. A board shall arrange by lot the names of the candidates for each position. *Education Code 11.058(g)*

**Election Services
Contract**

The county election officer, as defined by Election Code 31.091(1), may contract with the board of a district situated wholly or partly in the county served by the officer to perform election services, as provided by Election Code Chapter 31, Subchapter D, in any one or more elections ordered by the board.

If requested to do so by a district, the county elections administrator, as defined under Election Code Chapter 31, Subchapter B, shall enter into a contract to furnish the election services requested in accordance with a cost schedule agreed on by the contracting parties. A county elections administrator is not required to enter into a contract to furnish elections services for an election held on the first Saturday in May in an even-numbered year.

Election Code 31.092, .093, 41.001(d)

**Election Judges and
Clerks**

By written order, a board shall appoint a presiding election judge and an alternate presiding judge for each election precinct in which an election is held. A board shall prescribe the maximum number of clerks that each presiding judge may appoint for each election. The judges and clerks shall be selected and serve in accordance with Election Code Chapter 32. *Election Code 32.001(a), .008, .033*

Polling Places

A board shall designate polling places for election day and early voting. Each polling place shall be accessible to and usable by the elderly and persons with physical disabilities. *Election Code 43.004, .034, Ch. 85 (regarding early voting by personal appearance)*

In an election held on [the November](#) a uniform election date, a district shall use the regular county election precincts. [The district and](#) shall designate as the polling places for the election the regular county polling places in the county election precincts that contain territory from the district.

~~Exception for May
Election~~

~~A district is not required to use the county election precincts for an election held on the May uniform election date if the district:~~

- ~~1. Conducts early voting by personal appearance:
 - ~~a. At 75 percent or more of its permanent or temporary branch polling places on the same days and during the same hours as voting is conducted at the main early voting place; and~~
 - ~~b. At each remaining polling place for at least two consecutive days of voting during the early voting period, and for at least eight hours on each day; or~~~~
- ~~2. Has not established a permanent or temporary branch early voting polling place.~~

Election Code 42.002(a)(5), (e), .0621, 43.004(b)

kgc 7/8/19: Changes/repeal by HB 1888, effective 9.1.19

Electioneering

A person commits an offense if, during the voting period and within 100 feet of an outside door through which a voter may enter the building in which a polling place is located, the person loiters or electioneers for or against any candidate, measure, or political party.

[A district that owns or controls a public building being used as a polling place or early voting polling place may not, at any time during the voting period or early voting period, as applicable, prohibit electioneering on the building's premises outside of the area described above, but may enact reasonable regulations concerning the time, place, and manner of electioneering.](#)

[Definitions](#)

“Electioneering” includes the posting, use, or distribution of political signs or literature. The term does not include the distribution of a notice of a party convention authorized under Election Code 172.1114.

~~Voting Period~~

“Voting period” means the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later.

~~Early Voting Period~~

“Early voting period” means the period prescribed by Election Code 85.001.

~~A district that owns or controls a public building being used as a polling place or early voting polling place may not, at any time during the voting period or early voting periods, as applicable, prohibit~~

~~electioneering on the building's premises outside of the area described above, but may enact reasonable regulations concerning the time, place, and manner of electioneering.~~

Election Code 61.003, 85.036

kgc 7/8/19: just rearranging for better flow.

Early Voting

In each election, early voting shall be conducted by personal appearance at an early voting polling place and by mail, in accordance with Election Code Title 7, Chapters 81–114. *Election Code 81.001*

November Early Voting Polling Places

In an election on the November uniform election date in which the district is not holding a joint election with a county and has not executed a contract with a county elections officer under which the district and the county share early voting polling places, the district:

1. ~~s~~ Shall designate as an early voting polling place for the election an eligible county polling place located in the district; and
2. ~~m~~ May not designate as an early voting polling place a location other than an eligible county polling place unless each eligible county polling place located in the district is designated as an early voting polling place by the district.

“Eligible county polling place” means an early voting polling place, other than a polling place established under Election Code 85.062(e), established by a county.

Election Code 85.010(a-1), (b)

kgc 7/23/19: After a lengthy voicemail from Melanie Best and a conversation with the Elections Administrator for Williamson County, I decided to leave this for now. HB 1888 may render it largely moot, but I will delete it later if I decide it's superfluous or unnecessary.

kgc 7/7/19: HB 1048, effective 6.14.19 I've emailed Melanie Best about this bill, and I may decide to take this out depending on what she says.

Temporary Branch Days and Hours

Early voting by personal appearance at each temporary branch polling place shall be conducted on the days that voting is required to be conducted at the main early voting polling place under Election Code 85.005 and remain open for at least:

1. ~~e~~ Eight hours each day; or
2. ~~t~~ Three hours each day if the city or county clerk does not serve as the early voting clerk for the territory holding the

election and the territory has fewer than 1,000 registered voters.

Election Code 85.064(b)

kgc 7/7/19: HB 1888, effective 9.1.19

Records
Branch Daily
Register

The early voting clerk shall provide, in a downloadable database format, a current copy of the register for posting on the internet website of the district, if the district maintains a website, each day early voting is conducted. At a minimum, the voter registration number for each voter listed in the register must be posted. Election Code 85.072

kgc 7/7/19: HB 1850, effective 9.1.19. This is way in the weeds, and I wouldn't have included it except for the website posting reqt.

Early Voting
Rosters

Information on the roster for a person who votes an early voting ballot by personal appearance shall be made available for public inspection as provided below not later than 11 a.m. on the day after the date the information is entered on the roster. Information on the roster for a person who votes an early voting ballot by mail shall be made available for public inspection as provided below not later than 11 a.m. on the day following the day the early voting clerk receives a ballot voted by mail.

The information must be made available:

1. On the publicly accessible internet website of the district; or
2. If the district does not maintain a website, on the bulletin board used for posting notice of board meetings.

Election Code 87.121(g)-(i)

kgc 7/8/19: HB 1850, effective 9.1.19

Conducting
Elections

Elections shall be conducted in accordance with Election Code Title 6, Chapters 61–68.

Bilingual Materials
Spanish

Bilingual election materials shall be used in each election precinct situated wholly or partly in a county in which five percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census that may be officially recognized or acted upon by the state or political subdivisions.
Election Code 272.002

Other Languages

If the director of the census determines that a district must provide election materials in a language other than English or Spanish, the district shall provide election materials in that language in the same

manner in which the district would be required to provide materials in Spanish, to the extent applicable. *Election Code 272.011; 52 U.S.C. 10503*

Voting Systems

A voting system shall be adopted and utilized in accordance with Election Code Title 8.

Accessible Voting
Stations

Except as provided below, each polling place must provide at least one voting station that complies with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments, Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments, and the requirements for accessibility under 52 U.S.C. Section 21081(a)(3) [formerly 42 U.S.C. Section 15481(a)(3)] and its subsequent amendments, and that provides a practical and effective means for voters with physical disabilities to cast a secret ballot. *Election Code 61.012*

*Electronic Voting
System
Exceptions*

For an election other than an election of a district that is held jointly with another election in which a federal office appears on the ballot, a district is not required to meet the requirements for accessibility under Election Code 61.012(a)(1)(C) if the district is located in a county that meets certain population and other requirements set forth in Election Code 61.013(a). A district that intends to use this provision to provide fewer voting stations that meet the requirements for accessibility than required must provide notice under Election Code 61.013(d). *Election Code 61.013*

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Tie Votes

Second Election

In an election requiring a plurality, if two or more candidates for the same office tie for the number of votes required to be elected, a second election to fill the office shall be held in accordance with the deadlines and other requirements of Election Code 2.002.

Other Options

Casting Lots

The tying candidates may agree to cast lots to resolve the tie. The agreement must be filed with the board. The board president shall supervise the casting of lots.

Withdrawal

A tying candidate may resolve the tie by filing with the board a signed and acknowledged written statement of withdrawal. On receipt of the statement, the remaining candidate is the winner, and a second election or casting of lots is not held.

Automatic Recount

If the tie is not resolved by casting lots or withdrawal, an automatic recount shall be conducted under Election Code Chapter 216 before the second election is held.

Election Code 2.002

Runoff Election

In a district in which trustees are elected by majority vote under Education Code 11.057(c) [see BBB], if no candidate for a particular office receives the vote necessary to be elected, a runoff election for that office is required. *Election Code 2.021 et seq.*

If the candidates in a runoff election tie, an automatic recount shall be conducted under Election Code Chapter 216. If the recount does not resolve the tie, the tied candidates shall cast lots to determine the winner. The board president shall supervise the casting of lots. A tying candidate may resolve the tie by filing with the board president a signed and acknowledged written statement of withdrawal. On receipt of the statement, the remaining candidate is the winner, and a casting of lots is not held. *Election Code 2.028*

Ballot Order

[The order of the candidates' names on the ballot of any resulting runoff election or election held to resolve a tie vote shall be the relative order of names on the original election ballot. Election Code 2.002\(d\), 52.094\(a\)](#)

KGC 6/20/19: HB 88, effective 9.1.19, makes these changes. I'm torn about including this here. On the one hand, it's a little detailed and in

the weeds; on the other, we have detailed info about the ballot drawing in BBBA, but we don't include anything there about the drawings for these elections.

kgc 7/7/19: I added an xref to this at BBBA.

Recounts

The district shall conduct an authorized recount in accordance with Election Code Title 13. *Election Code 211.001*

A candidate in a board election may obtain an initial recount in an election if the difference in the number of votes received by the candidate and any candidate for the office who is shown by the election returns to be elected, tied, or entitled to a place on a runoff ballot, if applicable, is less than ten percent of that candidate's number of votes, or the total number of votes received by all candidates for the office is less than 1,000. *Election Code 212.022*

A ground for obtaining an initial recount is not required to obtain an initial recount of electronic voting system results. A candidate may obtain an initial recount of electronic voting system results in an election only if the candidate is shown by the election returns not to be elected. *Election Code 212.0241*

An initial recount may not be conducted unless an authorized candidate submits a petition for the recount to the presiding officer of the local canvassing authority in accordance with Election Code Chapter 212, Subchapter B, accompanied by a deposit to cover the costs of the recount in accordance with Subchapter E. *Election Code 212.025, .026, .111*

Effect of Petition

The submission of a recount petition before a board completes its canvass does not delay the canvass for the office involved in the recount. The board shall make a notation on the tabulation of any office involved in a recount. The submission of a recount petition delays the issuance of a certificate of election and qualification for the office involved in the recount pending completion of the recount. A candidate may not qualify for an office involved in a recount before completion of the recount. This provision does not affect a candidate who has received a certificate of election and qualified for office before the submission of a recount petition involving the office. *Election Code 212.033, .0331*

Canvass Returns

General Rule

Except as provided below, a board shall convene to conduct the local canvass at the time set by the presiding officer not later than the 11th day after election day and not earlier than the later of:

1. The third day after election day;

2. The date on which the early voting ballot board has verified and counted all provisional ballots, if a provisional ballot has been cast in the election; or
3. The date on which all timely received ballots cast from addresses outside of the United States are counted, if a ballot to be voted by mail in the election was provided to a person outside of the United States.

Election Code 67.003(b)

November
Election—Even-
Numbered Years

For an election held on the date of the general election for state and county officers (the first Tuesday after the first Monday in November in even-numbered years under Election Code 41.002), the time for the canvass may be set not later than the 14th day after election day. *Election Code 65.051(a-1), 67.003(c)*

Quorum for
Canvass

Two members of a board constitute a quorum for purposes of canvassing an election.

At the time set for convening the board for the local canvass, the presiding officer shall deliver the sealed precinct returns to the board. The board shall open the returns for each precinct and canvass them as provided by Election Code 67.004.

Minutes

The presiding officer shall note the completion of the canvass in the minutes or in the recording required by the Open Meetings Act (Government Code 551.021). [See BE]

Election Code 67.004(a), (g)

**Certificate of
Election**

After the completion of a canvass, the presiding officer shall prepare a certificate of election for each candidate who is elected to an office for which the official result is determined by the board's canvass. A certificate of election must contain:

1. The candidate's name;
2. The office to which the candidate is elected;
3. A statement of election to an unexpired term, if applicable;
4. The date of the election;
5. The signature of the officer preparing the certificate; and
6. Any seal used by the officer preparing the certificate to authenticate documents that the officer executes or certifies.

The authority preparing a certificate of election shall promptly deliver it to the person for whom it is prepared, subject to the submission of a recount petition. [See Effect of Petition, above]

A certificate of election may not be issued to a person who has been declared ineligible to be elected to the office.

The presiding officer shall also prepare a report of the precinct results as contained in the election register and deliver the report to the secretary of state not later than the 30th day after election day in an electronic format prescribed by the secretary of state.

Election Code 67.016, .017

Certificate for
Unopposed
Candidate

A certificate of election shall be issued to each unopposed candidate declared elected in the same manner and at the same time as provided for a candidate elected at the election. The candidate must qualify for the office in the same manner as provided for a candidate elected at the election. *Election Code 2.053(e)* [See BBBA regarding the election of an unopposed candidate.]

Officer's Statement

All elected and appointed board members, before taking the oath or affirmation of office and entering upon the duties of office, shall sign the required officer's statement. The statement shall be retained with the official records of the office. *Tex. Const. Art. XVI, Sec. 1(b), (c)*

Oath of Office

All elected and appointed ~~board members~~trustees, before they enter upon the duties of the office, shall take the official oath or affirmation of office. Newly elected trustees ~~and~~ shall file their official oaths with the board president. *Tex. Const. Art. XVI, Sec. 1(a); Education Code 11.061(a)*

kgc 7/2/19: Held back from U113.

kgc 2/3/19: statutory tightening. A CSA attorney pointed out that this was confusing as written – seemed to require filing oath as a prerequisite to taking office.

The oath may be administered and a certificate of the fact given by the individuals listed at Government Code 602.002, including:

1. A judge, retired judge, or clerk of a municipal court.
2. A judge, retired judge, senior judge, clerk, or commissioner of a court of record.
3. A justice of the peace or clerk of a justice court.
4. A notary public.

Gov't Code 602.002

Election Records

Except as otherwise provided by the Election Code, a district shall preserve the precinct election records distributed to it for at least 22 months after election day. *Election Code 66.058(a)*

**Destruction of
Records**

After expiration of the prescribed period for preserving election records under the Election Code, the records may be destroyed or otherwise disposed of unless, at the expiration of the preservation period, an election contest or a criminal investigation or proceeding connected with the election is pending. In that case, the records shall be preserved until the contest, investigation, or proceeding is completed and the judgment, if any, becomes final. *Election Code 1.013*

Electioneering

The board may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party. *Education Code 11.169*

Political Advertising

An officer or employee of a district may not knowingly spend or authorize the spending of public funds for the purpose of political advertising. This does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.

An officer or employee of a district may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:

1. The officer or employee knows is false; and
2. Is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

It is an affirmative defense to prosecution for an offense under these provisions or the imposition of a civil penalty for conduct under these provisions that the officer or employee reasonably relied on a court order, or an interpretation of these provisions in a written opinion issued by a court of record, the attorney general, or the Ethics Commission.

On written request of the board that has ordered an election on a measure, the Ethics Commission shall prepare an advance written advisory opinion as to whether a particular communication relating to a measure does or does not comply with these provisions.

Election Code 255.003 [See CPAB regarding use of the internal mail system for political advertising.]

Definition

“Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

1. In return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television;
2. Appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
3. Appears on an internet website.

Election Code 251.001(16); 1 TAC 20.1(13)(A)

“Political advertising” does not include an individual communication made by email, but does include mass emails involving an expenditure of funds beyond the basic cost of hardware, messaging software, and bandwidth. *1 TAC 20.1(13)(B)*

Newsletters

A newsletter of a public officer of a district is not political advertising if:

1. It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;
2. It includes no more than eight personally phrased references on a page that is 8 1/2” x 11” or larger, with a reasonable reduction in the number of such personally phrased references in pages smaller than 8 1/2” x 11”; and
3. When viewed as a whole and in the proper context:
 - a. Is informational rather than self-promotional;
 - b. Does not advocate passage or defeat of a measure; and
 - c. Does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.

1 TAC 26.2

Disclosure
Statement

A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising:

1. That it is political advertising; and
2. The full name of the:
 - a. Person who paid for the political advertising;
 - b. Political committee authorizing the political advertising; or
 - c. Candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under Election Code Title 15 shall be deemed to contain express advocacy.

These requirements do not apply to tickets or invitations to political fundraising events; campaign buttons, pins, hats, or similar campaign materials; or circulars or flyers that cost in the aggregate less than \$500 to publish and distribute.

Election Code 255.001(a), (b), (d)

A required disclosure statement must contain the words “political advertising” or any recognizable abbreviation and comply with 1 Administrative Code 26.1. 1 TAC 26.1

Note: For specific information regarding political advertising and campaign communications by candidates, including offenses, see Election Code 255.001–.0067. [For information regarding political signs, see Election Code Chapter 259.](#)

[kge 7/7/19: HB 2554, effective 9.1.19, moves all statutes related to political signs to this chapter.](#)

Nepotism

A candidate may not take affirmative action to influence a district employee or current trustee regarding the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of another individual related to the candidate within a prohibited degree of relationship under the nepotism law. [See DBE] This prohibition does not apply to a candidate’s actions taken regarding a bona fide class or category of employees or prospective employees. *Gov’t Code 573.042*

**Open Meetings Act
Training**

Not later than the 90th day after taking the oath of office, each board member shall complete training of not less than one and not more than two hours regarding the responsibilities of the board and its members under Government Code Chapter 551 (Texas Open Meetings Act).

The attorney general may provide the training and may also approve other acceptable sources of training.

The board shall maintain and make available for public inspection the record of its members' completion of the training. The failure of one or more members of the board to complete the training does not affect the validity of an action taken by the board.

Gov't Code 551.005

**Public Information
Act Training**

Not later than the 90th day after taking the oath of office, each board member shall complete training of not less than one and not more than two hours regarding the responsibilities of the board and its officers and employees under Government Code Chapter 552 (Public Information Act). A board member may designate a public information coordinator to satisfy the training for the board member if the public information coordinator is primarily responsible for administering the responsibilities of the board member or board under the Public Information Act. [See GBAA regarding public information coordinator training]- *Gov't Code 552.012*

**SBOE-Required
Training**

A trustee must complete any training required by the State Board of Education (SBOE). *Education Code 11.159*

The continuing education required under Education Code 11.159 applies to each member of the board and consists of orientation sessions, an annual team-building session with the board and the superintendent, and specified hours of continuing education based on identified needs. To the extent possible, an entire board shall participate in continuing education programs together. *19 TAC 61.1(b), (i)*

The SBOE's framework for governance leadership [see BBD(EX-HIBIT)] shall be distributed annually by the board president to all current board members and the superintendent. *19 TAC 61.1(a)*

No continuing education shall take place during a board meeting unless that meeting is called for the delivery of board member continuing education. Continuing education may take place before or after a legally called board meeting in accordance with Government Code 551.001(4) (definition of "meeting"). *19 TAC 61.1(c)*

Annually, the SBOE shall commend those board-superintendent teams that receive at least eight hours of continuing education in

the continuing education specified at Team Building and Annual Continuing Education below as an entire board-superintendent team.

Annually, the SBOE shall commend those board-superintendent teams that effectively implement the commissioner of education's trustee improvement and evaluation tool developed under Education Code 11.182 [\[see BG\]](#) or any other tool approved by the commissioner.

19 TAC 61.1(k), (l)

kgc 8/8/19: CVC & I decided to add xref.

Reporting

At the last regular board meeting before an election of trustees, the board president shall announce the name of each board member who has completed the required continuing education, who has exceeded the required hours of continuing education, and who is deficient in meeting the required continuing education as of the anniversary of the date of each board member's election or appointment to the board. The announcement shall state that completing the required continuing education is a basic obligation and expectation of any board member under SBOE rule. The minutes of the last regular board meeting held before an election of trustees must reflect whether each trustee has met or is deficient in meeting the training required for the trustee as of the first anniversary of the date of the trustee's election or appointment. The president shall cause the minutes to reflect the announcement and, if the minutes reflect that a trustee is deficient in training as of the anniversary of his or her joining the board, the district shall post the minutes on the district's Internet website within ten business days of the meeting and maintain the posting until the trustee meets the requirements. 19 TAC 61.1(j); Education Code 11.159(b)

Orientation

Local District Orientation

Each new board member shall participate in a local district orientation session within one year before or 120 days after the board member's election or appointment. The purpose of this orientation is to familiarize new board members with local board policies and procedures and district goals and priorities. The orientation shall be at least three hours in length for each new board member and, in addition to topics chosen by the district, shall address local district practices in curriculum and instruction, business and finance operations, district operations, superintendent evaluation, and board member roles and responsibilities.

Any sitting board member may attend or participate in the local district orientation.

19 TAC 61.1(b)(1)(A)

<i>Education Code Orientation</i>	A sitting board member shall receive a basic orientation to the Education Code and relevant legal obligations. The orientation shall have special but not exclusive emphasis on statutory provisions related to governing Texas school districts. The orientation shall be delivered by regional education service centers and shall be no less than three hours in length. Topics shall include Chapter 26 (Parental Rights and Responsibilities) and Education Code 28.004 (Local School Health Advisory Council and Health Education Instruction).
New Members	A newly elected or appointed board member shall receive the Education Code orientation within the first 120 days of service.
Current Members	The Education Code orientation shall be open to any sitting board member who chooses to attend. <i>19 TAC 61.1 (b)(1)(B)</i>
Legislative Updates	After each session of the Texas Legislature, each board member shall receive an update to the basic orientation to the Education Code from a regional education service center or any registered provider. A board member who has attended a basic orientation session given by a service center that incorporates the most recent legislative changes is not required to attend an update. <i>19 TAC 61.1(b)(1)(C)</i>
Team Building	Annually, the entire board, including all board members, shall participate with their superintendent in a team-building session facilitated by a regional education service center or any registered provider. The team-building session shall be at least three hours in length. The purpose of the team-building session is to enhance the effectiveness of the board-superintendent team and to assess the continuing education needs of the board-superintendent team. The session shall include a review of the roles, rights, and responsibilities of the board as outlined in the framework for governance leadership. The assessment of needs shall be based on the framework for governance leadership [see BBD(EXHIBIT)] and shall be used to plan continuing education activities for the governance leadership team for the year. <i>19 TAC 61.1(b)(2)</i>
Annual Continuing Education	In addition to the continuing education requirements at Orientation and Team Building above, each board member shall receive additional continuing education on an annual basis in fulfillment of assessed needs and based on the framework for governance leadership. [See BBD(EXHIBIT)] The continuing education may be

provided by a regional education service center or other registered provider. 19 TAC 61.1(b)(3)

At least 50 percent of the continuing education shall be designed and delivered by persons not employed or affiliated with a board member's school district. No more than one hour of the required continuing education that is delivered by the district may use self-instructional materials. 19 TAC 61.1(h)

First Year

In the first year of service, a board member shall receive at least ten hours of continuing education in fulfillment of assessed needs. Up to five of the required ten hours may be fulfilled through online instruction, provided the training is designed and offered by a registered provider, incorporates interactive activities that assess learning and provide feedback to the learner, and offers an opportunity for interaction with the instructor. 19 TAC 61.1(b)(3)(A)

Subsequent Years

After the first year of service, a board member shall receive at least five hours of continuing education annually in fulfillment of assessed needs. A board member may fulfill the five hours of continuing education through online instruction, provided that the training is designed and offered by a registered provider, incorporates interactive activities that assess learning and provide feedback to the learner, and offers an opportunity for interaction with the instructor. 19 TAC 61.1(b)(3)(B)

Board President

A board president shall receive continuing education related to leadership duties of the board president as some portion of the annual requirement. 19 TAC 61.1(b)(3)(C)

Evaluating Student
Academic
Performance

Each board member shall complete continuing education every two years on evaluating student academic performance.

The purpose of the training is to provide research-based information to board members that is designed to support the oversight role of the board of trustees outlined in Education Code 11.1515. [See BAA]

19 TAC 61.1(b)(4)

*Authorized
Provider*

~~A trustee or candidate may complete the training at a regional education service center or through another authorized provider. Education Code 11.159(d)~~

An authorized provider for training on evaluating student academic performance is a provider who is registered pursuant to 19 Administrative Code 61.1(f) and has demonstrated proficiency in the content required [see Contents, below]. 19 TAC 61.1(b)(4)(C)

~~Time for
Completion~~

~~A candidate may complete the training up to one year before the candidate is elected.~~

~~If a newly elected or appointed board member did not complete this training in the year preceding the member's election, the member must complete the training within 120 days after election or appointment.~~

~~A returning board member shall complete the training by the second anniversary of the completion of the trustee's previous training.~~

kgc 7/5/19: moved down

Contents

The training on evaluating student academic performance shall be at least three hours in length and include, at a minimum, the following:

1. Instruction in school board behaviors correlated to improved student outcomes with emphasis on inputs, outcomes, and collaborative student outcome goal setting;
2. Instruction in progress monitoring to improve student outcomes with emphasis on progress monitoring practices, formative assessments, interim assessments, and summative assessments; and
3. Instruction in state accountability with emphasis on the Texas Essential Knowledge and Skills, state assessment instruments administered under the Education Code Chapter 39, and the state accountability rating system.

If the training is attended by an entire board and its superintendent, includes a review of local school district data on student achievement, and otherwise meets the requirements described at Team Building above, the training may serve to meet a board member's obligation to receive training described at Team Building and at Evaluating Student Academic Performance, above, as long as the training complies with the Texas Open Meetings Act.

19 TAC 61.1(b)(4)

Identifying and
Reporting Abuse

The SBOE shall require a trustee to complete every two years at least one hour of training on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children.

kgc 7/5/19: HB 403, effective 9.1.19. It's odd to include this as a duty of SBOE, but it's really just a placeholder for the rules that are inevitably forthcoming.

Time for Completion A candidate may complete the training on evaluating student academic performance or identifying and reporting abuse up to one year before the candidate is elected.

A new trustee shall complete the training within 120 days after the date of the trustee's election or appointment.

A returning trustee shall complete the training by the second anniversary of the completion of the trustee's previous training.

Education Code 11.159(c-2)

kgc 7/5/19: This is a little more specific in the rule, so I may tweak it after SBOE amends the rule to include the new training.

Training Provider A trustee or candidate may complete the training on evaluating student academic performance or identifying and reporting abuse at a regional education service center or through another authorized provider. Education Code 11.159(d)

kgc 7/5/19: I moved this from above because it now applies more broadly. Rulemaking may impact its placement

Note: For cybersecurity training requirements, see CQB(LEGAL).

kgc 7/1/19: HB 3834, effective 6.14.19, requires this training. I've included the specifics at new CQB. Mark & I discussed including xrefs from here and DMA. I did this note because there isn't really any good statutory language to use here as a springboard to CQB. I don't know how Mark did it—please advise both of us so that we are consistent.

CVC 2/21/19: KGC and I decided to hold for U114

kgc 2/3/19: this policy was updated at U112 to reflect a rule change. The changes below are based on a clerk's complete cite check of this policy (and the rest of the B and C sections). This can probably wait until U114 after the legislative session.

Note: For information regarding conflicts of interest and depository contracts, see BDAE.

Substantial Interest Affidavit

If a local public official has a substantial interest in a business entity or in real property, the local public official shall, before a vote or decision on any matter involving the business entity or the real property, file an affidavit stating the nature and extent of the interest if:

1. In the case of a substantial interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
2. In the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

The affidavit shall be filed with the official recordkeeper of the district.

Local Gov't Code 171.004(a)–(b)

Abstention

The local public official shall also abstain from further participation in the matter.

If a trustee is required to file and does file an affidavit, that trustee shall not be required to abstain from further participation in the matter or matters requiring such an affidavit if a majority of the trustees are likewise required to file and do file affidavits of similar interests on the same official action

Local Gov't Code 171.004(a), (c)

Definitions

“Substantial Interest”

A person has a substantial interest in a business entity if any of the following is the case:

1. The person owns at least:
 - a. Ten percent of the voting stock or shares of the business entity, or

- b. Either ten percent or \$15,000 of the fair market value of the business entity.
2. Funds received by the person from the business entity exceed ten percent of the person's gross income for the previous year.

Local Gov't Code 171.002

<i>"Business Entity"</i>	"Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. <i>Local Gov't Code 171.001(2)</i>
<i>"First-Degree Relatives"</i>	The local public official is considered to have a substantial interest if a person related in the first degree by either affinity or consanguinity to the local public official, as determined under Government Code Chapter 573, Subchapter B [see DBE], has a substantial interest as defined above. <i>Local Gov't Code 171.002</i>
<i>"Local Public Official"</i>	"Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), central appraisal district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature. <i>Local Gov't Code 171.001(1)</i>
<i>"Real Property"</i>	A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more. <i>Local Gov't Code 171.002</i>
Contracts Permitted	A board may contract with a business entity in which a trustee has a substantial interest if the trustee follows the disclosure and abstention procedure set out above. <i>Atty. Gen. Op. JM-424 (1986)</i>
Separate Vote on Budget	A board shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a trustee has a substantial interest. The affected trustee shall not participate in that separate vote, but may vote on a final budget if he or she filed the affidavit and the matter in which he or she is concerned has been resolved. <i>Local Gov't Code 171.005</i>
Depository Bank	A school board member with a "substantial interest" in a depository bank must file an affidavit stating his interest and must abstain from participating in decisions on loan contracts with the depository if action on the matter will have a special economic effect on the bank that is distinguishable from the effect on the public. <i>Atty. Gen. Op. JM-1082 (1989) [See BDAE]</i>
Violations	A local public official commits an offense if the official knowingly:

1. Violates Local Government Code 171.004.
2. Acts as surety for a business entity that has a contract, work, or business with a district.
3. Act as surety on any official bond required of an officer of a district.

Local Gov't Code 171.003

Voidable Actions

The finding by a court of a violation of Local Government Code Chapter 171 does not render an action of the board voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed without the vote of the person who violated the chapter. *Local Gov't Code 171.006*

Conflicts Disclosure Statement

A local government officer shall file a conflicts disclosure statement, as adopted by the Texas Ethics Commission, with respect to a vendor if the vendor enters into a contract with the district or the district is considering entering into a contract with the vendor; and the vendor:

1. Has an employment or other business relationship with the local government officer or a family member of the officer, and the business relationship results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:
 - a. A contract between the district and the vendor has been executed; or
 - b. The district is considering entering into a contract with the vendor;
2. Has given to the local government officer or a family member of the officer one or more gifts, and the gift or gifts have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - a. A contract between the district and the vendor has been executed; or
 - b. The district is considering entering into a contract with the vendor; or
3. Has a family relationship with the local government officer.

Gifts—Exception

A local government officer is not required to file a conflicts disclosure statement in relation to a gift, as defined by law, accepted by the officer or a family member of the officer if the gift is:

1. A political contribution as defined by Title 15, Election Code;
or
2. Food accepted as a guest.

Local Gov't Code 176.003(a)-(a-1)

Filing Date	A local government officer shall file the conflicts disclosure statement with the records administrator of a district not later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement. <i>Local Gov't Code 176.003(b)</i>
Vendor Questionnaire	A person who is both a local government officer and a vendor of a local governmental entity is required to file a vendor questionnaire if the person enters or seeks to enter into a contract with the local governmental entity; or is an agent of a person who enters or seeks to enter into a contract with the local governmental entity. [See CHE] <i>Local Gov't Code 176.006(e)</i>
Definitions "Agent"	"Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee. <i>Local Gov't Code 176.001(1)</i>
"Business Relationship"	"Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on: <ol style="list-style-type: none">1. A transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;2. A transaction conducted at a price and subject to terms available to the public; or3. A purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. <i>Local Gov't Code 176.001(a-1)</i>
"Family Member"	"Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Government Code Chapter 573, Subchapter B. [See DBE] <i>Local Gov't Code 176.001(2)</i>
"Family Relationship"	"Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Government

Code Chapter 573, Subchapter B. [See DBE] *Local Gov't Code 176.001(2-a)*

"Gift" "Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. *Local Gov't Code 176.001(2-b)*

"Investment Income" "Investment income" means dividends, capital gains, or interest income generated from:

1. A personal or business:
 - a. Checking or savings account,
 - b. Share draft or share account, or
 - c. Other similar account;
2. A personal or business investment; or
3. A personal or business loan.

Local Gov't Code 176.001(2-d)

"Local Government Officer" "Local government officer" means a member of the board, the superintendent, or an agent (including an employee) of the district who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Local Gov't Code 176.001(4)*

"Records Administrator" "Records administrator" means the director, superintendent, or other person responsible for maintaining the records of a district or another person designated by the district to maintain statements and questionnaires filed under Local Government Code 176 and perform related functions. *Local Gov't Code 176.001(5)* [See CPC]

"Vendor" "Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. *Local Gov't Code 176.001(7)*

Duties of Records
Administrator

A records administrator shall:

1. Maintain a list of local government officers of the district and shall make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Local Government Code 176.006; and

2. Maintain the statements and questionnaires that are required to be filed under Government Code Chapter 176 in accordance with the district's records retention schedule. [See CPC]

Local Gov't Code 176.0065

Internet Posting

A district that maintains an internet website shall provide access on the district's internet website to the conflicts disclosure statements and questionnaires required to be filed with the records administrator. *Local Gov't Code 176.009*

Violations

A local government officer commits an offense if the officer is required to file a conflicts disclosure statement and knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement. It is an exception to the application of the penalty that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after receiving notice from the district of the alleged violation.

A board may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under Local Government Code 176. [See DF series]

A board may, at its discretion, declare a contract void if the board determines that a vendor failed to file a conflict of interest questionnaire required by Local Government Code 176.006.

Local Gov't Code 176.013

**Affidavit Disclosing
Interest in Property**

~~If a~~ public servant who has a legal or equitable interest in ~~any~~ property that is to be acquired with public funds, ~~and has actual notice of the acquisition or intended acquisition of the property, the public servant~~ shall file an affidavit within ten days before the date on which the property is to be acquired by purchase or condemnation. ~~as follows:~~

~~1.~~ The affidavit ~~shall~~ must be filed with the county clerk ~~(s) of the county in which the public servant resides and the county clerk of each~~ the county ~~or counties~~ in which the property is located, ~~and of the county in which the public servant resides within ten days before the date on which the property is to be acquired by purchase or condemnation.~~

~~2.~~ The affidavit must:

~~a.~~ 1. State the name of the public servant and the public servant's office, public title, or job designation ~~held or sought.~~

- ~~b.2.~~ Fully describe the property;~~i.~~
3. Fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest;
- ~~e.4.~~ State ~~and~~ the date when the person acquired an ~~the~~ interest in the property; ~~was acquired.~~
- ~~e.5.~~ Include a verification as follows: "I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code"; ~~and of the truth of the information in the affidavit.~~
- ~~e.6.~~ ~~Include~~ Contain an acknowledgment of the same type required for recording a deed in the deed records of the county.

Gov't Code 553.002

Definition "Public Servant"—
Government Code

"Public servant" means a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as:

1. A candidate for nomination or election to public office, or
2. An officer of government.

Gov't Code 553.001

Violations

A person commits an offense if the person violates Government Code 553.002 and the person has actual notice of the acquisition or intended acquisition of the legal or equitable interest in the property. A person who violates Government Code 553.002 by not filing the required affidavit ~~A public servant who fails to file the affidavit when required~~ is presumed to have the intent to commit an offense. ~~An offense under this section is a Class A misdemeanor.~~
Gov't Code 553.003

kgc 2/3/19: Statutory tightening.

Annual Financial Management Report

A district's annual financial management report shall include summary schedules of expenditures paid on behalf of each board member, reimbursements received by each board member, gifts with a total value over \$250 received by board members from certain vendors, and amounts received by board members for business transactions with the district. [See CFA] *Education Code 39.083; 19 TAC 109.1001(q)(3)(B)(ii), (iv), (v)*

kgc 2/3/19: More specific cite added because the clerk who reviewed this policy was unable to find the information. This paragraph is a

summary of the requirements required in the district's annual financial management report that are directly relevant to board member conflicts of interest since that is the subject of this code. The xref to CFA directs the reader to all of the requirements of that report in detail.

~~**Note:**—The following provisions do not apply to the board of a district that is subject to Education Code Section 11.0641 [See Trustee Financial Statement—Districts in El Paso County]. Education Code 11.064(d)~~

kgc 2/3/19: Education Code 11.064(d) expired 1/1/19.

Trustee Financial Statement

A board by resolution adopted by majority vote may require each member of the board to file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, with the board and the Texas Ethics Commission.

Not later than the 15th day after the date a board adopts this resolution, the board shall deliver a certified copy of the resolution to the Texas Ethics Commission. A resolution applies beginning on January 1 of the second year following the year in which the resolution is adopted. A member of a board that has adopted a resolution is not required to include, in a financial disclosure statement, financial activity occurring before January 1 of the year following the year in which the resolution is adopted.

The commissioner of education ("commissioner") by order shall require the members of a board to file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, in the same manner as the members of the board that have adopted a resolution if the commissioner determines that:

1. A board member has failed to comply with filing and recusal requirements applicable to the member under Chapter 171, Local Government Code;
2. District financial accounting practices are not adequate to safeguard state and district funds; or
3. A district has not met a standard set by the commissioner in the financial accountability rating system.

The commissioner may require the filing of financial statements covering not more than three fiscal years and beginning on January 1 of the second year following the date of the commissioner's order. A member of a board subject to an order issued by the com-

missioner is not required to include, in a financial disclosure statement, financial activity occurring before January 1 of the year following the year in which the order is issued. The commissioner may renew the requirement if the commissioner determines that a condition described above continues to exist.

Education Code 11.064

Electronic Filing

Except as provided at Appointed Official, below, a financial statement filed with the Ethics Commission must be filed by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commission specifications for a standard file format.

Appointed Official

An individual who was appointed to office may file the financial statement by certified mail in compliance with Government Code 572.029.

Gov't Code 572.0291

kgc 2/3/19: To eliminate confusion pointed out by clerk who reviewed this.

Confidentiality

Electronic report or financial statement data saved in an Ethics Commission temporary storage location for later retrieval and editing before the report or financial statement is filed is confidential and may not be disclosed. After the report or financial statement is filed with the Ethics Commission, the information disclosed in the filed report or financial statement is public information to the extent provided by the law requiring the filing of the report or financial statement. *Gov't Code 571.0671(d)*

Violations

A trustee serving in a school district that has adopted a resolution or that is subject to an order issued by the commissioner commits an offense if the trustee fails to file the statement required by the resolution or order. An offense under this section is a Class B misdemeanor. *Education Code 11.064(c)*

~~**Note:** The following provisions apply only to the board of a district located in a county on the international border and in which a municipality with a population of 600,000 or more is located.~~

~~**Trustee Financial Statement—Districts in El Paso County**~~

~~Each member of the board shall file a financial statement with:~~

- ~~1. The board of trustees; and~~
- ~~2. The commissioners court of the county in which the school district's central administrative office is located.~~

~~The provisions of Subchapter B, Chapter 572, Government Code, governing the contents, timeliness of filing, and public inspection of a statement apply to a statement filed under this section as if the trustee were a state officer and the commissioners court of the county were the Texas Ethics Commission. A trustee is not required to file a statement under this section for financial activity occurring on or after January 1, 2018.~~

~~If the commissioners court of the county determines that a required financial statement is late, the trustee responsible for filing the statement is liable to the county for a civil penalty of \$500. If a statement is more than 30 days late, the commissioners court shall issue a warning of liability by registered mail to the trustee responsible for the filing. If the penalty is not paid before the tenth day after the date on which the warning is received, the trustee is liable for a civil penalty not to exceed \$10,000.~~

~~Violations~~

~~A trustee commits a Class B misdemeanor if the trustee fails to file the required statement.~~

~~Education Code 11.0641~~

kgc 2/3/19: Education Code 11.0641 expired 1/1/19. This eliminates the need for a separate EP version.

Note: See also CBB for conflict of interest requirements when federal funds are involved.

Private Corporation

It is lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity. *Local Gov't Code 171.009*

Note: For employee and student use of district technology resources, see CQ.

[Public Information on Private Device](#)

A current or former board member or employee of a **district** who maintains public information on a privately owned device shall:

1. ~~f~~Forward or transfer the public information to the **district** or a **district** server to be preserved as provided by Government Code 552.004(a); or
2. ~~p~~Preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under Government Code 552.004(a).

Gov~~ernment~~ Code 522.004(b) [See GB??]

kgc 7/1/19: Mark & I discussed SB 944, effective 9.1.19, and decided that it should be presented in detail at GB (or the GB series – I’m not sure where it will land, hence the ?? in the xref) with appropriate xrefs to it from other codes and to other codes from it, as appropriate. I think he added an xref from DH(?), but please advise both of us so we are consistent in our presentation (incl. margin notes). I did not edit out “employee” because in a recent update, we decided to stop doing that because it can be misleading.

The highlighted word “district” is actually “governmental body” in the bill, and that term is defined as “a school district board of trustees” in Gov’t Code 552.003(1)(A)(v), but I think it would be strange to require transferring the info to the board, even tho that’s technically what the bill requires. Please let me know if anyone is not comfortable with this substitution.

The material at GB should include a cross-reference TO CPC from this provision in SECTION 3 of the bill:

(c) The provisions of Chapter 441 of this code and Title 6, Local Government Code, governing the preservation, destruction, or other disposition of records or public information apply to records and public information held by a temporary custodian.

I didn’t include an xref FROM CPC because I don’t really think it’s necessary.

[Written Electronic Communications Online Message Board](#)

A communication or exchange of information between board members about public business or public policy over which the board has supervision or control does not constitute a meeting or deliberation for purposes of the Texas Open Meetings Act if:

1. The communication is in writing;
2. The writing is posted to an online message board or similar Internet application that is viewable and searchable by the public; and
3. The communication is displayed in real time and displayed on the online message board or similar Internet application for no less than 30 days after the communication is first posted.

A board may have no more than one online message board or similar Internet application to be used for the purposes described above. The online message board or similar Internet application must be owned or controlled by the board, prominently displayed on the district's primary Internet Web page, and no more than one click away from the district's primary Internet Web page.

The online message board or similar Internet application may only be used by members of the board or district staff members who have received specific authorization from a member of the board. If a staff member posts a communication to the online message board or similar Internet application, the name and title of the staff member must be posted along with the communication.

If the district removes from the online message board or similar Internet application a communication that has been posted for at least 30 days, the district shall maintain the posting for a period of six years. This communication is public information and must be disclosed in accordance with Government Code Chapter 552 (Public Information Act).

The board may not vote or take any action that is required to be taken at a meeting under the Texas Open Meetings Act by posting a communication to the online message board or similar Internet application. In no event shall a communication or posting to the online message board or similar Internet application be construed to be an action of the board.

Gov't Code 551.006

Note: The Texas Education Agency maintains [information regarding depository contracts for districts](#),¹ including the forms referenced in this policy.

Selection

A school depository must be a bank located in this state and may be selected only as provided by this policy. "Bank" means a bank, a savings and loan association, or a savings bank organized under the laws of this state, another state, or federal law that has its main office or a branch office in this state. The term does not include any bank the deposits of which are not insured by the Federal Deposit Insurance Corporation (FDIC). *Education Code 45.201(2), .202, .203*

Method

Not later than the 60th day before the date a school district's current depository contract expires, the district shall choose whether to select a depository through competitive bidding or through requests for proposals. *Education Code 45.206(a)*

The district must keep the selected bid or proposal form in the district and make it available to TEA upon request. *19 TAC 109.51(b)*

Competitive Bidding
Notice

If a district chooses to use competitive bidding, the district shall, not later than the 30th day before the date the current depository contract expires, mail to each bank in the district and, if desired, to other banks, a notice stating the time and place in which bid applications will be received for selecting a depository or depositories. The notice must include the uniform bid blank form prescribed by State Board of Education (SBOE) rule. The district may add to the uniform bid blank other terms that do not unfairly restrict competition between banks in or near the territory of the district. *Education Code 45.206(a-1), (b); 19 TAC 109.51(b), (c)*

Requests for
Proposals
Notice

If a district chooses to use requests for proposals, the district shall, not later than the 30th day before the date the current depository contract expires, mail to each bank located in the district and, if desired, to other banks, a notice stating the time and place in which proposals will be received for selecting a depository or depositories. The notice must include the uniform proposal blank form prescribed by SBOE rule. A district shall state the selection criteria, including the factors specified under Education Code 45.207(c) [see Factors to Consider, below], in the request for proposals. The district may add to the uniform proposal blank other terms that do not unfairly restrict competition between banks in or near the territory of the district. *Education Code 45.206(a-2), (b), (d); 19 TAC 109.51(b), (d)*

Best Value

A district shall select the proposal that offers the best value to the district based on the evaluation and ranking of each submitted proposal in relation to the stated selection criteria. A district may negotiate with the bank that submits the highest-ranked proposal to determine any terms of the proposed depository contract other than the interest rates proposed. *Education Code 45.206(d)*

Award of Contract

A district shall award the depository contract to the bank that submits the highest bid or the highest-ranked proposal, as determined under Factors to Consider, below, except that the district may award the contract as provided at Tie Bids and Proposals, below if:

1. The district:
 - a. Receives tying bids for the contract; or
 - b. After evaluating the proposals for the contract, ranks two or more proposals equally;
2. Each bank submitting a tying bid or proposal has bid or proposed to pay the district the maximum interest rates allowed by law by the Federal Reserve System and the FDIC; and
3. The tying bids or proposals are otherwise equal in the judgment and discretion of the board.

Education Code 45.207(a)

Factors to Consider

The board shall at a regular or special meeting consider each bid or proposal received. In determining the highest and best bid or the highest-ranked proposal, or in case of tying bids or proposals the highest and best tying bids or proposals, a board shall consider:

1. The interest rate bid or proposed on time deposits;
2. The charge for keeping district accounts, records, and reports and furnishing checks;
3. The ability of the bank submitting the bid or proposal to provide the necessary services and perform the duties as school district depository; and
4. Any other matter the board considers to be in the best interest of a district.

Education Code 45.207(c)

Tie Bids or
Proposals

In the case of tying bids or proposals, a board may:

1. Determine by lot which of the banks submitting the tying bids or proposals will receive the contract; or

2. Award a contract to each of the banks submitting the tying bids or proposals.

Education Code 45.207(a-1)

Rejection of Bids or Proposals

A board has the right to reject any and all bids or proposals.
Education Code 45.207(d)

Conflict of Interest

If a member of the board is a stockholder, officer, director, or employee of a bank, the bank is not disqualified from bidding, submitting a proposal, or becoming the depository of the district if the bank is selected by a majority vote of the board or a majority vote of a quorum when only a quorum is present.

Abstention

If a board member is a stockholder, officer, director, or employee of a bank that has bid or submitted a proposal to become the depository, the member may not vote on awarding a depository contract to the bank, and the contract must be awarded by a majority vote of the trustees as provided above who are not either a stockholder, officer, director, or employee of a bank receiving a depository contract.

Education Code 45.204

Contract

Term

The depository shall serve for a term of two years and until its successor is selected and has qualified. A district and its depository bank may agree to extend the contract for three additional two-year terms. The contract may be modified for each two-year extension if both parties mutually agree to the terms. The contract term and any extension must coincide with the district's fiscal year. An extension is not subject to the requirements of Education Code 45.206 [see Method, above]. *Education Code 45.205*

Form

The depository or depositories and a district shall enter into a depository contract(s), bond(s), or other necessary instruments setting forth the duties and agreements pertaining to the depository in the form and with the content prescribed by the SBOE. The parties shall attach and incorporate by reference the bid or proposal of the depository. ~~A copy of the contract and bond, if applicable, shall be filed with TEA.~~ *Education Code 45.208(a), (e); 19 TAC 109.52*

kgc 7/5/19: SB 1376, effective 6.4.19.

Authorized
Collateral

Bond

The depository shall attach to the contract and file with the district a bond in an initial amount equal to the estimated highest daily balance, determined by the board, of all deposits the district will have in the depository, less any FDIC insurance. The bond must be payable to the district and signed by the depository and some surety company authorized to do business in this state. The depository

shall increase the amount of the bond if the board determines it to be necessary to adequately protect the funds of the district deposited with the depository. *Education Code 45.208(b)*

The bond and surety must be approved by the board. A premium on the bond may not be paid out of district funds. *Education Code 45.208(d)*

Bond Conditions

The bond shall be conditioned on:

1. Faithful performance of all legal duties and obligations;
2. Payment on presentation of all checks or drafts on order of the board;
3. Payment on demand of any demand deposit;
4. Payment, after the expiration of the required notice period, of any time deposit;
5. Faithful keeping of school funds by the depository and accounting for the funds according to law; and
6. Faithful paying over to the successor depository all balances remaining in the accounts.

Education Code 45.208(c)

*Approved
Securities*

In lieu of a bond, the depository may deposit or pledge, with the district or a designated trustee, approved securities, as defined in Education Code 45.201(4), in an amount sufficient to adequately protect the funds of the district deposited with the depository. A depository may give a bond and deposit or pledge approved securities in an aggregate amount sufficient to adequately protect the funds of the district. The district shall designate from time to time the amount to adequately protect the district. The district may not designate an amount less than the balance of school district funds on deposit with the depository from day to day, less any applicable FDIC insurance. *Education Code 45.208(f)*

In accordance with written board policy, a district shall determine if an investment security, as defined in Government Code 2257.002(5), is eligible to secure deposits of public funds under the Public Funds Collateral Act, Government Code, Chapter 2257. *Gov't Code 2257.023(a)*

“Eligible security” means:

1. A surety bond;
2. An investment security;

3. An ownership or beneficial interest in an investment security, other than an option contract to purchase or sell an investment security;
4. A fixed-rate collateralized mortgage obligation that has an expected weighted average life of ten years or less and does not constitute a high-risk mortgage security;
5. A floating-rate collateralized mortgage obligation that does not constitute a high-risk mortgage security; or
6. A letter of credit issued by a federal home loan bank.

Gov't Code 2257.002(4)

The policy may include the security of the institution that obtains or holds an investment security, the substitution or release of an investment security, and the method by which an investment security used to secure a deposit of public funds is valued. *Gov't Code 2257.023(b)*

**Texas Bullion
Depository**

The Texas Bullion Depository is established as an agency of this state in the office of the comptroller under Subtitle C, Title 10, Government Code. The depository may receive a deposit of bullion or specie from or on behalf of a district in accordance with rules adopted by the comptroller. *Gov't Code 2116.002(a), .005(a); 34 TAC 14.1–.20.*

An investment by a school district in a depository account may be made instead of an investment as provided by Education Code 45.102, and the depository may be used by a district instead of a depository bank for purposes of Subchapter G, Chapter 45, Education Code. *Gov't Code 2116.015(b)*

¹ Depository Contracts for School Districts:
https://tea.texas.gov/Finance_and_Grants/Financial_Compliance/Depository_Contracts_for_School_Districts/

THIS CODE & ITS VERSIONS MAY BE DELETED.

kgc 7/23/19: I've included at CCG the parts of this that I think are necessary or relevant; this code may be eliminated. I have in my U114 working folder a version with tracked changes as it was handed off if anyone ever needs that.

kgc 7/6/19: I don't like this policy with this much detail. I forget it's here; I almost overlooked it in my SB 2 updating. Some of this is duplicated in the CCG policies. It seems like it should be located there as part of that series in an abridged version.

Also, if we keep this policy, I strongly recommend that we get rid of the versions based on item 3 below – it's not that long and districts know whether they can do that or not. I think all districts (other than COM, MU, and ST) should get the PRM version.

kgc 2/8/19: Review thoroughly at U114. Also figure out how it fits with other Tax policies at CCG.

**Selection of
Assessor and
Collector**

~~A board may employ a person to assess or collect the district's taxes and may compensate the person as the board considers appropriate. *Education Code 45.231*~~

~~A district may also provide for the assessment or collection of the district's taxes under one of the following methods:~~

- ~~1. Require the county to assess and collect taxes for the school district. The board may revoke the requirement at any time by official action. *Tax Code 6.22(c)*~~
- ~~2. Contract with another taxing unit or the county appraisal district(s) to perform duties relating to the assessment or collection of taxes. *Tax Code 6.24(a)*~~
- ~~3. Use one of the following methods, which were specified in former Education Code Chapter 23, Subchapter F, if the district used one of those methods for the 1994 tax year. The district may continue to use that method of selection until the district uses one of the methods above. *Education Code 45.232*~~
 - ~~a. Appoint an assessor and provide by resolution that taxes be collected by the county or city tax collector. *Former Education Code 23.95*~~
 - ~~b. By ordinance or resolution, authorize the city tax assessor-collector to assess and collect taxes. *Former Education Code 23.96*~~

OFFICERS AND OFFICIALS
SELECTION AND DUTIES OF CHIEF TAX OFFICIALS

BDAF
(LEGAL)

~~c. By a two-thirds vote of each board, consolidate assessing and collecting taxes with other independent school districts by appointing the same assessor-collector. Former Education Code 23.97~~

Registration Requirements

~~In accordance with the Property Taxation Professional Certification Act, the following school district tax officials shall be registered with the Texas Department of Licensing and Regulation and satisfy all requirements for certification:~~

- ~~1. An assessor-collector, collector, or other person designated by a board as the chief administrator of the district's assessment functions, collection functions, or both;~~
- ~~2. All persons engaged in appraisals of real or personal property for ad valorem tax purposes; and~~
- ~~3. A person who performs assessment or collection functions for a district and who is required to register by the chief administrator of the district's tax office.~~

~~Occupations Code 1151.151, .160~~

Duties

~~The assessor and collector shall assess, collect, or assess and collect taxes, as applicable. Tax Code 6.23(b)~~

Assessor

~~In addition to any other duties that may be required by law, the assessor shall:~~

- ~~1. On receipt of the appraisal roll, determine the total appraised value, total assessed value, and total taxable value of property taxable by the district. Tax Code 26.04(a)~~
- ~~2. By August 1 or as soon thereafter as practicable, submit to the board the appraisal roll showing the total appraised, assessed, and taxable values. Tax Code 26.04(b)~~
- ~~3. On receipt of notice of the tax rate for the current tax year, calculate the tax imposed on each property on the appraisal roll for the district. Tax Code 26.09~~
- ~~4. By October 1 or as soon thereafter as practicable, prepare and mail a tax bill to each person in whose name the property is listed on the tax roll and to the person's authorized agent. The assessor is not required to mail a tax bill if on or before September 15, the individual or entity entitled to receive a tax bill and the assessor enter into a signed, written agreement providing for delivery of the tax bill by electronic means. Tax Code 31.01(a), (k)~~

Collector

~~In addition to any other duties that may be required by law, the collector shall:~~

- ~~1. By August 1 or as soon thereafter as practicable, certify to a board an estimate of the collection rate for the current year. If the collector certified an anticipated collection rate in the preceding year that was lower than the actual collection rate, the collector shall also certify the amount collected in excess of the anticipated amount in the preceding year. Tax Code 26.04(b)~~
- ~~2. Each month, prepare and submit to a board a written report made under oath accounting for all taxes collected during the preceding month. Reports of collections made in the months of October through January are due on the 25th day of the month following the month that is the subject of the report. Reports of collections made in all other months are due on the 15th day of the month following the month that is the subject of the report. Tax Code 31.10(a)~~
- ~~3. Each year, prepare and submit to a board an annual report made under oath accounting for all taxes collected or delinquent on property taxed by a district during the preceding 12-month period. Annual reports are due on the 60th day following the last day of the fiscal year. Tax Code 31.10(b)~~
- ~~4. At least monthly, deposit in a district's depository all taxes collected for the district. The board may require deposits to be made more frequently. Tax Code 31.10(c)~~
- ~~5. If a district's taxes are collected by another taxing unit or the appraisal district, the collector shall deposit taxes in the district's depository daily, unless a board by official action provides that deposits may be made less often than daily. Tax Code 31.10(d)~~
- ~~6. Each year, prepare a current and cumulative delinquent tax roll for the district. Tax Code 33.03~~
- ~~7. At least once each year, deliver a delinquent tax notice to each person whose name appears on the delinquent tax rolls. Tax Code 33.04~~

Collector's Bond

~~If a district's taxes are collected by a district employee, a board shall require the tax collector to give bond conditioned on the faithful performance of duties. The bond shall be made payable to and be approved by a board in an amount determined by the board. The board may require a new bond at any time, and failure to give new bond within a reasonable time after demand is a ground for removal from office. The board may prescribe additional requirements for the bond.~~

~~If a district's taxes are collected by a person who is not an employee of the district, a board may require the person to give bond conditioned on the faithful performance of duties. The bond shall be payable to, approved by, and paid for by the board in an amount determined by the board. The board may prescribe additional requirements for the bond.~~

~~A district shall pay the premium for the required bond from its general fund or as provided by intergovernmental contract.~~

~~Tax Code 6.29~~

Limit on Contracting

~~A district may not enter into a contract relating to the performance of an activity governed by Title 1 of the Tax Code (i.e., the Property Tax Code) with a member of the board of directors of an appraisal district in which the district participates or with a business entity in which a member of the appraisal board has a substantial interest.~~

~~For purposes of the above paragraph, an individual has a substantial interest in a business entity if:~~

- ~~1. The combined ownership of the individual and the individual's spouse is at least ten percent of the voting stock or share of the business entity or the individual; or~~
- ~~2. The individual's spouse is a partner, limited partner, or officer of the business entity.~~

~~"Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or other entity recognized by law.~~

~~Tax Code 6.036(c), (ed)~~

[kge 7/23/19: The material above is already at CCH.](#)

[kge 2/4/19: during comprehensive PRM review, clerk recommended change for completeness. This can wait until post-legislative update unless it can be done as a printing change.](#)

BOARD INTERNAL ORGANIZATION
ATTORNEY

BDD
(LEGAL)

**Procurement of
Legal Services**

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered by an attorney. *Education Code 44.031(f)*- [See CH(LEGAL)]

Contingent Fee
Contract

[\[For requirements regarding contingent fee contracts for legal services, see CH\(LEGAL\).\]](#)

[kgc 7/7/19: HB 2826, effective 9.1.19. This could be a note if that's preferred.](#)

Attorney General

A district may request the assistance of the attorney general on any legal matter. The district must pay any costs associated with the assistance. *Education Code 11.151(e)*

A board may act only by majority vote of the members present at a meeting held in compliance with Government Code Chapter 551, at which a quorum of the board is present and voting. A majority vote is generally determined from a majority of those present and voting, excluding abstentions, assuming a quorum is present. *Education Code 11.051(a-1); Atty. Gen. Op. GA-689 (2009)*

Definitions**“Meeting”**

“Meeting” means a deliberation among a quorum of a board, or between a quorum of the board and another person, during which public business or public policy over which the board has supervision or control is discussed or considered, or during which the board takes formal action. “Meeting” also means a gathering:

1. That is conducted by a board or for which a board is responsible;
2. At which a quorum of members of a board is present;
3. That has been called by a board; and
4. At which board members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of a district, about the public business or public policy over which the board has supervision or control.

Gov’t Code 551.001(4)

A communication or exchange of information between board members about public business or public policy over which the board has supervision or control does not constitute a meeting or deliberation for purposes of the Texas Open Meetings Act if the communication is posted to an online message board or similar Internet application in compliance with Government Code 551.006. *Gov’t Code 551.006 [See BBI(LEGAL)]*

“Deliberation”

“Deliberation” means a verbal or written exchange between ~~during a meeting among~~ a quorum of a board, or between a quorum of a board and another person, concerning ~~any~~ issue within the jurisdiction of the board ~~or any public business~~. *Gov’t Code 551.001(2)*

[kqc 7/5/19: SB 1640, effective 6.10.19](#)

“Recording”

“Recording” means a tangible medium on which audio or a combination of audio and video is recorded, including a disc, tape, wire, film, electronic storage drive, or other medium now existing or later developed. *Gov’t Code 551.001(7)*

"Videoconference Call"	"Videoconference call" means a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through duplex audio and video signals transmitted over a telephone network, a data network, or the Internet. <i>Gov't Code 551.001(8)</i>
Social Function, Convention, or Candidate Event	The term "meeting" does not include the gathering of a quorum of a board at a social function unrelated to the public business that is conducted by the board, the attendance by a quorum of the board at a regional, state, or national convention or workshop, ceremonial event, or press conference, or the attendance by a quorum of a board at a candidate forum, appearance, or debate to inform the electorate, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, press conference, forum, appearance, or debate. <i>Gov't Code 551.001(4)</i>
Legislative Committee or Agency Meeting	The attendance by a quorum of a board at a meeting of a committee or agency of the legislature is not considered to be a meeting of a board if the deliberations at the meeting by the board members consist only of publicly testifying, publicly commenting, and publicly responding to a question asked by a member of the legislative committee or agency. <i>Gov't Code 551.0035(b)</i>
Superintendent Participation	A board shall provide a superintendent an opportunity to present at a meeting an oral or written recommendation to the board on any item that is voted on by the board at the meeting. <i>Education Code 11.051(a-1)</i>
Open to Public	Every meeting of a board shall be open to the public. A board may, however, exclude a witness from a hearing during the examination of another witness in a matter being investigated and may enter into a closed meeting, as provided by law. <i>Gov't Code 551.002, .084, Ch. 551, Subch. D-</i> [See BDB and BEC]
Parental Access	A parent, as defined in Education Code 26.002, is entitled to complete access to any meeting of a board, other than a closed meeting held in compliance with the Open Meetings Act. <i>Education Code 26.007(a)</i>
Recording	All or any part of an open meeting may be recorded by any person in attendance by means of a recorder, video camera, or any other means of aural or visual reproduction. A board may adopt reasonable rules to maintain order at a meeting, including rules related to the location of recording equipment and the manner in which the recording is conducted. These rules shall not prevent or unreasonably impair a person from exercising the right to record a meeting that is open to the public. <i>Gov't Code 551.023</i>

Minutes

A board shall prepare and keep minutes or make a recording of each open meeting. The minutes shall state the subject matter of each deliberation and indicate each vote, order, decision, or other action taken. *Gov't Code 551.021*

Board Member Attendance

The minutes or recording, as applicable, of a regular or special meeting of a board must reflect each member's attendance at or absence from the meeting. *Education Code 11.0621*

Availability

The minutes and recording are public records and shall be available for public inspection and copying on request to a superintendent or designee. *Gov't Code 551.022; Education Code 11.0621*

Note: [For website posting requirements regarding the record of a board meeting, see CQA.](#)

kgc 7/6/19: HB 305, effective 9.1.19. Unlike the brackets I used below, this note seems appropriate here for the reasons set out in chatter in BBBA.

Notice Required

A board shall give written notice of the date, hour, place, and subject(s) of each meeting it holds. *Gov't Code 551.041*

Continued Meeting

If a board recesses an open meeting to the following regular business day, the board is not required to post notice of the continued meeting if the action is taken in good faith and not to circumvent Government Code Chapter 551. If an open meeting is continued to the following regular business day and, on that following day, a board continues the meeting to another day, the board must give the required written notice of the meeting continued to that other day. *Gov't Code 551.0411(a)*

Inquiry During Meeting

If a member of the public or of a board inquires at a meeting about a subject for which notice has not been given, the notice provisions do not apply to a statement of specific factual information given in response to the inquiry or a recitation of existing policy in response to the inquiry. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda of a subsequent meeting. *Gov't Code 551.042*

Location

A board must hold each public meeting within the boundaries of the district, except:

1. As otherwise required by law; or
2. To hold a joint meeting with another district or with another governmental entity if the boundaries of the governmental entity are in whole or in part within the boundaries of the district.

*Education Code 26.007(b)***Time of Notice and Accessibility**

Notice of a board meeting shall be posted on a bulletin board at a place convenient to the public in the central administration office for at least 72 hours before the scheduled time of the meeting. That notice or a notice posted at another board-designated place shall at all times be readily accessible to the public for at least 72 hours before the scheduled time of the meeting. *Gov't Code 551.043(a), .051; City of San Antonio v. Fourth Court of Appeals, 820 S.W. 2d 762 (Tex. 1991)*

If a district is required to post notice of a meeting on the Internet, the district satisfies the requirement that the notice must be posted in a place readily accessible to the general public at all times by making a good-faith attempt to continuously post the notice on the Internet during the prescribed period.

A district must still comply with the duty to physically post the notice in the central administration office and if the district makes a good-faith attempt to continuously post the notice on the Internet during the prescribed period, the physically posted notice must be readily accessible to the general public during normal business hours.

*Gov't Code 551.043(b)***Internet Posting**

If a district maintains an Internet website, in addition to the other place at which notice is required to be posted, a board must also concurrently post notice of a meeting on the Internet website.

A district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more must also, concurrently with the notice, post on the district's Internet website the agenda for a board meeting, if the agenda differs from the posted notice.

The validity of a posting of a district that made a good-faith attempt to comply with the Internet posting requirements is not affected by a failure to comply that is due to a technical problem beyond the control of the district.

Gov't Code 551.056 [[See CQA for website posting requirements regarding notice of board meetings.](#)]

kgc 7/6/19: Unlike the notes in BBBA and above, I think this suffices here because the posting requirement from HB 305, effective 9.1.19, is not really anything different from what they have to do otherwise.

Specificity of Agenda / Notice

Agendas for all meetings shall be sufficiently specific to inform the public of the subjects to be deliberated at the meeting, setting out

any special or unusual matters to be considered or any matter in which the public has a particular interest. Deliberations or actions pertaining to a superintendent and principals are of particular public interest, and notice of those subjects must be worded with such clarity that the public will understand what a board proposes to discuss or accomplish. *Cox Enterprises, Inc. v. Austin Indep. Sch. Dist.*, 706 S.W.2d 956 (Tex. 1986); *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied); *Atty. Gen. Ops. M-494* (1969), *H-419* (1974), *H-662* (1975), *H-1045* (1977)

The terms “employee briefing” or “staff briefing” do not give adequate notice of the subject matter to be presented to a board by employees or staff members. *Atty. Gen. Op. JC-169* (2000)

The subject of a report or update by district staff or a member of the board must be set out in the notice in a manner that informs a reader about the subjects to be addressed. *Atty. Gen. Op. GA-668* (2008)

Emergency Meeting or Emergency Addition to Agenda

In an emergency or when there is an urgent public necessity, the notice of a meeting [to deliberate or take action on the emergency or urgent public necessity](#), or the supplemental notice ~~of a subject added to an agenda~~ [to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda for a meeting for which notice has been](#) posted in accordance with [the Open Meetings Act law](#), is sufficient if [the notice or supplemental notice](#) ~~it~~ is posted for at least ~~one~~[two](#) hours before the meeting is convened.

[A board may not deliberate or take action on a matter at a meeting for which notice or supplemental notice is posted as described above other than:](#)

1. ~~a~~[A matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting; or](#)
2. ~~a~~[An agenda item listed on a notice of the meeting before the supplemental notice was posted.](#)

An emergency or urgent public necessity exists only if immediate action is required because of:

1. ~~a~~[An imminent threat to public health and safety, including a threat described in ~~paragraph~~ item 2, below, if imminent; or](#)
2. ~~a~~[A reasonably unforeseeable situation, including:](#)

- a. ~~f~~ Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
- b. ~~p~~ Power failure, transportation failure, or interruption of communication facilities;
- c. ~~e~~ Epidemic; or
- d. ~~r~~ Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

~~The~~^A board shall clearly identify the emergency or urgent public necessity ~~for each item~~ in the notice of an emergency meeting or ~~and each item added in a~~ supplemental notice.

The sudden relocation of a large number of residents from the area of a declared disaster to a district's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation. ~~Notice of an emergency meeting or supplemental notice of an emergency item added to the agenda of a meeting to address a situation described by this subsection must be given to members of the news media as provided by Government Code 551.047 not later than one hour before the meeting.~~

Gov't Code 551.045

kgc 7/5/19: SB 494, effective 9.1.19

Catastrophe

A board prevented from convening an open meeting that was otherwise properly posted under Government Code Section 551.041 because of a catastrophe may convene the meeting in a convenient location within 72 hours pursuant to Government Code Section 551.045 if the action is taken in good faith and not to circumvent Government Code Chapter 551. If a board is unable to convene the open meeting within those 72 hours, the board may subsequently convene the meeting only if the board gives the required written notice of the meeting.

“Catastrophe” means a condition or occurrence that interferes physically with the ability of a board to conduct a meeting, including:

1. Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
2. Power failure, transportation failure, or interruption of communication facilities;
3. Epidemic; or

4. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

Gov't Code 551.0411(b), (c)

Special Notice to News Media

A district shall provide special notice of each meeting by telephone, facsimile transmission, or electronic mail to any news media that has requested [special notice](#) and agreed to reimburse the district for the cost of providing the special notice. [Gov't Code 551.052](#)

~~The board president or board member who calls~~ ~~When~~ an emergency meeting ~~is called or an~~ ~~or adds an~~ emergency item ~~added to the~~ ~~an~~ agenda ~~of a board meeting,~~ ~~a board president~~ shall notify ~~by telephone, facsimile transmission, or electronic mail~~ ~~the~~ any news media ~~of the emergency meeting or emergency item.~~ ~~The president or member is required to notify only those members of the news media that~~ ~~who~~ have previously ~~filed a~~ ~~requested~~ ~~containing all pertinent information for the~~ special notice ~~and agreed to reimburse the board for the cost of providing the special notice.~~ ~~The president or member shall give the notice by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened.~~ ~~of all meetings.~~ *Gov't Code 551.047, .052*

kgc 7/5/19: SB 494, effective 9.1.19 ONLY adds the one hour requirement. The rest here is statutory tightening.

Quorum

A majority of a board (e.g., four members of a seven-member board or five members of a nine-member board, regardless of the number of vacancies) constitutes a quorum for meetings of the board. *Gov't Code 551.001(6), 311.013(b)*

Disaster

Notwithstanding any other law, a quorum is not required for a board to act if:

1. The district's jurisdiction is wholly or partly located in the area of a disaster declared by the president of the United States or the governor; and
2. A majority of the members of the board are unable to be present at a board meeting as a result of the disaster.

Gov't Code 418.1102

Secret Ballot

No vote shall be taken by secret ballot. *Atty. Gen. Op. H-1163 (1978)*

Meeting by Telephone Conference Call

A board may hold a meeting by telephone conference call if an emergency or public necessity exists within the meaning of Government Code 551.045 and the convening at one location of a

quorum of the board is difficult or impossible, or if the meeting is held by an advisory board.

Each part of the telephone conference call meeting that is required to be open shall be audible to the public at the location specified in the notice of the meeting. The location designated in the notice as the location of the meeting shall provide two-way communication during the entire telephone conference call meeting and the identification of each party to the telephone conference shall be clearly stated prior to speaking.

- Notice The telephone conference call meeting is subject to the notice requirements applicable to other meetings. The notice must specify as the location of the meeting, the location where meetings of the governmental body are usually held.
- Recording The conference call meeting shall be recorded and made available to the public.

Gov't Code 551.125

**Meeting by
Videoconference
Call**

A board member or district employee may participate remotely in a board meeting by means of a videoconference call if the video and audio feed of the board member's or employee's participation, as applicable, is broadcast live at the meeting and complies with the provisions below. A board member who participates by videoconference call shall be counted as present at the meeting for all purposes. A board member who participates in a meeting by video conference call shall be considered absent from any portion of the meeting during which audio or video communication with the member is lost or disconnected. The board may continue the meeting only if a quorum remains present at the meeting location or, if applicable, continues to participate in a meeting conducted as specified at Multiple Counties, below. *Gov't Code 551.001(8), .127(a-1)-(a-3)*

- Quorum A meeting may be held by videoconference call only if a quorum of the board is physically present at one location of the meeting, except as provided at Multiple Counties, below.

Multiple Counties A meeting of a board of a district that extends into three or more counties may be held by videoconference call only if the board member presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.

- Notice A meeting held by videoconference call is subject to the notice requirements applicable to other meetings in addition to the notice requirements applicable to meetings by videoconference call.

The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum of the board will be physically present and specify the intent to have a quorum present at that location; the notice of a meeting held by videoconference call described above at Multiple Counties must specify as a location of the meeting the location where the board member presiding over the meeting will be physically present and specify the intent to have that member present at that location.

Gov't Code 551.127(b)–(e)

Quality of Audio and
Video Signals

Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at the location specified in the notice. If a problem occurs that causes a meeting to no longer be visible and audible to the public at that location, the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

The location specified in the notice, and each remote location from which a member of the board participates, shall have two-way audio and video communication with each other location during the entire meeting. The face of each participant in the videoconference call, while that participant is speaking, shall be clearly visible, and the voice audible, to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the physical location described by the notice and at any other location of the meeting that is open to the public.

The quality of the audio and video signals perceptible at each location of the meeting must meet or exceed standards specified by the Department of Information Resources. The audio and video signals perceptible by members of the public at the location of the meeting described by the notice and at each remote location from which a member participates must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

Gov't Code 551.127(f), (h)–(j); 1 TAC 209.10–.11

Recording

A board shall make at least an audio recording of the meeting. The recording shall be made available to the public.

Remote
Participation by the
Public

A board may allow a member of the public to testify at a meeting from a remote location by videoconference call even if a board member is not participating in the meeting from a remote location.

Gov't Code 551.127(g), (k)

**Video and Audio
Recording of
Meeting**

A board for a district that has a student enrollment of 10,000 or more shall make a video and audio recording of reasonable quality of each:

1. Regularly scheduled open meeting that is not a work session or a special called meeting; and
2. Open meeting that is a work session or special called meeting at which the board votes on any matter or allows public comment or testimony. [\[See BED for requirements regarding public testimony.\]](#)

~~2.~~ **kgc 7/5/19: Added to bring attention to the requirement to allow everyone to speak at all meetings under HB 2840, effective 9.1.19.**

The board shall make available an archived copy of the video and audio recording of each meeting on the Internet not later than seven days after the date the recording was made. The board shall maintain the archived recording on the Internet for not less than two years after the date the recording was first made available. A board is exempt from the requirements in this paragraph if the board's failure to make the required recording of a meeting available is the result of a catastrophe, as defined by Government Code 551.0411 [see Catastrophe, above], or a technical breakdown. Following a catastrophe or breakdown, the board must make all reasonable efforts to make the required recording available in a timely manner.

The board may make the archived recording available on an existing Internet site, including a publicly accessible video-sharing or social networking site. The board is not required to establish a separate Internet site and provide access to archived recordings of meetings from that site.

A district that maintains an Internet site shall make available on that site, in a conspicuous manner, the archived recording of each meeting or an accessible link to the archived recording of each such meeting.

A board may broadcast a regularly scheduled open meeting on television.

Gov't Code 551.128(b-1)–(b-6)

Internet Broadcast

A board that is not subject to the provisions above at Video and Audio Recording of Meeting may broadcast an open meeting over the Internet. If a board broadcasts a meeting over the Internet, it shall establish an Internet site and provide access to the broadcast from that site. A board shall provide on the Internet site the same notice of the meeting, within the time required for posting that notice, that

the board is required to post under the Open Meetings Act. *Gov't Code 551.128(b), (c)*

Attorney Consultation

A board may use a telephone conference call, videoconference call, or communications over the Internet to conduct a public consultation with its attorney in an open meeting of the board or a private consultation with its attorney in a closed meeting of the board. [See BEC]

Each part of a public consultation by a board with its attorney in an open meeting must be audible to the public at the location specified in the notice of the meeting as the location of the meeting.

Exception

This does not apply to a consultation with an attorney who is an employee of a district. An attorney who receives compensation for legal services performed, from which employment taxes are deducted by a district, is an employee of the district.

Gov't Code 551.129

Hearing-Impaired Persons

In a proceeding before a board in which the legal rights, duties, or privileges of a party are to be determined by the board after an adjudicative hearing, the board shall supply for a party who is deaf or hearing impaired an interpreter who has qualifications approved by the Texas Department of Assistive and Rehabilitative Services.

For purposes of this requirement, "deaf or hearing impaired" means having a hearing impairment, regardless of the existence of a speech impairment, that inhibits comprehension of a proceeding or inhibits communication with others.

Gov't Code 558.001, .003

Prohibited Series of Communications

A board member commits an offense if the member:

1. ~~k~~Knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by the Open Meetings Act and that concern an issue within the jurisdiction of the board in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and
2. ~~k~~Knew at the time the member engaged in the communication that the series of communications:
 - a. ~~i~~Involved or would involve a quorum; and
 - b. ~~w~~Would constitute a deliberation once a quorum of members engaged in the series of communications.

[Gov't Code 551.143](#)

[kgc 7/5/19: SB 1640, effective 6.10.19; this amends a provision that we didn't have in here before \(i.e., this isn't an entirely new section\).](#)

**United States
Constitution**

A district shall take no action abridging the freedom of speech or the right of the people to petition the board for redress of grievances. *U.S. Const. Amend. I, XIV*

A board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. When the board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys.

Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819, 828 (1995); *City of Madison v. Wis. Emp. Rel. Comm'n*, 429 U.S. 167, 176 (1976); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)

A board may create a limited public forum for the purpose of hearing comments from the public so long as:

1. The board does not discriminate against speech on the basis of viewpoint;
2. Any restrictions are reasonable in light of the purpose served by the forum; and
3. The board provides alternative paths for expressing categories of protected speech that are excluded from the forum.

Fairchild v. Liberty Indep. Sch. Dist., 597 F.3d 747 (5th Cir. 2010)

Texas Constitution

Citizens shall have the right, in a peaceable manner, to assemble together for their common good and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance. *Tex. Const. Art. I, Sec. 27*

Public Comment

[A board shall allow each member of the public who desires to address the board regarding an item on an agenda for an open meeting of the board to address the board regarding the item at the meeting before or during the board's consideration of the item.](#)

[Time Limits](#)

[A board may adopt reasonable rules regarding the public's right to address the board under these provisions, including rules that limit the total amount of time that a member of the public may address the board on a given item.](#)

[Additional Time
for Translation](#)

[If a board does not use simultaneous translation equipment in a manner that allows the board to hear the translated public testimony simultaneously, a rule adopted that limits the amount of time that a member of the public may address the board must provide that a member of the public who addresses the board through a translator must be given at least twice the amount of time as a](#)

member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the board.

Public Criticism

A board may not prohibit public criticism of the board, including criticism of any act, omission, policy, procedure, program, or service. This does not apply to public criticism that is otherwise prohibited by law.

~~Gov't Code 551.007 As long as the requirements of the Open Meetings Act are satisfied and the right of citizens to apply to a board for redress of their grievances is not abridged, the board need not provide a public forum for every citizen wishing to express an opinion on a matter. Reasonable restraints on the number, length, and frequency of presentations are permissible. A board may limit the number of persons it will hear on a particular subject and the frequency with which they may appear, so long as the regulation does not abridge constitutionally guaranteed rights of freedom of speech and to petition, nor unfairly discriminate among views seeking expression. Atty. Gen. Op. H-188 (1973)~~

kgc 7/23/19: Bill speaks in terms of public testimony, but left margin note Public Comment per CVC & for consistency with Local.

kgc 7/5/19: HB 2840, effective 9.1.19

Disruption

It is a criminal offense for a person, with intent to prevent or disrupt a lawful meeting, to substantially obstruct or interfere with the ordinary conduct of a meeting by physical action or verbal utterance and thereby curtail the exercise of others' First Amendment rights. *Penal Code 42.05; Morehead v. State, 807 S.W. 2d 577 (Tex. Cr. App. 1991)*

Team Building

The **S**uperintendent's participation in team building sessions as part of the **B**oard's continuing education [see BBD] shall represent one component of the **S**uperintendent's ongoing professional development. 19 TAC 61.1(b)

Identifying and Reporting Abuse

Continuing education requirements for a superintendent must include at least two and a half hours of training every five years on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children. Education Code 21.054(h)

kgc 7/5/19: HB 403, effective 9.1.19; a supt subject to CE before effective date is not reqd to comply for any CE period that ends before 1.1.21.

I'm conflicted about including this bc we don't include other parts of this statute because it's a statute that directs SBEC to make rules re: continuing ed. The rules applicable to supt training are 19 TAC 232.13, 242.15, & 242.30. It doesn't seem appropriate to add those here now. This is just such a weirdly specific requirement. All of that said, I'm leaning toward EXCLUSION, but wanted input. Maybe we watch for rules – esp since supts don't have to comply for a while?

**Employment and
Evaluation**

The board shall adopt a policy providing for the employment and duties of district personnel. The employment policy must provide that the board employs and evaluates the superintendent. *Education Code 11.1513(a)(1)* [See DC]

Appraisal Process

A board shall appraise a superintendent annually using either:

1. The commissioner of education's recommended appraisal process and criteria; or
2. An appraisal process and performance criteria that are:
 - a. Developed by the district in consultation with the district- and campus-level committees; and
 - b. Adopted by the board.

Education Code 21.354(c)

In addition to other procedures and criteria determined by the board, the commissioner's recommended appraisal process and criteria shall include, at a minimum, an annual evaluation of the superintendent and a student performance domain. Completion of the Lone Star Governance superintendent evaluation may satisfy these requirements. *19 TAC 150.1031(b)-(c)*

Annual
Performance Report

The information in the annual report describing the educational performance of a district [see AIB] shall be a primary consideration of the board in evaluating the superintendent. *Education Code 39.307(3)(C)*

**Penalty for
Noncompliance**

Funds of the district may not be used to pay a superintendent who has not been appraised in the preceding 15 months. *Education Code 21.354(d)*

Confidentiality

A document evaluating the performance of a [superintendent teacher or administrator](#) is confidential and is not subject to disclosure under the Public Information Act, Government Code Chapter 552. [Education Code 21.355](#) [[For disclosure requirements on evaluations, See GBA.](#)]

~~A district give the Texas Education Agency (TEA) a document evaluating the performance of a superintendent employed by the district for purposes of an investigation conducted by TEA. A document provided to TEA remains confidential unless the document becomes part of the record in a contested case under the Administrative Procedure Act, Government Code Chapter 2001.~~

~~Except as provided by a court order prohibiting disclosure, a document provided to TEA may be used in a disciplinary proceeding against a superintendent if the document may be admitted under~~

~~rules of evidence applicable to a contested case under Govern-
ment Code 2001.081.~~

~~Education Code 21.355~~

kgc 7/23/19: Removed here to avoid excessive duplication.

kgc 7/6/19: SB 1230, effective 6.14.19; this is duplicated at DNA and DNB; is that duplication desirable or would a single location with a pointer from the other two be preferable? Also, I did NOT edit out the word teacher here bc, as indicated in chatter elsewhere, we decided in a prior update that this sort of editing can be misleading as to what a statute actually says.

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Planning and Decision-Making Process

A board shall adopt a policy to establish a district- and campus-level planning and decision-making process that will involve the professional staff of a district, parents of students enrolled in a district, business representatives, and community members in establishing and reviewing the district's and campuses' educational plans, goals, performance objectives, and major classroom instructional programs. *Education Code 11.251(b)*

The planning and decision-making requirements do not:

1. Prohibit a board from conducting meetings with teachers or groups of teachers other than the district-level committee meetings.
2. Prohibit a board from establishing policies providing avenues for input from others, including students or paraprofessional staff, in district- or campus-level planning and decision making.
3. Limit or affect the power of a board to govern the public schools.
4. Create a new cause of action or require collective bargaining.

Education Code 11.251(g), .252(e), .253(f)

Evaluation

At least every two years, a district shall evaluate the effectiveness of the district's decision-making and planning policies, procedures, and staff development activities related to district- and campus-level decision making and planning to ensure that they are effectively structured to positively impact student performance. *Education Code 11.252(d)*

Administrative Procedure

A board shall ensure that an administrative procedure is provided to clearly define the respective roles and responsibilities of the superintendent, central office staff, principals, teachers, district-level committee members, and campus-level committee members in the areas of planning, budgeting, curriculum, staffing patterns, staff development, and school organization.

A board shall ensure that the district-level planning and decision-making committee will be actively involved in establishing the administrative procedure that defines the respective roles and responsibilities pertaining to planning and decision making at the district and campus levels.

Education Code 11.251(d)

Federal Requirements

The district policy must provide that all pertinent federal planning requirements are addressed through the district- and campus-level planning process. *Education Code 11.251(f)*

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Single-Campus District

In a district that has only one campus, the district- and campus-level committees may be one committee and the district and campus plans may be one plan. *Education Code 11.252(c)*

Required Plans

A board shall ensure that a district improvement plan and improvement plans for each campus are developed, reviewed, and revised annually for the purpose of improving the performance of all students. A board shall annually approve district and campus performance objectives and shall ensure that the district and campus plans:

1. Are mutually supportive to accomplish the identified objectives; and
2. At a minimum, support the state goals and objectives under Education Code Chapter 4.

Education Code 11.251(a)

Shared Services Arrangement for DAEP Services

A district participating in a shared services arrangement for disciplinary alternative education program (DAEP) services shall ensure that the district improvement plan and each campus-level plan include the performance of the DAEP student group for the district. The identified objectives for the improvement plans shall include:

1. Student groups served, including overrepresentation of students from economically disadvantaged families, with ethnic and racial representations, and with a disability who receive special education and limited English proficiency services;
2. Attendance rates;
3. Pre- and post-assessment results;
4. Dropout rates;
5. Graduation rates; and
6. Recidivism rates.

19 TAC 103.1201(b)

District Improvement Plan

A district shall have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the superintendent with the assistance of the district-level committee. The purpose of the district improvement plan is to guide district and campus staff in the improvement of student performance for all student groups in order to attain state standards in respect to the achievement indicators. *Education Code 11.252(a)* [See AIA]

The district improvement plan must include provisions for:

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1. A comprehensive needs assessment addressing performance on the achievement indicators, and other appropriate measures of performance, that are disaggregated by all student groups served by a district, including categories of ethnicity, socioeconomic status, sex, and populations served by special programs, including students in special education programs under Education Code Chapter 29, Subchapter A.
2. Measurable district performance objectives for all appropriate achievement indicators for all student populations, including students in special education programs under Education Code Chapter 29, Subchapter A, and other measures of student performance that may be identified through the comprehensive needs assessment.
3. Strategies for improvement of student performance that include:
 - a. Instructional methods for addressing the needs of student groups not achieving their full potential.
 - b. Methods for addressing the needs of students for special programs, including:
 - (1) Suicide prevention programs, in accordance with Health and Safety Code Chapter 161, Subchapter O-1, which includes a parental or guardian notification procedure [see FFB];
 - (2) Conflict resolution programs;
 - (3) Violence prevention programs; and
 - (4) Dyslexia treatment programs.
 - c. Dropout reduction.
 - d. Integration of technology in instructional and administrative programs.
 - e. Discipline management.
 - f. Staff development for professional staff of a district.
 - g. Career education to assist students in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities.
 - h. Accelerated education.
4. Strategies for providing to middle school, junior high school, and high school students, those students' teachers and

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school counselors, and those students' parents information about:

- a. Higher education admissions and financial aid opportunities.
 - b. The TEXAS grant program and the Teach for Texas grant program.
 - c. The need for students to make informed curriculum choices to be prepared for success beyond high school.
 - d. Sources of information on higher education admissions and financial aid.
5. Resources needed to implement identified strategies.
 6. Staff responsible for ensuring the accomplishment of each strategy.
 7. Timelines for ongoing monitoring of the implementation of each improvement strategy.
 8. Formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of student performance.
 9. [The trauma-informed care policy required under Education Code 38.036. \[See FFBA\]](#)

~~8.~~ [kgc 7/2/19: This what we \(kgc, CVC, AK, E.JN\) decided to do in our meeting of 6.27.19. This isn't consistent with choices below re: dating violence and sexual abuse; we might consider moving that material to a more relevant policy code with an xref from this policy like above. From SB 11, effective 6.6.19](#)

Education Code 11.252(a)

10. [The law enforcement duties of peace officers, school resource officers, and security personnel. Education Code 37.081\(d\)\(1\) \[See CKE\]](#)

[kgc 6/30/19: SB 1707, effective 6.2.19.](#)

- ~~9.~~11. A discipline management program providing for prevention of and education concerning unwanted physical or verbal aggression, sexual harassment, and other forms of bullying in schools, on school grounds, and in school vehicles. *Education Code 37.083(a)*

- ~~10.~~12. A dating violence policy that must:

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- a. Include a definition of dating violence that includes the intentional use of physical, sexual, verbal, or emotional abuse by a person to harm, threaten, intimidate, or control another person in a dating relationship, as defined by Family Code 71.0021; and
- b. Address safety planning, enforcement of protective orders, school-based alternatives to protective orders, training for teachers and administrators, counseling for affected students, and awareness education for students and parents.

Education Code 37.0831 [See FFH]

~~44.~~13. A policy addressing sexual abuse, [sex trafficking](#), and other maltreatment of children that must include:

- a. Methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, [sex trafficking](#), and other maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim of sexual abuse, [sex trafficking](#), or other maltreatment, using resources developed by [the Texas Education Agency \(TEA\) or the commissioner regarding those issues, including resources developed by TEA under Education Code 38.004 \(regarding child abuse reporting and programs\)](#). These methods must include the staff training described at Education Code 38.0041(c) [see DMA];
- b. Actions that a child who is a victim of sexual abuse, [sex trafficking](#), or other maltreatment should take to obtain assistance and intervention; and
- c. Available counseling options for students affected by sexual abuse, [sex trafficking](#), or other maltreatment.

The policy must be included in any informational handbook provided to students and parents.

Education Code [11.252\(a\)\(9\)](#), 38.0041

[kgc 7/5/19: HB 111, effective 5.31.19, reenacts and amends this section. Applies beginning with 2019-20 school year. Are there other xrefs?](#)

[kgc 7/2/19: I added the section \(11.252\(a\)\(9\)\) that requires this to be in the plan. Is this the best place for the details of this requirement or should it be located elsewhere with a pointer from here based on 11.252 – like we've done with trauma-informed care?](#)

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A district's plan for the improvement of student performance is not filed with TEA, but the district must make the plan available to TEA on request. *Education Code 11.252(b)*

Campus-Level Plan

Each school year, the principal of each school campus, with the assistance of the campus-level committee, shall develop, review, and revise the campus improvement plan for the purpose of improving student performance for all student populations, including students in special education programs under Education Code Chapter 29, Subchapter A, with respect to the student achievement indicators and any other appropriate performance measures for special needs populations. *Education Code 11.253(c)*

Each campus improvement plan must:

1. Assess the academic achievement for each student in the school using the achievement indicator system.
2. Set the campus performance objectives based on the achievement indicator system, including objectives for special needs populations, including students in special education programs under Education Code Chapter 29, Subchapter A.
3. Identify how the campus goals will be met for each student.
4. Determine the resources needed to implement the plan.
5. Identify staff needed to implement the plan.
6. Set time lines for reaching the goals.
7. Measure progress toward the performance objectives periodically to ensure that the plan is resulting in academic improvement.
8. Provide for a program to encourage parental involvement at the campus.
9. Include goals and methods for violence prevention and intervention on campus.
10. If the campus is an elementary, middle, or junior high school, set goals and objectives for the coordinated health program at the campus based on:
 - a. Student fitness assessment data, including any data from research-based assessments such as the school health index assessment and planning tool created by the federal Centers for Disease Control and Prevention;
 - b. Student academic performance data;

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- c. Student attendance rates;
- d. The percentage of students who are educationally disadvantaged;
- e. The use and success of any method to ensure that students participate in moderate to vigorous physical activity; and
- f. Any other indicator recommended by the local school health advisory council.

Education Code 11.253(d)

KGC 6/29/19: Per meeting on 6.28.19, kgc, CVC, AK, EJM agreed to delete this policy as it is difficult to maintain and probably not used enough to warrant the investment of resources to keep it updated. It is likely and appropriate that someone looking for a reporting requirement would look in the policy code covering the topic, not here. Also, TASBO maintains a Master Calendar of a district's obligations.

Note: — The following is an index of periodic reports that are addressed in the legally referenced material of the policy manual. The list is not exhaustive. This list does not address responsive reports (those that are required in response to a specific incident), reports required under special circumstances, or all reports required under administrative procedures of an agency.

**Electronic
Submission to TEA**

Notwithstanding any other law, a district shall submit only in electronic format all reports required to be submitted to TEA under the Education Code. *Education Code 7.060(c)*

**Report
Requirements**

District publication and distribution requirements follow:

1. — A written report to each parent of student performance, under Education Code 39.303. [See AIB]
2. — At the beginning of the school year, a report to each teacher of students who took a state assessment, indicating whether each student performed satisfactorily or, if the student did not perform satisfactorily, whether the student met the standard for annual improvement, under Education Code 39.304. [See AIB]
3. — At the beginning of the school year, a report to each student who took a state assessment, indicating whether the student performed satisfactorily or, if the student did not perform satisfactorily, whether the student met the standard for annual improvement, under Education Code 39.304. [See AIB]
4. — Annually, a report describing the educational performance of the district and of each campus in the district, under Education Code 39.306. [See AIB]
5. — Annually, information from a campus report card to the parent of each student at the campus, under Education Code 39.305. [See AIB]

- ~~6.—An end-of year financial report, for distribution to the community under Education Code 11.1511(b)(11). [See BAA]~~
- ~~7.—At the last regular board meeting before an election of trustees, the board president's announcement of the name of each board member who has completed the required continuing education, who has exceeded the required hours of continuing education, and who is deficient in meeting the required continuing education as of the anniversary of the date of each board member's election or appointment to the board. The minutes of this board meeting must reflect whether each trustee has met or is deficient in meeting the training required for the trustee as of the first anniversary of the date of the trustee's election or appointment under 19 Administrative Code 61.1(j) and Education Code 11.159(b). [See BBD]~~
- ~~8.—By September 1 of each year, a report to TEA regarding the number of requests submitted by a member of the board, during the preceding school year, for information, documents, and records and the total cost to the district of responding to such requests, under Education Code 11.1512(c)–(f). [See BBE]~~
- ~~9.—The annual financial management report, under Education Code 39.083. [See CFA]~~
- ~~10.—Annually, a proposed budget shall be submitted to TEA on or before the date established in the *Financial Accountability System Resource Guide*, under Education Code 44.005. [See CE]~~
- ~~11.—On or before the date set by the State Board of Education, a report of the revenues and expenditures for the preceding fiscal year shall be filed with TEA, under Education Code 44.007(c), (d). [See CFA]~~
- ~~12.—Not later than the 150th day after the date the fiscal year ends, a board president shall submit the annual financial statement to a daily, weekly, or biweekly newspaper published within the boundaries of the district, under Local Government Code 140.006. [See CFA]~~
- ~~13.—Not later than the 150th day after the end of the fiscal year for which an audit was made, a copy of the annual audit report shall be filed with TEA, under Education Code 44.008(d). [See GFC]~~
- ~~14.—At least once every three years, a district shall conduct a safety and security audit of the district's facilities and report~~

~~the results of the safety and security audit to the Texas School Safety Center, under Education Code 37.108. [See CK]~~

- ~~15. Not later than March 1 of each year, each district police department shall submit a report containing information about motor vehicle stops during the previous calendar year to the Texas Commission on Law Enforcement (TCOLE) and the governing body of each county or municipality served by the department, under Code of Criminal Procedure 2.134. [See CKE]~~
- ~~16. By September 1, districts involved in a school bus advertising program shall provide to the Texas Department of Public Safety written notification of the number of school buses operated by or for the district that display exterior advertising or another paid announcement, under 37 Administrative Code 14.65(a)(1), (b). [See CNB]~~
- ~~17. Annually, a district shall report to TEA the number of accidents in which its buses were involved in the past year, under Education Code 34.015(b). [See CNC]~~
- ~~18. A district that does not participate in the uniform group health insurance program (TRS ActiveCare) shall prepare a report addressing its compliance with Education Code 22.004. [See CRD]~~
- ~~19. At least every two years, before the beginning of the school year and in strict compliance with the time frames established by Railroad Commission rule, a district shall report to its natural gas supplier the results of a pressure test of natural gas piping systems in each district facility, under Utilities Code 421.502-.504. [See CS]~~
- ~~20. Each month, a district that employs any retirees shall file a certified statement with TRS, under Government Code 824.6022. [See DC]~~
- ~~21. Before November 1 of each year, a board shall report to TEA the number of limited English proficient (LEP) students on each campus, under Education Code 29.053(b). [See EHBE]~~
- ~~22. Annually, a district that operates a high school equivalency program shall submit a progress report to TEA, under 19 Administrative Code 89.1417(a). [See EHBL]~~
- ~~23. Annually, a district shall report to TEA the number of students who have participated in a program to earn college credit in high school and the courses in which participating students~~

~~have earned credit, under Education Code 28.009. [See EHDD]~~

- ~~24. A superintendent shall report the results of reading instruments to the commissioner of education and the board; a student's results, in writing, to the student's parent or guardian; and each student's raw score electronically to TEA, under Education Code 28.006(d). [See EKC]~~
- ~~25. A district shall use the student attendance accounting standards established by the commissioner to make reports on student attendance and student participation in special programs, under 19 Administrative Code 129.1025. [See FEB]~~
- ~~26. A district shall compile the results of the annual physical fitness assessment of students and provide summary results to TEA, under Education Code 38.103. [See FFAA]~~
- ~~27. On or before June 30 of each year, a district shall submit to the Texas Department of State Health Services (TDSHS) a report on the vision and hearing screening status of students who were screened during the reporting year, under Health and Safety Code 36.006 and 25 Administrative Code 37.26(b)(6). [See FFAA]~~
- ~~28. On or before June 30 of each year, a district shall submit to TDSHS a report of spinal screening performed during the school year, under 25 Administrative Code 37.145(b)(5). [See FFAA]~~
- ~~29. A district located in Regional Education Service Centers 1, 2, 3, 4, 10, 11, 13, 15, 18, 19, or 20 shall submit to the University of Texas—Rio Grande Valley Border Health Office an annual report on its students' risk assessment status for Type 2 diabetes, under Health and Safety Code 95.004(e). [See FFAA]~~
- ~~30. Annually, a district shall submit a report of the immunization status of students to TDSHS, under Education Code 38.002(c) and 25 Administrative Code 97.71. [See FFAB]~~
- ~~31. Annually, a district shall report to the commissioner information regarding each placement in a disciplinary alternative education program (DAEP) and each expulsion, under Education Code 37.020. [See FO]~~
- ~~32. 1 Not later than the 30th day after the contract is executed and again not later than the 30th day after the contract is terminated, a district shall report to the Office of Federal-State Relations any contract between the district and a federal-level~~

[Delete at U114](#)

REPORTS

BR
(LEGAL)

~~government relations consultant, under Government Code
751.016. [See GR]~~

Please Note: This manual does not have policies in all codes. The coding structure is common to all TASB manuals and is designed to accommodate expansion of both (LEGAL) and (LOCAL) policy topics and administrative regulations.

SECTION C: BUSINESS AND SUPPORT SERVICES

CA	FISCAL MANAGEMENT GOALS AND OBJECTIVES
CAA	Financial Ethics
CB	STATE AND FEDERAL REVENUE SOURCES
CBA	State
CBB	Federal
CC	LOCAL REVENUE SOURCES
CCA	Bond Issues
CCB	Time Warrants
CCC	Certificates of Indebtedness
CCD	Recreational Facilities Bonds
CCE	Athletic Stadium Authority
CCF	Loans and Notes
CCG	Ad Valorem Taxes
CCGA	Exemptions and Payments
CCGB	Economic Development
CCH	Appraisal District
CD	OTHER REVENUES
CDA	Investments
CDB	Sale, Lease, or Exchange of School-Owned Property
CDBA	Revenue Bonds from Proceeds
CDC	Gifts and Solicitations
CDD	Rentals and Service Charges
CDE	Shop Sales
CDF	Royalties
CDG	Gate Receipts, Concessions
CDH	Public and Private Facilities
CE	ANNUAL OPERATING BUDGET
CEA	Financial Exigency
CF	ACCOUNTING
CFA	Financial Reports and Statements
CFB	Inventories
CFC	Audits
CFD	Activity Funds Management
CFE	Payroll Procedures
CFEA	Salary Deductions and Reductions
CFF	Checking Accounts
CFG	Cash in School Buildings
CG	BONDED EMPLOYEES AND OFFICERS

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SECTION C: BUSINESS AND SUPPORT SERVICES

CH	PURCHASING AND ACQUISITION
CHB	Petty Cash Account
CHD	Purchasing Procedures
CHE	Vendor Relations
CHF	Payment Procedures
CHG	Real Property and Improvements
CHH	Financing Personal Property Purchases
CI	SCHOOL PROPERTIES DISPOSAL
CJ	CONTRACTED SERVICES
CJA	Criminal History
CK	SAFETY PROGRAM/RISK MANAGEMENT
CKA	Inspections
CKB	Accident Prevention and Reports
CKC	Emergency Plans
CKD	Emergency Medical Equipment and Procedures
CKE	Security Personnel
CKEA	Commissioned Peace Officers
CKEB	School Marshals
CKEC	School Resource Officers
CL	BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT
CLA	Security
CLB	Maintenance
CLC	Traffic and Parking Controls
CLD	Records and Reports
CLE	Flag Displays
CM	EQUIPMENT AND SUPPLIES MANAGEMENT
CMA	Receiving and Warehousing
CMB	Authorized Uses of Equipment and Supplies
CMD	Instructional Materials Care and Accounting
CN	TRANSPORTATION MANAGEMENT
CNA	Student Transportation
CNB	District Vehicles
CNBA	Bus Maintenance
CNC	Transportation Safety
CO	FOOD AND NUTRITION MANAGEMENT
COA	Procurement
COB	Free and Reduced-Price Meals
COC	Vending Machines

Please Note: This manual does not have policies in all codes. The coding structure is common to all TASB manuals and is designed to accommodate expansion of both (LEGAL) and (LOCAL) policy topics and administrative regulations.

SECTION C: BUSINESS AND SUPPORT SERVICES

CP	OFFICE MANAGEMENT
CPA	Office Communications
CPAA	Printing and Duplicating
CPAB	Mail and Delivery
CPAC	Telephone
CPC	Records Management
CQ	TECHNOLOGY RESOURCES
CQA	District, Campus, and Classroom Websites
CQB	Equipment Cybersecurity
CQC	Equipment
CR	INSURANCE AND ANNUITIES MANAGEMENT
CRA	Property Insurance
CRB	Liability Insurance
CRD	Health and Life Insurance
CRE	Workers' Compensation
CRF	Unemployment Insurance
CRG	Deferred Compensation and Annuities
CS	FACILITY STANDARDS
CT	FACILITIES PLANNING
CV	FACILITIES CONSTRUCTION
CVA	Competitive Bidding
CVB	Competitive Sealed Proposals
CVC	Construction Manager-Agent
CVD	Construction Manager-at-Risk
CVE	Design-Build
CVF	Job Order Contracts
CW	NAMING FACILITIES
CX	RENTING OR LEASING FACILITIES FROM OTHERS
CY	INTELLECTUAL PROPERTY

kgc 7/8/19: This is what I'd recommend; it's better than what we had, and I think it provides a decent, short overview of the FSP. I've added a parenthetical reference to the transportation allotment and the NIFA to support its inclusion. I'd like to do this in this update rather than U115 because of HB 3. Also, CQ is already getting some revision at this update, so I can delete PEIMS there now.

kgc 9/19/18: From CVC Update Notes:

CVC: HOLD? I lean toward holding for U115.

I could live with deleting 42.001. Regarding, NIFA, it seems like we would either include all or none of the allotments. Is there a way to provide a general citation to Chapter 42(?) for applicable allotments, including NIFA?

kgc 9/19/18: I agree with holding until U115 – especially since some of this could change in the legislative session.

I'm not crazy about a general reference to allotments because they are not all the same – for example, they don't all require application like NIFA does. Also, we present others in the manual, such as instructional materials and transportation. I think it would be helpful to include NIFA, but we can keep thinking about the best way to do that between now and U115.

Available School Fund

The available school fund is apportioned annually to Texas counties according to the scholastic population of each. *Education Code 43.001(b)*

~~kgc 9/5/18: I don't think this is helpful or entirely accurate out of context like this.~~

Foundation School Program

~~It is the policy of this state that theThe provision of public education is a state responsibility and that a thorough and efficient system be provided shall beand substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to the student's educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors. The public school finance system shall adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences. Education Code 42.001~~

~~kgc 9/5/18: I don't know that this is particularly helpful here, but if we are going to include it, I don't think we should selectively present the statute.~~

The Foundation School Program consists of:

1. Two tiers that in combination provide for:
 - a. ~~s~~Sufficient financing for all school districts to provide a basic program of education that is rated acceptable or higher under Education Code 39.054, and meets other applicable legal standards; and
 - ~~1.b. for s~~Substantially equal access to funds to provide an enriched program; and
2. A facilities component as provided by Education Code Chapter 46. [See CCA(LEGAL)]

Education Code 482.002(b)

~~kgc 7/8/19: only thing new is the cite per HB 3, generally effective 9.1.19~~

~~kgc 9/5/18: I'd rather structure this like the statute.~~

Funding Levels

~~Not later than July 1 of each year, the Commissioner shall determine for each district whether the estimated amount of state and local funding per student in weighted average daily attendance to be provided to the district under the Foundation School Program for maintenance and operations for the following school year is less than the amount provided to the district for the 2010–11 school year. If the amount estimated to be provided is less, the Commissioner shall certify the percentage decrease in funding to be provided to the district. *Education Code 42.009(a)*~~

~~kgc 9/5/18: I don't think this provision adds much by itself.~~

The cost of the Foundation School Program for a district is the total sum of:

1. ‡The sum of the tier one allotments and other funding as follows:
 - a. ‡The basic allotment under Education Code Chapter 48, Subchapter B;
 - b. ‡The student-based allotments under Education Code Chapter 48, Subchapter C; and

c. ~~†~~The additional funding under Education Code Chapter 48, Subchapter D (including the transportation allotment [see CNA] and the new instructional facility allotment below); and

2. ~~†~~The tier two allotment under Education Code Chapter 48, Subchapter E.

The sum of the Foundation School Program maintenance and operations costs for all accredited school districts in this state constitutes the total maintenance and operations cost of the Foundation School Program.

The Foundation School Program shall be financed by:

1. ~~§~~State available school funds distributed in accordance with the law;
2. ~~a~~Ad valorem tax revenue generated by local school district effort [see CCG series]; and
3. ~~§~~State funds appropriated for the purposes of public school education and allocated to each district in an amount sufficient to finance the cost of each district's Foundation School Program not covered by other funds specified.

Education Code 48.251

kgc 7/8/19: previously 42.251 as amended by HB 3.

PEIMS

A district shall participate in the Public Education Information Management System (PEIMS) and shall provide through that system information required for the administration of Education Code Chapter 48~~2~~ (Foundation School Program) and of other appropriate provisions of the Education Code. Data standards, established by the commissioner of education, shall be used by a district to submit required information. ~~Education Code 42.006~~48.008; 19 TAC 61.1025(b)

kgc 7/4/19: cite change under HB 3, generally effective 9.1.19

kgc 4/20/18: I recommend moving this here from CQ Technology Resources because that policy is quite long, and this doesn't really fit there. I'm open to suggestions for a different location.

kgc 9/7/18: The overhaul of CQ is now delayed until UI15. Given that, we can add this here now and delete it from CQ later or wait to move it and wait on this policy until UI15. The only real questions are whether anyone thinks the NIEA info (below) warrants inclusion here

or at a different code and whether its inclusion warrants issuance of the policy now.

New Instructional Facility Allotment (NIFA)

A ~~school~~ district is entitled to an additional allotment as provided by Education Code ~~42.158~~48.152 for operational expenses associated with opening a new instructional facility. A ~~school~~ district entitled to an allotment may use funds from the district's allotment to renovate an existing instructional facility to serve as a dedicated cybersecurity computer laboratory. *Education Code* ~~42.158~~48.152

Eligibility

The facility for which NIFA funds are requested must meet the following requirements:

- ~~— The facility must qualify as an instructional campus and a new instructional facility used for teaching the curriculum required by Education Code Chapter 28.~~
- ~~— To qualify for first-year funding, a new facility must not have been occupied in the prior school year. To qualify for follow-up funding, the facility must have been occupied for the first time in the prior school year and funded for the NIFA for that first year. If an instructional facility qualifies as a new instructional facility but did not receive the allotment in the first year of eligibility due to a failure to apply, the district may still apply for and receive funding for the average daily attendance (ADA) earned only during the second year of occupation in the new instructional facility.~~
- ~~— With the exception of a covered walkway connecting the new facility to another building, the new facility must be physically separate from other existing school structures.~~

~~19 TAC 61.1034(b)(2)~~

Definitions

"Instructional facility" has the meaning assigned by Education Code 46.001. ~~Education Code 42.158(g)(1)~~48.152(a)(1) [See CCA]

"New instructional facility" includes:

1. ~~a~~A newly constructed instructional facility, which is a new instructional campus built from the ground up;
2. ~~a~~A repurposed instructional facility, which is a facility that has been renovated to become an instructional facility for the first time for the applying district; or
3. ~~a~~A leased facility operating for the first time as an instructional facility for the applying district with a minimum lease term of not less than ~~10~~ten years. The lease must not be a continuation or renegotiation of an existing lease for an instructional facility.

[Education Code 48.152\(a\)\(2\); “Instructional campus” means a campus that:](#)

- ~~[Has its own unique campus ID number registered with the Texas Education Agency \(TEA\), an assigned administrator, enrolled students who are counted for average daily attendance, and assigned instructional staff;](#)~~
- ~~[Receives federal and/or state and/or local funds as its primary support;](#)~~
- ~~[Provides instruction in the Texas Essential Knowledge and Skills \(TEKS\);](#)~~
- ~~[Has one or more grade groups in the range from early education through Grade 12; and](#)~~
- ~~[Is not a program for students enrolled in another public school.](#)~~

[19 TAC 61.1034\(a\)](#)

[kge 7/8/19: I cut this down to just the statute with a cite to the rule. I added xrefs at CCA and CV. New section location under HB 3.](#)

[kge 9/5/18: I don't know where to go with this – it doesn't fit in CCA bc it's not tied to bonds or taxes. I put it here since it's tied to attendance, but then I haven't included the attendance component because it gets a little confusing with the dollar amounts and the cap on appropriations.](#)

[There are very recent amendments to the rules \(which hadn't been amended since 2012\) that prompted me to consider this. The rules are effective 9/11/18, 43 TexReg 5774](#)

[Maybe it goes at CV? Maybe we continue to leave it out? Thoughts??](#)

[kge 9/19/18: per Joy/LRS, add xref at CV to this material when and if it's added.](#)

**Bonds and Bond
Taxes**

The board may issue bonds for:

1. The construction, acquisition, and equipment of school buildings in the district;
2. The acquisition of property or the refinancing of property under a contract entered under the Public Property Finance Act (Local Government Code, Chapter 271, Subchapter A), regardless of whether payment obligations under the contract are due in the current year or a future year;
3. The purchase of the necessary sites for school buildings;~~and~~
- ~~4.~~ The purchase of new school buses;
- ~~5.~~ The retrofitting of school buses with emergency, safety, or security equipment; and
- ~~6.~~ The purchase or retrofitting of vehicles to be used for emergency, safety, or security purposes.

~~4.~~ **KGC 7/3/19: SB 11, effective 6.6.19 (sec. 21)**

The board may levy, pledge, assess, and collect annual ad valorem taxes sufficient to pay the principal of and interest on the bonds as or before the principal and interest become due, subject to the provisions at Bond Elections, below.

Education Code 45.001(a)

All bonds shall be issued in accordance with the Public Security Procedures Act. *Gov't Code, Ch. 1201*

Limitation

A district may not issue general obligation bonds to purchase, improve, or construct one or more improvements to real property-, to purchase one or more items of personal property-, or to do both, if the weighted average maturity of the issue of bonds exceeds 120 percent of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of bonds. *Gov't Code 1253.002*

KGC 6/29/19: HB 440, effective 9.1.19.

Use of Proceeds for
Utilities

The proceeds of bonds issued by school districts for the construction and equipment of school buildings in the district and the purchase of the necessary sites for school buildings may be used, among other things, to pay the cost of acquiring, laying, and installing pipes or lines to connect with the water, sewer, or gas lines of a municipality or private utility company, whether or not the water, sewer, or gas lines adjoin the school, so that the school district

may provide its public school buildings the water, sewer, or gas services. *Education Code 45.101*

State Facilities
Funding

*Instructional
Facilities
Allotment*

“Instructional facility” means real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the required curriculum. *Education Code 46.001*

Under the Instructional Facilities Allotment, Education Code Chapter 46, Subchapter A, for each year, except as provided by Education Code 46.005 (regarding limitation on the guaranteed amount) and 46.006 (regarding shortage or excess of appropriated funds), a district is guaranteed a specified amount per student in state and local funds for each cent of tax effort, up to the statutory maximum in Education Code 46.003(b), to pay the principal of and interest on eligible bonds issued to construct, acquire, renovate or improve an instructional facility. *Education Code 46.003(a); 19 TAC 61.1032*

*Existing Debt
Allotment*

A district is guaranteed a specified amount per student in state and local funds for each cent of tax effort to pay the principal and interest on eligible bonds under Education Code Chapter 46, Subchapter B. Bonds are eligible to be paid with state and local funds under Subchapter B if the district made payments on the bonds during the final school year of the preceding state fiscal biennium or taxes levied to pay the principal and interest on the bonds were included in a district’s audited debt service collections for that school year, and the district does not receive state assistance under the Instructional Facilities Allotment for payment of the principal and interest on the bonds. *Education Code 46.032(a), .033; 19 TAC 61.1035*

Note: [For information on the new instructional facility allotment, see CBA.](#)

[kcg 7/8/19: I feel like this note is more appropriate for this xref since the NIFA doesn't have to do with bonds – it just happens to be additional state money based on facilities \(it's not considered facilities funding, and it is not under ch. 46\).](#)

Investment of Bond
Proceeds

[For legal requirements regarding investment of bond proceeds, see CDA\(LEGAL\).](#)

[kcg 7/3/19: I feel like this xref is more appropriate with this margin note since the pertains directly to the subject of this policy.](#)

Unspent Bond
Proceeds

[A district may use unspent proceeds of issued general obligation bonds only:](#)

1. For the specific purposes for which the bonds were authorized;
2. To retire the bonds; or
3. For a purpose other than the specific purposes for which the bonds were authorized if:
 - a. The specific purposes are accomplished or abandoned; and
 - b. The board at a public meeting held only for the purpose of considering the use of the unspent bond proceeds approves in separate votes the use of the proceeds for:
 - (1) A purpose other than to retire the bonds; and
 - (2) The purpose specified at the time the vote is taken.

In addition to other requirements, notice of a public meeting held under this provision must include a statement that the board will consider the use of unspent bond proceeds for a purpose other than the specific purposes for which the bonds were authorized. A public meeting held under this provision must provide the public an opportunity to address the board on the question of using the unspent bond proceeds for a purpose other than the specific purposes for which the bonds were authorized.

Education Code 45.1105

KGC 6/28/19: HB 440, effective 9.1.19.

Capital Appreciation Bonds

For purposes of the following policy provisions, a “capital appreciation bond” is a bond that accrues and compounds interest from its date of delivery, the interest on which by its terms is payable only upon maturity or prior redemption.

Limitation on Issuance

A school district may not issue capital appreciation bonds that are secured by ad valorem taxes unless:

1. The bonds have a scheduled maturity date that is not later than 20 years after the date of issuance;
2. The board has received a written estimate of the cost of the issuance, including:
 - a. The amount of principal and interest to be paid until maturity;
 - b. The amount of fees to be paid to outside vendors, including vendors who sell products to be financed by the bond issuance;

- c. The amount of fees to be paid to each financing team member; and
 - d. The projected tax impact of the bonds and the assumptions on which the calculation of the projected tax impact is based;
3. The board has determined in writing whether any personal or financial relationship exists between the members of the board and any financial advisor, bond counsel, bond underwriter, or other professional associated with the bond issuance and submitted the determination to the Ethics Commission; and
4. The board posts prominently on the district's Internet website and enters in the minutes of the board:
 - a. The total amount of the proposed bonds;
 - b. The length of maturity of the proposed bonds;
 - c. The projects to be financed with bond proceeds;
 - d. The intended use of bond proceeds not spent after completion of the projects identified;
 - e. The total amount of the district's outstanding bonded indebtedness at the time of the election on the bonds, including the amount of principal and interest to be paid on existing bond indebtedness until maturity;
 - f. The total amount of the district's outstanding bonded indebtedness, including the amount of principal and interest to be paid until maturity; and
 - g. The information received at item 2 above and determined under item 3 above.

The board shall regularly update the debt information posted on the district's Internet website under item 4.f above to ensure that the information is current and accurate.

Limitation on Use of
Proceeds

Capital appreciation bond proceeds may not be used to purchase the following items, unless an item has an expected useful life that exceeds the bond's maturity date:

1. Items more regularly considered maintenance items, including replacement HVAC units, upgraded plumbing, or similar items; or
2. Transportation-related items, including buses.

*Unspent
Proceeds*

Capital appreciation bond proceeds unspent after completion of the project identified as the proceeds' intended use may be used only for a use identified on the district's website as required above, unless another use is approved by the voters of the district at an election held for that purpose.

Total Amount of
Capital Appreciation
Bonds

The total amount of capital appreciation bonds may not exceed 25 percent of the district's total outstanding bonded indebtedness at the time of the issuance, including the amount of principal and interest to be paid on the outstanding bonds until maturity.

Extension

A district may not extend the maturity date of an issued capital appreciation bond, including through the issuance of refunding bonds that extend the maturity date, unless:

1. The extension of the maturity date will decrease the total amount of projected principal and interest to maturity; or
2. The maximum legally allowable tax rate for indebtedness has been adopted and TEA certifies in writing that the solvency of the permanent school fund's bond guarantee program would be threatened without the extension.

Gov't Code 1201.0245

The foregoing provisions of Government Code 1201.0245 do not apply to the issuance of refunding bonds under Government Code Chapter 1207 or capital appreciation bonds for the purpose of financing transportation projects. *Gov't Code 1201.0245(j)*

Bond Elections

Bonds may not be issued and taxes may not be levied unless authorized by a majority of the qualified voters of the district, voting at an election held for such purpose, at the expense of the district, in accordance with the Election Code, except as provided by Education Code 45.003. The election shall be called by resolution or order of the board. The resolution or order must state the date of the election, the proposition or propositions to be submitted and voted on, the polling place or places, and any other matters considered necessary or advisable by the board. *Education Code 45.003(a)*

Each special election in this state shall be held on one of the following dates:

1. The first Saturday in May; or
2. The first Tuesday after the first Monday in November.

Election Code 41.001(a) [See BBB]

Call for Election

For an election to be held on a uniform election date, the election shall be ordered not later than the 78th day before election day.
Election Code 3.005 [See BBBA]

Election Order

In addition to other legal requirements regarding the election order [see BBBA(LEGAL)], the ~~election order~~ [document ordering an election to authorize a district to issue debt obligations](#) must distinctly state:

1. The proposition language that will appear on the ballot;
2. The purpose for which the bonds are to be authorized;
3. The principal amount of the bonds to be authorized;
4. That taxes sufficient to pay the ~~annual~~ principal of and interest on the bonds may be imposed;
5. The estimated tax rate if the bonds are authorized or the maximum interest rate of the bonds or any series of the bonds, based on the market conditions at the time of the election order;
6. The maximum maturity date of the bonds to be authorized or that the bonds may be issued to mature over a specified number of years not to exceed [the maximum number of years authorized by law](#)⁴⁰;
7. The aggregate amount of the outstanding principal of the district's debt obligations as of the ~~beginning of the fiscal year in which~~ [date](#) the election is ordered;
8. The aggregate amount of the outstanding interest on the district's debt obligations as of the ~~beginning of the district's fiscal year in which~~ [date](#) the election is ordered, [which may be based on the district's expectations relative to variable rate debt obligations](#); and
9. The district's ad valorem debt service tax rate at the time the election is ordered, expressed as an amount per \$100 valuation of taxable property.

Election Code 3.009(b)

[kgc 7/7/19: HB 477, effective 9.1.19](#)

Propositions

~~A proposition submitted to authorize the issuance of bonds must include the question of whether the board may levy, pledge, assess, and collect annual ad valorem taxes, on all taxable property in the district, either:~~

1. ~~Sufficient, without limits as to rate or amount, to pay the principal of and interest on said bonds; or~~
2. ~~Sufficient to pay the principal of and interest on the bonds, provided that the annual aggregate bond taxes in the district may never be more than the rate stated in the proposition.~~

~~Education Code 45.003(b)~~

~~In addition to any other requirement imposed by law for a proposition, including a provision prescribing the proposition language, a proposition submitted to the voters for approval of the issuance of bonds shall specifically state:~~

1. ~~The total principal amount of the bonds to be authorized, if approved; and~~
2. ~~A general description of the purposes for which the bonds are to be authorized, if approved.~~

~~Election Code 52.072(e)(1)~~

~~The district shall assign a letter to each measure on the ballot that corresponds to its order on the ballot. Each proposition on the ballot must identify the name of the authority ordering the election on the measure. Election Code 52.095~~

kgc 7/4/19: There were a number of bills addressing propositions, so I'm moving this to a more appropriate location.

Posting

The election order must be posted:

1. On election day and during early voting by personal appearance, in a prominent location at each polling place;
2. Not later than the 21st day before the election in three public places in the boundaries of the district; and
3. During the 21 days before the election, on the district's ~~i~~nternet website, prominently and together with the notice of the election, ~~and~~ the contents of the proposition, and any sample ballot prepared for the election, if the district maintains an ~~i~~nternet website.

~~Election Code 4.003(f)~~ [sSee Voter Information, below]

KGC 6/29/19: HB 440, effective 9.1.19.

Election Notice

The notice of election must comply with Election Code Chapter 4. [For specific requirements regarding contents of the election notice, see BBBA(LEGAL).]

<i>Publication and Posting</i>	The notice of election must be published and posted in accordance with Election Code requirements. [For specific requirements regarding publication and posting, see BBBA(LEGAL).]
<i>Notice to Election Officials</i>	Notice must be given to the county clerk, voter registrar, and election judge in accordance with Election Code Chapter 4. [For specific requirements, see BBBA(LEGAL).]
Propositions	<p>A proposition submitted to authorize the issuance of bonds must include the question of whether the board may levy, pledge, assess, and collect annual ad valorem taxes, on all taxable property in the district, either:</p> <ol style="list-style-type: none">1. Sufficient, without limits as to rate or amount, to pay the principal of and interest on said bonds; or2. Sufficient to pay the principal of and interest on the bonds, provided that the annual aggregate bond taxes in the district may never be more than the rate stated in the proposition. <p>2. <u>The ballot proposition must include the following statement: "THIS IS A PROPERTY TAX INCREASE."</u></p>

Education Code 45.003(b), (b-1)

kgc 7/4/19: Added by HB 3, generally effective 9.1.19.

~~In addition to any other requirement imposed by law for a proposition, including a provision prescribing the proposition language, a proposition submitted to the voters for approval of the issuance of bonds shall specifically state:~~

- ~~1. The total principal amount of the bonds to be authorized, if approved; and~~
- ~~2. A general description of the purposes for which the bonds are to be authorized, if approved.~~

A district that submits to the voters a proposition for the approval of the issuance of debt obligations shall prescribe the wording of the proposition that is to appear on the ballot in accordance with the requirements of Government Code Chapter 1251, Subchapter B.
Election Code 52.072(f)(e)(1)

kgc 7/7/19: Added by HB 477, effective 9.1.19; both HB 477 and SB 30 essentially eliminated the provision that was here before.

The district shall assign a letter to each measure on the ballot that corresponds to its order on the ballot. Each proposition on the ballot must identify the name of the authority ordering the election on the measure. *Election Code 52.095*

kgc 7/4/19: moved all of this on Propositions from above and I accepted it here so that legislative changes are obvious. I changed the margin note from m3 to m2.

Ballot Contents

The ballot for a measure seeking voter approval of the issuance of debt obligations by a district shall specifically state:

1. ~~a~~A plain language description of the single specific purposes for which the debt obligations are to be authorized;
2. ~~t~~The total principal amount of the debt obligations to be authorized; and
3. ~~t~~That taxes sufficient to pay the principal of and interest on the debt obligations will be imposed.

Each single specific purpose for which debt obligations requiring voter approval are to be issued must be printed on the ballot as a separate proposition. A proposition may include as a specific purpose one or more structures or improvements serving the substantially same purpose and may include related improvements and equipment necessary to accomplish the specific purpose.

Gov't Code 1251.052(a)-~~(a-1)~~

kgc 7/7/19: Added by SB 30 (yes, it actually says "single specific purposes") HB 477 has a very similar, but less specific provision.

Exception

Notwithstanding the requirements at Ballot Contents, above, the question of whether to approve the issuance of bonds for the construction, acquisition, and equipment of school buildings in the district, the purchase of new school buses, and the purchase of necessary sites for school buildings may be submitted to the voters in a single ballot proposition, except that bonds for each of the following purposes must be stated in a separate proposition:

1. ~~t~~The construction, acquisition, or equipment of:
 - a. ~~a~~A stadium with seating capacity for more than 1,000 spectators;
 - b. ~~a~~A natatorium;
 - c. ~~a~~Another recreational facility other than a gymnasium, playground, or play area;

- d. ~~a~~ A performing arts facility;
 - e. ~~h~~ Housing for teachers as determined by the district to be necessary to have a sufficient number of teachers for the district; and
2. ~~a~~ An acquisition or update of technology equipment, other than equipment used for school security purposes or technology infrastructure integral to the construction of a facility.

The question of whether to approve the issuance of bonds for a building described by ~~paragraphs~~ items 1a--e above must be printed on the ballot as a separate ballot proposition regardless of whether that building is proposed as part of the same complex or building that contains traditional classroom facilities. -Each separate ballot proposition must state the principal amount of the bonds to be issued that constitutes the cost for construction of that portion of the building or complex attributable to the building described by ~~paragraphs~~ items 1a--e above or to the traditional classroom facilities, as applicable.

Education Code 45.003(g)--(h)

kgc 7/7/19: Added by SB 30, effective 9.1.19

Definition

"Debt obligation" means a public security, as defined by Government Code 1201.002, secured by and payable from ad valorem taxes. -The term does not include public securities that are designated as self-supporting by the political subdivision issuing the securities. Gov't Code 1251.051(1)

kgc 7/7/19: Added by both HB 477 and SB 30, both effective 9.1.19. I want to leave this "political subdivision" because I think there is only one type of rarely-used bonds that school districts can issue that are self-supporting.

Voter Information

A district with at least 250 registered voters on the date the board adopts the debt obligation election order must prepare a voter information document for each proposition to be voted on at the election.

Posting
Requirements

The district shall post the voter information document in the same manner as a debt obligation election order is required to be posted under Election Code ~~Section~~ 4.003(f) (see Posting, above) and may include the voter information document in the debt obligation election order.

A district that maintains an internet website shall provide the information described at Contents, below, on its website in an easily accessible manner beginning not later than the 21st day before election day and ending on the day after the date of the debt obligation election.

kgc 7/7/19: this second paragraph seems duplicate of the first, but they are both in HB 477 at 1251.52(b) and (d)

Contents

The voter information document must distinctly state:

1. ~~†~~The language that will appear on the ballot;
2. ~~†~~The following information formatted as a table:
 - a. ~~†~~The principal of the debt obligations to be authorized;
 - b. ~~†~~The estimated interest for the debt obligations to be authorized;
 - c. ~~†~~The estimated combined principal and interest required to pay on time and in full the debt obligations to be authorized; and
 - d. ~~a~~As of the date the district adopts the debt obligation election order:
 - (1) ~~†~~The principal of all outstanding debt obligations of the district;
 - (2) ~~†~~The estimated remaining interest on all outstanding debt obligations of the district, which may be based on the district's expectations relative to the interest due on any variable rate debt obligations; and
 - (3) ~~†~~The estimated combined principal and interest required to pay on time and in full all outstanding debt obligations of the district, which may be based on the district's expectations relative to the interest due on any variable rate debt obligations;
3. ~~†~~The estimated maximum annual increase in the amount of taxes that would be imposed on a residence homestead in the district with an appraised value of \$100,000 to repay the debt obligations to be authorized, if approved, based upon assumptions made by the board; and
4. ~~a~~Any other information that the board considers relevant or necessary to explain the information required by these provisions.

Assumptions

The board shall identify in the voter information document the major assumptions made in connection with the statement required by ~~paragraph~~ item 3 above, including:

1. ~~†~~The amortization of the district's debt obligations, including outstanding debt obligations and the proposed debt obligations;
2. ~~€~~Changes in estimated future appraised values within the district; and
3. ~~†~~The assumed interest rate on the proposed debt obligations.

Gov't Code 1251.052(b)-(d)

kgc 7/7/19: HB 477, effective 9.1.19

Electioneering and
Political Advertising

~~The board may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party. Education Code 11.169~~

{For additional information and prohibitions related to electioneering and political advertising, see BBBB(LEGAL).}

kgc 8/8/19: per discussion with CVC; to avoid unnecessary duplication.

**50 Cent Test for New
Debt**

Before issuing bonds, a district must demonstrate to the attorney general that, with respect to the proposed issuance, the district has a projected ability to pay the principal of and interest on the proposed bonds and all previously issued bonds, other than bonds authorized to be issued at an election held on or before April 1, 1991, and issued before September 1, 1992, from a tax at a rate not to exceed \$0.50 per \$100 of valuation (the "50 Cent Test").

A district may demonstrate the ability to comply with the 50 Cent Test by using the most recent taxable value of property in the district, combined with state assistance to which the district is entitled under Education Code Chapter ~~42 or 46~~ or 48 that may be lawfully used for the payment of bonds.

Future Taxable
Value

A district may demonstrate the ability to comply with the 50 Cent Test by using a projected future taxable value of property in the district anticipated for the earlier of the tax year five years after the current tax year or the tax year in which the final payment is due for the bonds submitted to the attorney general, combined with state assistance to which the district is entitled under Education Code Chapter ~~42 or 46~~ or 48 that may be lawfully used for the payment of bonds.

The district must submit to the attorney general a certification of the district's projected taxable value prepared by a registered, certified professional appraiser who has demonstrated professional experience in projecting taxable values or who can obtain any necessary assistance from an experienced person.

The certification of a district's projected taxable value must be signed by the superintendent. The attorney general must base a determination of whether a district has complied with the 50 Cent Test on a taxable value that is equal to 90 percent of the value certified.

Education Code 45.0031

Refunding Bonds

A board may refund or refinance all or any part of any of the district's outstanding bonds and matured or unmatured but unpaid interest on those bonds payable from ad valorem taxes by issuing refunding bonds payable from ad valorem taxes. *Education Code 45.004; Gov't Code Ch. 1207*

Instructional
Facilities Allotment
for Refunding
Bonds

A district may use state funds received under Education Code Chapter 46 to pay principal of and interest on refunding bonds that:

1. Are issued to refund bonds eligible under Education Code 46.003;
2. Do not have a final maturity date later than the final maturity date of the bonds being refunded;
3. May not be called for redemption earlier than the earliest call date of all bonds being refunded; and
4. Result in a present value savings as defined in Education Code 46.007(4).

Education Code 46.007

Authorized Unissued Bonds

If a district has authorized school bonds for a specific purpose and that purpose has been accomplished by other means or has been abandoned and all or a portion of the authorized bonds remains unissued, a board may order an election [see BBBA] to submit to the qualified voters of the district the proposition of whether or not the authorized but unissued bonds may be issued, sold, and delivered for other and different purposes specified in the election order and notice. The election shall be ordered, held, and conducted in the same form and manner as that at which the bonds were originally authorized. If a majority of those voting at the election vote in favor of the sale and delivery of the unissued bonds for the pur-

poses specified in the election order and notice, the board may issue, sell, and deliver the bonds and use the proceeds for the purposes authorized at the election. *Education Code 45.110*

Bond Guarantee Program

Eligibility

A district seeking guarantee of eligible bonds under the Bond Guarantee Program shall apply to the commissioner of education using a form adopted by the commissioner. To be eligible for approval, district bonds must be issued under Education Code Chapter 45, Subchapter A, or under Government Code Chapter 1207. *Education Code 45.054, .055(a); 19 TAC 33.65(b)(5)*

Application

An application must include:

1. The name of the district and the principal amount of the bonds to be issued;
2. The name and address of the district's paying agent, which means the financial institution designated by a district as its agent for payment of principal and interest on guaranteed bonds; and
3. The maturity schedule, estimated interest rate, and date of the bonds.

Education Code 45.051(2), .055

An application must be accompanied by a fee set by rule of the State Board of Education. *Education Code 45.055(c); 19 TAC 33.65(f)(1)*

On approval by the commissioner, bonds issued by a district are guaranteed by the corpus and income of the permanent school fund. The guarantee remains in effect until the date those bonds mature or are defeased in accordance with state law. *Education Code 45.052*

If a district does not receive approval for the guarantee or for any reason does not receive approval of the bonds from the attorney general within the specified time period, the district may reapply in a subsequent month. Applications that were denied approval for the guarantee will not be retained for consideration in subsequent months. *19 TAC 33.65(f)(5)*

A district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee. *19 TAC 33.65(g)(4)(D)*

Credit Enhancement Program

If a district's application for guarantee of district bonds by the permanent school fund is rejected, the district may apply under Education Code Chapter 45, Subchapter I for credit enhancement of bonds described by Education Code 45.054 (eligibility for the Bond

Guarantee Program) by money appropriated for the Foundation School Program, other than money that is appropriated to districts specifically:

1. As required under the Texas Constitution; or
2. For assistance in paying debt service.

The credit enhancement remains in effect until the date the bonds mature or are defeased in accordance with state law.

Education Code 45.252

Eligibility

To be eligible for approval by the commissioner for credit enhancement:

1. Bonds must be issued in the manner provided by Education Code 45.054;
2. Payments of all of the principal of the bonds must be scheduled during the first six months of the state fiscal year;
3. The district's lowest credit rating from any credit rating agency may not be the same as or higher than that of the School District Bond Enhancement Program;
4. The bonded debt for which the credit enhancement is sought must be structured so that no single annual debt service payment exceeds two times the quotient produced by dividing the total proposed annual debt service, as defined in 19 Administrative Code 61.1038(b)(10), for the term of the bonds by the number of years in the amortization schedule; and
5. The district must agree in its application that the total annual debt service on bonds approved for the credit enhancement will be paid on or before August 15 of each state fiscal year.

Education Code 45.254; 19 TAC 61.1038(f)

Application

A district seeking credit enhancement of eligible bonds shall apply to the commissioner using a form adopted by the commissioner for the purpose. The application must:

1. Include the information required by Education Code 45.055(b), at Bond Guarantee Program—Application, above; and
2. Be accompanied by a fee set by the State Board of Education. *19 TAC 61.1038(d)(1)*

Education Code 45.255

The district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

If a district does not receive a credit enhancement or for any reason does not receive approval of the bonds from the attorney general within the specified time period, the district may reapply in a subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.

A district may not represent the bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval for the credit enhancement.

19 TAC 61.1038(e)(1), (8), (10)

Federal Securities Law

Disclosure
Obligations for
Bond and Other
Debt Offerings

Prior to publicly offering bonds, a school district must prepare and deliver to an underwriter an official statement containing the terms of the bond offering, a description of the district itself, financial and operating data of the district, and any other information that may be material to an investor interested in purchasing the district's bonds or otherwise required by Rule 15c2-12 (the "Rule") of the Securities Exchange Commission (SEC). *SEC Rule 15c2-12(b)* [See Note, below]

Liability under
Federal Securities
Law

School districts, board members, and employees of the district are subject to liability under the "antifraud provisions" of the federal securities laws contained in Section 17(a) of the Securities Act of 1933 (the "Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 of the SEC. The antifraud provisions generally prohibit false or misleading statements made in connection with the offer or sale of a district's bonds (or the omission of material facts from such statements), including the official statement itself and any other statement reasonably expected to reach bond investors ("disclosures"). *SEC Exchange Act Release No. 33741 (Mar. 9, 1994)*

The antifraud provisions also apply to a district's continuing disclosure obligations under the Rule after a district's bonds are issued. [See Continuing Disclosure after Issuing Bonds, below] *SEC Report on the Municipal Securities Market (July 31, 2012) (the "SEC 2012 Report") at pg. 29 and SEC Exchange Act Release No. 33741 (Mar. 9, 1994)*

Continuing
Disclosure after
Issuing Bonds

Except for exempt offerings, the Rule requires underwriters to obtain a continuing disclosure agreement (CDA) from the district when the district issues bonds. The CDA obligates the district to

prepare and file “continuing disclosures” of financial information and operating data after the bonds are issued. *SEC Rule 15c2-12(b)(5)* [See Note, below]

Note: In preparing an official statement, a district may reasonably rely on the advice of outside professionals who are also subject to the antifraud provisions, but a district is primarily liable for the content of its official statement and other disclosures. *SEC Exchange Act Release No. 36761 (Jan. 24, 1996)*

A district may engage qualified consultants, including qualified disclosure or securities counsel and a financial adviser, to assist with preparing an official statement and other disclosures relating to a bond offering. Creation of internal procedures may help to insulate a district against criticism or liability under federal securities laws.

Internal procedures may provide for (1) appointment of, and disclosure training for, district officials and employees who will be part of the financing team, (2) a procedure of accountability for review of the disclosures, and (3) ensuring that any procedures established are in fact followed.

[See SEC Report on the Municipal Securities Market (July 31, 2012) at pg. 109]

[kgc 7/8/19: I did not attempt to review this from Federal Securities Law; at some point we should consider having a bond lawyer review this.](#)

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Tax Rate Adoption

Maintenance Taxes

The board may levy, assess, and collect annual ad valorem taxes for the maintenance of the district's schools. Taxes may not be levied unless authorized by a majority of the qualified voters of the district, voting at an election called for that purpose. *Education Code 45.002, .003(a)*

kgc 7/8/19: The new terminology throughout is from SB 2, effective 1.1.20. It's in HB 3, too, but SB 2 does a global change.

Restriction on
Maintenance Tax
Levy

A district may not increase the rate of the district's maintenance taxes to create a surplus in maintenance tax revenue for the purpose of paying the district's debt service. ~~Tax~~Education Code 45.0021(a) [See Taxpayer Injunction, below]

kgc 7/4/19: Added by HB 3, generally effective 9.1.19

Maintenance Tax
Rate
Components

Tier One

A district's tier one maintenance and operations tax rate is the number of cents levied by the district for maintenance and operations that does not exceed the product of the state compression percentage, as determined under Education Code 48.255, multiplied by \$1.00.

Tier Two

A district's enrichment tax rate consists of:

1. ~~a~~Any cents of additional maintenance and operations tax effort, not to exceed eight cents over the maximum tier one tax rate; and
2. ~~a~~Any cents of additional maintenance and operations tax effort that exceeds the sum of the maximum tier one tax rate and the maximum number of cents permitted under ~~para-~~~~graph~~ item 1 above.

Education Code 45.0032(a), (b)

kgc 7/4/19: HB 3, generally effective 9.1.19

Districts Subject
to Disaster
Exception

For a district to which the Disaster Exception to Election Requirement described below applies, the amount by which the district's maintenance tax rate exceeds the district's voter-approval tax rate, excluding the district's current debt rate under Tax Code 26.08(n)(1)(C) for the preceding year is not considered in determining a district's tier one maintenance and operations tax rate or the district's enrichment tax rate for the current tax year. *Education Code 45.0032(d)*

kgc 7/4/19: HB 3, generally effective 9.1.19

*Maximum Tax
Rate*

For any year, the maintenance tax rate per \$100 of taxable value adopted by the district may not exceed the rate equal to the sum of \$0.17 and the product of the state compression percentage, as determined under Education Code ~~42.2516~~[48.255](#), multiplied by \$1.~~0~~[50](#).

kgc 7/4/19: Changed by HB 3, and it will change again next year, I've left out a lot of 2019-only material from HB 3, but these statutes that will change next year and the next will just have to updated over and over.

A rate that exceeds the maximum rate for the year in which the tax is to be imposed is void. A district with a tax rate that is void under this provision may, subject to requirements imposed by other law, adopt a rate for that year that does not exceed the specified maximum rate for that year.

[Education Code 45.003\(d\), \(e\)](#)

[Districts with
2005 Tax Rate
over \\$1.50](#)

Notwithstanding any other law, a district that levied a maintenance tax for the 2005 tax year at a rate greater than \$1.50 per \$100 of taxable value in the district as permitted by special law [\[Art. 2784g Tex. Rev. Civ. Stat.\]](#) may not levy a maintenance tax at a rate that exceeds the rate per \$100 of taxable value that is equal to the sum of \$0.17 and the product of ~~66.67 percent the state compression percentage, as determined under Education Code 42.2516~~, multiplied by the rate of the maintenance tax levied by the district for the 2005 tax year, [minus any amount by which \\$1.00 exceeds the product of the state compression percentage, as determined under Education Code 48.255, multiplied by \\$1.00.](#)

[Education Code 45.003~~\(d\)~~-\(f\)](#)

kgc 8/9/19: I added the bracketed reference to Art. 2784g so we can DELETE the HC version of this policy.

[For a district described above, any cents of maintenance and operations tax effort that exceeds the maximum rate described at Maximum Tax Rate are not included in the district's tier one maintenance and operations tax rate or the district's enrichment tax rate and the district is not entitled to the guaranteed yield amount of state funds under Education Code 48.202 for those cents of tax effort. Education Code 45.0032\(c\)](#)

kgc 7/4/19: HB 3, generally effective 9.1.19.

Assessor and
Collector

The board may employ a person to assess or collect the district's taxes and may compensate the person as the board considers appropriate. This provision does not prohibit a district from providing for the assessment or collection of the district's taxes under a method authorized by Tax Code Chapter 6, Subchapter B. *Education Code 45.231*

A district that used a method of selection for the 1994 tax year that was authorized by former Education Code Chapter 23, Subchapter F, may continue to use that method until the district uses another method authorized above. *Education Code 45.232*

kgc 7/23/19: modified by adding second paragraph so BDAF can be eliminated.

kgc 7/6/19: See my chatter at BDAF – I'd really to eliminate the duplication between here and there. Frankly, I'd like to get rid of BDAF all together.

The assessor and collector shall assess, collect, or assess and collect taxes, as applicable. *Tax Code 6.23(b)*

kgc 7/23/19: from BDAF

Collector's Bond

A district that has its own collector shall require the collector to give bond conditioned on the faithful performance of duties. The bond must be made payable to and be approved by the board in an amount determined by the board. The board may require a new bond at any time, and failure to give new bond within a reasonable time after demand is a ground for removal from office. The board may prescribe additional requirements for the bond.

A district whose taxes are collected by a person other than the district's own collector may require that person to give bond conditioned on the faithful performance of duties. The bond must be payable to, approved by, and paid for by the board in an amount determined by the board. The board may prescribe additional requirements for the bond.

A district shall pay the premium for a required bond from its general fund or as provided by intergovernmental contract.

Tax Code 6.29

kgc 7/23/19: moved from BDAF

Certified Estimate of
Values

By April 30, the chief appraiser shall prepare and certify to the district's assessor an estimate of the taxable value of district property. *Tax Code 26.01(e)*

Appraisal Roll

By July 25, the chief appraiser shall prepare and certify to the assessor for the district that part of the appraisal roll that lists the property taxable by the district. The part certified to the assessor is the appraisal roll for the district.

If by July 20 the appraisal review board has not approved the appraisal records as required under Tax Code 41.12, the chief appraiser shall not later than July 25 prepare and certify to the assessor for a school district an estimate of the taxable value of property in the school district.

Tax Code 26.01(a) ~~-(a-1)~~

kgc 7/4/19: SB 2, generally effective 1.1.20

By August 1 or as soon thereafter as practicable, the district's assessor shall submit to the board the district's appraisal roll, showing the total appraised, assessed, and taxable values of all property and the total taxable value of new property.

By August 1 or as soon thereafter as practicable, a district's collector shall certify to the board ~~an estimate of the~~ anticipated collection rate for the current year. If the collector certified an anticipated collection rate in the preceding year and the actual collection rate in that year exceeded the anticipated rate, the collector shall also certify the amount of debt taxes collected in excess of the anticipated amount in the preceding year.

Tax Code 26.04(b)

kgc 7/4/19: SB 2, generally effective 1.1.20

kgc 7/23/19: I'm not moving the lists of duties of the assessor/collector from BDAF to here. I don't think it's necessary to include them except for the ones above.

*Reappraisal after
Disaster*

The board of a district that is located partly or entirely inside an area declared to be a disaster area by the governor may authorize the reappraisal of all property damaged in the disaster at its market value immediately after the disaster. A district that authorizes a reappraisal pursuant to this provision must pay the appraisal district all the costs of making the appraisal.

If property damaged in a disaster is reappraised as provided by this provision, the board shall provide for prorating the taxes on the property as specified in Tax Code 23.02(d) for the year in which the disaster occurred.

Tax Code 23.02; Att'y Gen. Op. KP-0192 (2018)

kgc 7/24/19: We will keep this here until U115 after the November election on the constitutional amendment. If it passes, I will delete this in U115.

kgc 7/6/19: Repealed by HB 492, effective 1.1.20 IF HJR 34 passes in November. I put it on my calendar to watch, but do we go forward with this now or what?

Designated
Employee/Officer to
Calculate Rates

After the district's assessor submits the appraisal roll to the board, an officer or employee designated by the board shall calculate the no-new-revenue tax rate and the voter-approval tax rate for the district. Tax Code 26.04(c)

kgc 7/4/19: SB 2, generally effective 1.1.20

This is part of a weird statute that applies to us in part, specifically doesn't apply to us in part, and seems like it shouldn't apply to us in part. I've included it now because a number of new provisions reference this employee or officer and reporting reqts.

Truth-in-Taxation
Requirements

Note: The *Truth in Taxation* website maintained by the Texas comptroller of public accounts offers [detailed guidance on setting local property tax rates for school districts](#).¹

*Traditional
Method*

When the budget has been prepared under Education Code 44.002, the board president shall call a meeting of the board for the purpose of adopting a budget for the succeeding tax year. The budget must be adopted before the adoption of the tax rate for the tax year in which the fiscal year covered by the budget begins. *Education Code 44.004(a), (g)* [See CE]

Published Notice

The board president shall provide for publication of notice of the budget and proposed tax rate meeting in a daily, weekly, or bi-weekly newspaper published in the district. If no daily, weekly, or biweekly newspaper is published in the district, the president shall provide for publication of notice in at least one newspaper of general circulation in the county in which the district's central administrative office is located. The notice shall be published not earlier than the 30th day or later than the tenth day before the date of the hearing.

Form of
~~Notice~~and
Contents

The notice of public meeting to discuss and adopt the budget and the proposed tax rate may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type and contain the information~~must comply with the size, format, and content requirements~~ set out in Education Code 44.004(c) and (c-1).

kgc 7/4/19: statutory tightening

The notice must include a statement that a district may not increase its maintenance and operations tax rate to create a surplus in maintenance and operations tax revenue for the purpose of paying the district's debt service.

kgc 7/4/19: Added by HB 3, generally effective 9.1.19

A notice is not valid if it does not substantially conform to the language and format prescribed by the comptroller.

Education Code 44.004(b)–(d)

Debt Service
Rate Decrease

If the published interest and sinking fund (debt service) rate decreases after the publication of the required notice, the president is not required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate.

Education Code 44.004(g-1)

*Districts with
July 1 Fiscal Year*

Notwithstanding the provisions above, a district with a fiscal year beginning July 1 may use the certified estimate of the taxable value of district property in preparing the required notice if the district does not receive the certified appraisal roll on or before June 7. A district that uses a certified estimate may adopt a budget at the public meeting designated in the published notice prepared using the estimate, but the district may not adopt a tax rate before the district receives the certified appraisal roll for the district.

After receipt of the certified appraisal roll, a district must publish a revised notice and hold another public meeting before the district may adopt a tax rate that exceeds:

1. The rate proposed in the notice prepared using the estimate; or
2. The district's ~~rollback-voter-approval~~ rate determined under Tax Code 26.08 using the certified appraisal roll.

Education Code 44.004(h), (i)

*Early Adoption
Method*

Notwithstanding the provisions above or at Deadline below, a district may adopt a budget after the district adopts a tax rate for the tax year in which the fiscal year covered by the budget begins if the district elects to adopt a tax rate before receiving the certified appraisal roll for the district. If a district elects to adopt a tax rate before adopting a budget, the district must publish notice and hold a meeting for the purpose of discussing the proposed tax rate as provided above. Following adoption of the tax rate, the district must publish notice and hold another public meeting before the district

may adopt a budget. The comptroller shall prescribe the language and format to be used in the notices. The district may use the certified estimate of taxable value in preparing a notice under this provision. *Education Code 44.004(j)*

The board of a district that elects to adopt a tax rate before the adoption of a budget for the fiscal year that begins in the current tax year may adopt a tax rate for the current tax year before receipt of the certified appraisal roll for the district if the chief appraiser of the appraisal district in which the district participates has certified to the assessor for the district an estimate of the taxable value of property in the district as specified at Certified Estimate of Values above. If a district adopts a tax rate under this provision, the no-new-revenue~~effective~~ tax rate and the rollback-voter-approval tax rate of the district shall be calculated based on the certified estimate of taxable value. *Tax Code 26.05(g)*

Tax Rate Adoption
Requirements

Deadline

~~Before the later of September 30 or the 60th day after the date the certified appraisal roll is received, the~~ The board shall adopt a tax rate for the current tax year and shall notify the assessor of the tax rate adopted. [See Adoption of Tax Roll, below] The board must adopt a tax rate before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the district, except that the board must adopt a tax rate that exceeds the voter-approval tax rate not later than the 71st day before the next uniform election date that occurs in November of that year. ~~Tax Code 26.05(a)~~ [See Time for Election, below, and Election Code 3.005(c) for the deadline to order an election to be held on a uniform election date.]

kgc 7/4/19: I really hate this provision from SB 2 for several reasons:

1. HB 3 allows us to have an election to approve a tax rate on a uniform election date; although it's virtually impossible to do it right in May, it's still an option.

2. More importantly, an election on the November uniform election date must be ordered 78 days before the election. This provision doesn't address ordering the election, but it doesn't make sense to adopt a tax rate a week after calling an election that isn't necessary until the tax rate triggering it is adopted. Tax Code 26.07 as amended by SB 2 purports to allow taxing entities other than school districts to order an election 71 days before the election, but that doesn't help us because it's n/a to us AND Melanie Best at SOS thinks that Election Code 3.005(b) would apply to impose the 78 day deadline.

That said, we can't exclude it, but I propose we include some sort of caveat like I've done in the brackets.

The tax rate consists of two components, each of which must be approved separately. The components are:

1. The interest and sinking fund (debt service) rate calculated under Education Code 44.004(c)(5)(A)(ii)(b); and
2. The rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the district for the next year.

Tax Code 26.05(a)

Tax Date for
Certain Districts

A district that before January 1, 1989, has for at least ten years followed a practice of adopting its tax rate at a different date than as provided by Tax Code Chapter 26 and of billing for and collecting its taxes at different dates than as provided by Chapters 31 and 33 may continue to follow that practice. This does not affect the dates provided by the Property Tax Code (Tax Code Title 1) for other purposes, including those relating to the appraisal and taxability of property, the attachment of tax liens and personal liability for taxes, and administrative and judicial review under Chapters 41 and 42.

Tax Code 26.135

Vote

A board may not impose property taxes in any year until it has adopted a tax rate for that year, and the annual tax rate must be set by ordinance, resolution, or order. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget. The vote on the ordinance, resolution, or order setting a tax rate that exceeds the sum of the district's ~~no-new-revenue~~ effective maintenance and operations tax rate and the district's current debt rate must be a record vote, and at least 60 percent of the members of the board must vote in favor of the ordinance, resolution, or order.

Motion

A motion to adopt an ordinance, resolution, or order setting a tax rate that exceeds the ~~no-new-revenue~~ effective tax rate must be made in the following form: "I move that the property tax rate be increased by the adoption of a tax rate of (specify tax rate), which is effectively a (insert percentage by which the proposed tax rate exceeds the ~~no-new-revenue~~ effective tax rate) percent increase in the tax rate."

*Language and
Internet Posting*

If the ordinance, resolution, or order sets a tax rate that, if applied to the total taxable value, will impose an amount of taxes to fund maintenance and operation expenditures of the district that exceeds the amount of taxes imposed for that purpose in the preceding year the district must:

1. Include in the ordinance, resolution, or order in type larger than the type used in any other portion of the document:

- a. The following statement: “THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR’S TAX RATE”; and
 - b. If the tax rate exceeds the no-new-revenueeffective maintenance and operations rate, the following statement: “THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE NO-NEW-REVENUE~~EF-FECTIVE~~ MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$(Insert amount).”; and
2. Include on the home page of any internet website operated by the district:
- a. The following statement: “(Insert name of unit) ADOPTED A TAX RATE THAT WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR’S TAX RATE”; and
 - b. If the tax rate exceeds the no-new-revenueeffective maintenance and operations rate, the following statement: “THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE NO-NEW-REVENUE~~EF-FECTIVE~~ MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$(Insert amount).”

Tax Code 26.05(b)

Adoption of Tax Roll On receipt of notice of the tax rate for the current tax year, the assessor for a district shall calculate the tax imposed on each property included on the appraisal roll for the district. The assessor shall enter the amount of tax in the appraisal roll and submit it to the board for approval. The appraisal roll with amounts of tax entered as approved by the board constitutes the district’s tax roll.
Tax Code 26.09(a), (e)

Failure to Adopt Tax Rate If the board does not adopt a tax rate before the date required at Deadline above, the tax rate for the district for that tax year is the lower of the no-new-revenueeffective tax rate calculated for that tax year or the tax rate adopted by the district for the preceding tax year. A tax rate established by this provision is treated as an adopted tax rate. Before the fifth day after the establishment of a tax rate by this provision, the board must ratify the applicable tax

rate in the manner set out at Tax Rate Adoption Requirements above. *Tax Code 26.05(c)*

Taxpayer Injunction A person who owns taxable property in a district is entitled to an injunction restraining the collection of taxes by the district if the district has not complied with the requirements above at Published Notice, including Form [and Contents of Notice](#), Districts with July 1 Fiscal Year, if applicable, and Tax Rate Adoption Requirements, and the failure to comply was not in good faith. An action to enjoin the collection of taxes must be filed before the date a district delivers substantially all of its tax bills. *Education Code 44.004(e); Tax Code 26.05(e)*

kgc 7/4/19: The Tax Code provision is changed drastically by SB 2, BUT that part is not effective until 1.1.21, so it can be put on the map for U116. There are a few other things in SB 2 that will be in later updates.

A person who owns taxable property in a district is entitled to an injunction restraining the collection of taxes by the district if the district adopts a maintenance tax in violation of the prohibition described above at Restriction on Maintenance Tax Levy. An action to enjoin the collection of taxes must be filed before the date a district delivers substantially all of its tax bills. *Education Code 45.0021(b)*

kgc 7/4/19: Added by HB 3, generally effective 9.1.19

Tax Information to County A district shall provide to the county assessor-collector for each county in which all or part of district territory is located the district's adopted tax rate, maintenance and operations rate, debt rate, no-new-revenue effective tax rate, no-new-revenue effective maintenance and operations rate, and voter-approval rollback tax rate for posting on the county's internet website. The district shall provide the information annually following the adoption of a tax rate by the district for the current tax year. *Tax Code 26.16(a)-(b)*

Appraisal District
Property Tax
Database

The officer or employee designated by the board to calculate the no-new-revenue tax rate and the voter-approval tax rate for the district must electronically incorporate into the database created and maintained by the chief appraiser under Tax Code 26.17 the information required by Tax Code 26.17(e). *Tax Code 26.17(e)*

kgc 7/4/19: I don't want to specify the required information here because the statute is structured in a strange way AND it contains some ambiguities about what actually applies to us. I'd rather districts work with the chief appraiser to determine what they need to provide. If the comptroller issues any guidance, I'll revise this at that point.

This was added by SB 2, generally effective 1.1.20. This provision sort of phases in over two years (SB 2, SEC. 105). Appraisal districts in counties with population of 200,000 or more comply beginning with 2020 tax year, and those in counties under 200,000 comply beginning with 2021 tax year.

Internet Posting of Tax Rate and Budget Information

Each district shall maintain an internet website or have access to a generally accessible internet website that may be used for the purposes of this provision. Each district shall post or cause to be posted on the internet website the information required by Tax Code 26.18 in a format prescribed by the comptroller. Tax Code 26.18 [See CE for required information]

kgc 7/4/19: SB 2, generally effective 1.1.20

Election to Approve Tax Rate
~~Tax Ratification Election~~

If the board adopts a tax rate that exceeds the district's voter-approved ~~rollback~~ tax rate, the registered voters of the district at an election held for that purpose must determine whether to approve the adopted tax rate.

~~If for the preceding tax year a district adopted a maintenance and operations tax rate that was less than the district's effective maintenance and operations tax rate for that preceding tax year, the rollback tax rate of the district for the current tax year is calculated as if the district adopted a maintenance and operations tax rate for the preceding tax year that was equal to the district's effective maintenance and operations tax rate for that preceding tax year.~~

~~Tax Code 26.08(a), (n), (p); see Att'y Gen. Op. KP-0154 (2017) (addressing calculation of the rollback rate and when a district must hold a tax ratification election)~~

[For information on conducting elections, see the BBB series.]

kgc 7/4/19: HB 3 repeals 26.08(p). I don't think the AG's op. is necessary in light of HB 3 changes. HB 3 is generally effective 9.1.19, but these changes apply beginning with the 2019 tax year.

KGC 6/27/19: The title to Tax Code § 26.08 is changed to Automatic Election to Approve Tax Rate of School District in SB 2, effective 1.1.20

Efficiency Audit

"Efficiency audit" means an investigation of the operations of a district to examine fiscal management, efficiency, and utilization of resources.

The board shall conduct an efficiency audit before seeking voter approval to adopt a tax rate for the maintenance and operations of the district at an election held for that purpose and may not hold an election without complying with this requirement.

The board may select the auditor that conducts the district's annual audit under Education Code 44.008 and may include the efficiency audit as part of the district's annual audit. [See CFC] A district must pay for the costs associated with an efficiency audit required under this provision. A district shall provide all documents, records, and personnel requested by the auditor as needed to conduct the audit in an efficient manner.

The board must select an auditor to conduct an efficiency audit not later than four months before the date on which the district proposes to hold an election to adopt a maintenance and operations tax rate. An auditor selected by the board must maintain independence from the district and complete the efficiency audit not later than three months after the date the auditor was selected.

Before an election at which a district seeks voter approval to adopt a tax rate, the board must hold an open meeting to discuss the results of the efficiency audit. Not later than 30 days before the date of the election, the results of an efficiency audit must be posted on the district's internet website.

Education Code 11.184

Disaster Exception

To Efficiency
Audit
Requirement

The board of a district all or part of which is located in an area declared a disaster area by the governor may hold an election to seek voter approval to adopt a maintenance and operations tax rate during the two-year period following the date of the declaration without conducting an efficiency audit otherwise required above.
Education Code 11.184(b-1)

KGC 6/27/19: From HB 3, effective 1.1.20.

To Election
Requirement

When increased expenditure of money by a district is necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, that has impacted a district and the governor has requested federal disaster assistance for the area in which the district is located, an election is not required to approve the tax rate adopted by the board for the year following the year in which the disaster occurs. A tax rate adopted under this provision applies only in the year for which the rate is adopted. -If a district adopts a tax rate under this provision, the amount by which that rate exceeds the district's voter-approval tax rate for that tax year may not be considered when calculating the district's voter-approval tax rate for the tax year following the year in which the district adopts the rate. Tax Code 26.08(a-1)

kgc 7/4/19: addition of wildfire -- SB 2, effective 1.1.20. HB 3 made the same change.

kgc 7/4/19: All other changes from HB 3, generally effective 9.1.19, but this applies beginning with the 2019 tax year.

Time for Election The board shall order that the election be held in the district on the next uniform election date prescribed by ~~a date not less than 30 or more than 90 days after the day on which it adopted the tax rate.~~ Election Code 41.001 ~~(regarding uniform election dates) does not apply to the election unless a uniform election date falls within the time permitted by this provision~~ that occurs after the date of the election order and that allows sufficient time to comply with the requirements of other law. Tax Code 26.08(b)

kgc 7/4/19: HB 3, generally effective 9.1.19, but this applies beginning with the 2019 tax year.

~~Call for Election Except as provided at Uniform Election Date below, an election shall be ordered not later than the 62nd day before election day.~~

Uniform Election Date For an election to be held on a uniform election date, the election shall be ordered not later than the 78th day before election day.

An election to ratify a tax rate adopted by a board under the early adoption method described above shall be ordered not later than the 30th day before election day.

Election Code 3.005 [See BBBA]

Notice to County Clerk The board shall deliver notice of the election to the county clerk and voter registrar of each county in which the district is located not later than the 60th day before election day.

Exception A board that orders an election to ratify a tax rate adopted by the board under the early adoption method described above shall deliver notice of the election to the county clerk of each county in which the district is located not later than the 30th day before election day.

Election Code 4.008

Proposition At the election, the ballots shall be prepared to permit voting for or against the proposition: "~~Approving~~ Ratifying the ad valorem tax rate of _____ (insert adopted tax rate) \$ _____ per \$100 valuation in (name of school district) for the current year, a rate that will result in an increase of _____ (insert percentage increase in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year) percent in maintenance and operations tax revenue for the district for the current year as compared to the preceding year, which is an additional \$ _____ (insert dollar amount of increase in maintenance and operations tax revenue under the

adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year is \$ _____ higher per \$100 valuation than the school district rollback tax rate, for the purpose of (description of purpose of increase).” The ballot proposition must include the adopted tax rate and the difference between that rate and the rollback tax rate in the appropriate places. *Tax Code 26.08(b)*

ARD 8/27/19: Per KGC, HB 3, generally effective 9.1.19

In addition to any other requirement imposed by law for a proposition, including a provision prescribing the proposition language, a proposition submitted to the voters for approval of the imposition or increase of a tax shall specifically state the amount of or maximum tax rate of the tax or tax increase for which approval is sought. *Election Code 52.072(e)(12)*

kgc 7/8/19: SB 30 & HB 477, effective 9.1.19

Each proposition on the ballot must identify the name of the authority ordering the election on the measure. *Election Code 52.095(c)*

Election Outcome

If a majority of the votes cast in an election favor the proposition, the tax rate for the current year is the rate that was adopted by the board. If the proposition is not approved, a board may not adopt a tax rate for the current year that exceeds the district’s ~~rollback-~~voter-approval tax rate. *Tax Code 26.08(c)–(d)*

kgc 7/4/19: There may be more HB 3 changes to this policy at U115 bc a number of changes are effective 9.1.20.

¹ Truth-in-Taxation: Tax Rate Adoption: <https://comptroller.texas.gov/taxes/property-tax/truth-in-taxation/index.php>

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kgc 7/24/19: I have taken my very best stab at shortening this – it’s still a lot, but I believe I’ve left what I think the board needs to know OR what I’ve gotten specific questions about.

At times, in the interest of brevity, I’ve been a little more editorial than I generally like to be, but I think it’s ok here. You can see what I’ve done in case you have discomfort with anything editorial.

KGC 6/25/19: I am NOT adding anything from HB 2859 (effective 1.1.20 if HJR 95 is approved by voter) re: exemption of precious metals held in a precious metal depository in Texas. There are similar exemptions, which we do not include.

That said, this is not a comprehensive catalog of all exemptions, nor do I think it should be, but I wonder if perhaps it hasn’t grown too long and detailed for the policy manual. I think the board needs to know about its options for exemptions, but I’m not sure the rest of this info at this level of detail is necessary.

KGC 6/25/19: I am NOT adding anything from SB 1943, effective 9.1.19, re: “heir property.” It just seems beyond the scope of this policy or the PRM.

Note: [For more information on property tax exemptions, see the Texas Comptroller’s Property Tax Exemptions website.](#)

Exemptions

Definitions

~~“Disabled”~~

~~“Disabled” means under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance. Tax Code 11.13(m)(1)~~

~~“Disabled Veteran”~~

~~“Disabled veteran” means a veteran of the armed services of the United States who is classified as disabled by the Veterans’ Administration or its successor or the branch of the armed services in which the veteran served and whose disability is service-connected. Tax Code 11.22(h)(3)~~

~~“First Responder”~~

~~“First responder” means an individual listed under Government Code 615.003. Tax Code 11.134(a)(1)~~

~~“Residence Homestead”~~

~~“Residence homestead” means a structure (including a mobile home) or a separately secured and occupied portion of a structure (together with the land, not to exceed 20 acres, and improvements used in the residential occupancy of the structure, if the structure and the land and improvements have identical ownership) that is:~~

- ~~1.— Owned by one or more individuals, either directly or through a beneficial interest in a qualifying trust;~~
- ~~2.— Designed or adapted for human residence;~~
- ~~3.— Used as a residence; and~~
- ~~4.— Occupied as the individual's principal residence by an owner, by an owner's surviving spouse who has a life estate in the property, or, for property owned through a beneficial interest in a qualifying trust, by a trustor or beneficiary of the trust who qualifies for the exemption.~~

~~Tax Code 11.13(j)~~

Homestead
Exemptions

Mandatory

An adult is entitled to exemption from taxation by a district of \$25,000 of the appraised value of the adult's residence homestead, [as defined by Tax Code 11.13\(j\)](#), except that only \$5,000 of the exemption applies to an entity operating under former Education Code Chapters 17, 18, 25, 26, 27, or 28, as those chapters existed on May 1, 1995, as permitted by Education Code 11.301. ~~To receive the residence homestead exemption, the person claiming the exemption must apply for the exemption. Tax Code 11.13(b), .43~~

Persons 65 or Older or Disabled

In addition to the mandatory exemption above, an adult who is disabled, [as defined by Tax Code 11.13\(m\)\(1\)](#), or 65 or older is entitled to an exemption of \$10,000 of the appraised value of ~~his or her~~ [the individual's](#) residence homestead. *Tax Code 11.13(c)*

Tax Limitation

A district may not increase the total annual amount of ad valorem tax it imposes on the residence homestead of an individual 65 years of age or older, or on the residence homestead of an individual who is disabled ~~as defined by Tax Code 11.13~~, above the amount of the tax it imposed in the first tax year in which the individual qualified that residence homestead for an applicable exemption. *Tax Code 11.26(a)*

Improvements

If an individual subject to a tax limitation makes improvements to the individual's residence homestead, other than improvements required to comply with governmental requirements or repairs, the district may increase the tax on the homestead in the first year the value of the homestead is increased on the appraisal roll because of the enhancement of value by the improvements. A limitation then applies to the increased amount of tax until more improvements, if any, are made. *Tax Code 11.26(b)*

Exception

An improvement to property that would otherwise constitute an improvement discussed above is not treated as an improvement if it

is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by wind or water damage. For purposes of appraising the property in the tax year in which the structure would have constituted an improvement, the replacement structure is considered to be an improvement only if the square footage of the replacement structure exceeds that of the replaced structure as that structure existed before the casualty or damage occurred or the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure. *Tax Code 11.26(o)*

Portability of Tax Limitation If an individual who receives a tax limitation, including a surviving spouse, discussed below, subsequently qualifies a different residence homestead for the same exemption, a district may not impose ad valorem taxes on the subsequently qualified homestead in a year in an amount that exceeds the amount of taxes calculated in accordance with Tax Code 11.26(g). *Tax Code 11.26(g)*

Surviving Spouse of Persons 65 or Older If an individual who qualifies for the exemption ~~for an individual 65 years of age or older~~ at Persons 65 or Older or Disabled, above, dies, the surviving spouse of the individual is entitled to the limitation applicable to the residence homestead of the individual if the surviving spouse is 55 years of age or older when the individual dies, and the residence homestead of the individual is the residence homestead of the surviving spouse on the date that the individual dies and remains the residence homestead of the surviving spouse. *Tax Code 11.26(i)*

kgc 7/7/19: HB 1313, effective 1.1.20

Local Options All Taxpayers In addition to other ~~residence homestead~~ exemptions in Tax Code 11.13, an individual is entitled to an exemption from taxation by a district of a percentage of the appraised value of ~~his or her~~ the individual's residence homestead if the exemption is adopted by the board before July 1 in the manner provided by law for official action by the board. If the percentage set by the district produces an exemption in a tax year of less than \$5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of \$5,000 of the appraised value. The percentage adopted by the district may not exceed 20 percent. *Tax Code 11.13(n)*

Disabled or 65 or Older An individual who is disabled or ~~is~~ 65 or older is entitled to an exemption from taxation by a district of a portion of the appraised value of ~~his or her~~ the individual's residence homestead if the exemption is adopted either by the board or by a favorable vote of a majority of the qualified voters of the district at an election called by the board, and the board shall call the election on the petition of at

least 20 percent of the number of qualified voters who voted in the preceding election of the district.

Amount

The amount of an exemption adopted as provided at Disabled or 65 or Older is \$3,000 of the appraised value of the residence homestead unless a larger amount is specified by the board if the board authorizes the exemption or the petition for the election if the exemption is authorized through an election. Once authorized, an exemption adopted may be repealed or decreased or increased in amount by the board or by the petition and election procedure. In the case of a decrease, the amount of the exemption may not be reduced to less than \$3,000 of the market value.

Tax Code 11.13(d)–(f)

*Continuation of
Exemption during
Construction*

If a qualified residential structure for which the owner receives a homestead exemption under Tax Code 11.13 is rendered uninhabitable or unusable by a casualty or by wind or water damage, the owner may continue to receive the exemption for the structure and the land and improvements used in the residential occupancy of the structure while the owner constructs a replacement qualified residential structure on the land in accordance with Tax Code 11.135. *Tax Code 11.135(a), .26(n); 34 TAC 9.416*

~~To continue to receive the exemption, the owner must begin active construction of the replacement qualified residential structure or other physical preparation of the site on which the structure is to be located not later than the first anniversary, or the fifth anniversary for a property described at paragraph 1 below, of the date the owner ceases to occupy the former qualified residential structure as the owner's principal residence.~~

~~An owner may not receive an exemption for the property under these provisions for more than:~~

- ~~1. five years if the property is located in an area declared to be a disaster area by the governor following a disaster; and the residential structure located on the property is rendered uninhabitable or unusable as a result of the disaster; or~~
- ~~2. two years if paragraph 1 does not apply.~~
- ~~3. Tax Code 11.135(a), (a-1)~~

kgc 7/24/19: I accepted the NEW material before I deleted it. I decided it's not necessary here; it is captured by the "in accordance with . . ." phrase of the existing paragraph.

kgc 7/7/19: SB 443, effective 6.4.19, I really don't know that we need all this exemption detail throughout this policy, but since it's already

here, this is just one more bill that responds to Harvey. The new part here is the five year period for property damaged in a disaster – I had to add some of the existing statute in order to add the new part.

*Surviving Spouse
of First
Responder*

The surviving spouse of a first responder who is killed or fatally injured in the line of duty is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse:

1. is an eligible survivor for purposes of Government Code Chapter 615 as determined by the Employees Retirement System of Texas; and

2. has not remarried since the first responder's death.

~~This exemption applies regardless of the date of the first responder's death if the surviving spouse otherwise meets the qualifications above.~~

~~A surviving spouse who receives an exemption for a residence homestead is entitled to receive an exemption from taxation of a property that the surviving spouse subsequently qualifies as the surviving spouse's residence homestead in an amount equal to the dollar amount of the exemption from taxation of the first property for which the surviving spouse received the exemption in the last year in which the surviving spouse received that exemption if the surviving spouse has not remarried since the death of the first responder.~~

Tax Code 11.134

*Veteran Exemptions
100 Percent
Disabled*

A disabled veteran who receives from the U.S. Department of Veterans Affairs or its successor 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability is entitled to an exemption from taxation of the total appraised value of the veteran's residence homestead. *Tax Code 11.131(b)*

*Partially Disabled
with Donated
Residence*

A disabled veteran who has a disability rating of less than 100 percent is entitled to an exemption from taxation of a percentage of the appraised value of the disabled veteran's residence homestead equal to the disabled veteran's disability rating if the residence homestead was donated to the disabled veteran by a charitable organization at no cost to the disabled veteran, or at some cost to the disabled veteran in the form of a cash payment, a mortgage, or both in an aggregate amount that is not more than 50 percent of the good faith estimate of the market value of the residence homestead made by the charitable organization as of the date of the donation. *Tax Code 11.132(b)*

~~Exemption for~~
~~Surviving Spouse~~
~~of Veteran~~

The surviving spouse of a ~~100 percent~~ disabled veteran, as defined by Tax Code 11.22(h)(3), ~~who qualified for an exemption when the veteran died, of a disabled veteran who would have qualified for an exemption if it had been in effect on the date the veteran died, or of a disabled veteran who qualified for a residence homestead exemption of a percentage of appraised value~~ is entitled to the same exemption from taxation of the same property to which the disabled veteran's exemption applied or would have applied if it had been in effect on the date of death if:

1. The surviving spouse has not remarried since the death of the disabled veteran; and
2. The property was the residence homestead of the surviving spouse when the disabled veteran died and remains the residence homestead of the surviving spouse.

~~If a surviving spouse who qualifies for an exemption subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is entitled to an exemption from taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption of the former homestead in the last year in which the surviving spouse received an exemption for that homestead if the surviving spouse has not remarried since the death of the disabled veteran.~~

~~Tax Code 11.131(c)-(d), .132(c)-(d)~~

~~Surviving Spouse~~
~~of Individual~~
~~Killed in Action~~

The surviving spouse of a member of the armed services of the United States who is killed in action is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead if the surviving spouse has not remarried since the death of the member of the armed services. ~~A surviving spouse who receives an exemption for a residence homestead is entitled to receive an exemption from taxation of a property that the surviving spouse subsequently qualifies as the surviving spouse's residence homestead in an amount equal to the dollar amount of the exemption from taxation of the first property for which the surviving spouse received the exemption in the last year in which the surviving spouse received that exemption if the surviving spouse has not remarried since the death of the member of the armed services.~~ Tax Code 11.133

~~Tex. Const. Art. VIII, Sec. 1-b~~

~~Disabled Veteran~~

A disabled veteran is entitled to an exemption from taxation of a portion of the assessed value of a property the veteran owns and designates under Tax Code 11.22(f). Tax Code 11.22

kgc 7/24/19: Material re: Temporary Exemption for Property Damaged by Disaster will be added in U115 if the constitutional amendment passes in November. (Draft material deleted here, but retained in my working folder)

kgc 7/7/19: Added by HB 492, effective 1.1.20 IF HJR 34 passes in November. I put it on my calendar to watch, but do we go forward with this now or what?

There's a lot more detail, but I think this is sufficient for the purpose of this policy.

Exemption for
Subsequent
Residence

The surviving spouse of a first responder, disabled veteran, or armed services member killed in action who receives an exemption for a residence homestead is entitled to receive an exemption from taxation of a different property that the surviving spouse subsequently qualifies as the surviving spouse's residence homestead in an amount equal to the dollar amount of the exemption from taxation of the first property for which the surviving spouse received the exemption in the last year in which the surviving spouse received that exemption if the surviving spouse has not remarried. Tax Code 11.131(d), .132(d), .133(c), .134(d)

kgc 7/24/19: This is a little editorial in that all 4 of these provisions aren't worded exactly the same, but I don't want to present it in this policy multiple times when the ultimate result of each provision is the same.

Optional
Exemptions

Among others, a board may grant additional tax exemptions in accordance with applicable law for:

1. Residential property owned by the United States or an agency of the United States and used to provide transitional housing for the indigent under a program operated or directed by the U.S. Department of Housing and Urban Development. *Tax Code 11.111*
2. Land and housing units on the land owned by a community land trust. *Tax Code 11.1827*
3. Certain historic structures or archeological sites and the land necessary to access and use the structure or archeological site. The board may not repeal or reduce the amount of an exemption for a property that otherwise qualifies for the exemption unless the property owner consents to the repeal or reduction or the district provides written notice of the repeal or reduction to the owner not later than five years before the date the board repeals or reduces the exemption. Tax Code 11.24

~~3.~~ kgc 7/4/19: SB 2, generally effective 1.1.20. Applies to an exemption repealed or reduced on or after 1.1.20.

4. Property on which approved water conservation initiatives, desalination projects, or brush control initiatives have been implemented. *Tax Code 11.32*

If a district adopts, amends, or repeals an exemption that the district by law has the option to adopt or not, the district shall notify the appraisal office of its action and of the terms of the exemption within 30 days after the date of its action. *Tax Code 6.08*

Goods-in-Transit

A person is entitled to an exemption from taxation of the appraised value of that portion of the person's property that consists of goods-in-transit, as defined in Tax Code 11.253(a)(2).

A board, by official action, may provide for the taxation of goods-in-transit exempt under Tax Code 11.253(b) and not exempt under other law. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the board proposes to tax goods-in-transit. Before acting to tax the exempt property, a board must conduct a public hearing as required by Texas Constitution Article VIII, Section 1-n(d). If the board provides for the taxation of the goods-in-transit as provided by this provision, the exemption stated above does not apply to that district. The goods-in-transit remain subject to taxation by the district until the board, by official action, rescinds or repeals its previous action to tax goods-in-transit, or otherwise determines that the exemption will apply to that district.

Notwithstanding official action that was taken before October 1, 2011, to tax goods-in-transit, a district may not tax such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the board takes official action on or after October 1, 2011, to provide for the taxation of the goods-in-transit.

Exception

If a board, before October 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the district, the district tax officials may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created.

Tax Code 11.253(b), (j)–(j-2)

kgc 7/24/19: I really don't like all of this detail, but I can't figure out a good way to trim it.

Payment Options	The board may adopt, by official action, one or both of the discount options below. <i>Tax Code 31.05(a)</i>
Discounts	
<i>Option 1</i>	A district may adopt the following discounts to apply regardless of the date on which the district mails its tax bills: <ol style="list-style-type: none">1. Three percent if the tax is paid in October or earlier.2. Two percent if the tax is paid in November.3. One percent if the tax is paid in December. <p><i>Tax Code 31.05(b)</i></p> <p>This discount does not apply to taxes that are calculated too late for it to be available. <i>Tax Code 31.04(c)</i></p>
<i>Option 2</i>	A district may adopt the following discounts to apply when the district mails its tax bills after September 30: <ol style="list-style-type: none">1. Three percent if the tax is paid before or during the next full calendar month following the date on which the tax bills were mailed.2. Two percent if the tax is paid during the second full calendar month following the date on which the tax bills were mailed.3. One percent if the tax is paid during the third full calendar month following the date on which the tax bills were mailed. <p><i>Tax Code 31.05(c)</i></p>
<i>Both Options</i>	If a board adopts both discounts, the discounts described at Option 1 apply unless the tax bills for the district are mailed after September 30, in which case only the discounts described at Option 2 apply. <i>Tax Code 31.05(a)</i>
<i>Rescission</i>	The board may rescind a discount lawfully adopted by the board. The rescission of a discount takes effect in the tax year following the year in which the discount is rescinded. <i>Tax Code 31.05(d)</i>
Split Payments	<p>AThe board of a district that collects its own taxes may provide, by official action, that a person who pays one-half of the district's taxes before December 1 may pay the remaining one-half of the taxes without penalty or interest at any time before July 1 of the following year. This payment option does not apply to taxes that are calculated too late for it to be available. Tax Code 31.03, .04(c)</p> <p><u>If a board contracts with the appraisal district for collection of taxes, the split-payment option does not apply to taxes collected by the appraisal district unless approved by resolution adopted by a majority of the governing bodies of the taxing units whose taxes the</u></p>

appraisal district collects and filed with the secretary of the appraisal district board of directors. The split-payment option may be revoked in the same manner as provided for adoption.

Tax Code 31.03

This payment option does not apply to taxes that are calculated too late for it to be available. Tax Code 31.04(c)

kgc 7/2/19: Held from U113.

kgc 2/8/19: On further consideration and study, I didn't adequately present this before. That said, however, I think it could wait until U114 if others agree.

*In Certain
Counties*

The board of a district located in a county having a population of not less than 285,000 and not more than 300,000 that borders a county having a population of 3.3 million or more and the Gulf of Mexico that has its taxes collected by another taxing unit that has adopted the split-payment option may provide, by official action, that the split-payment option does not apply to the district's taxes collected by the other taxing unit. *Tax Code 31.03(d)*

Installment
Payments

Certain
Homesteads

An individual who is disabled or at least 65 years of age and qualified for a homestead exemption under Tax Code 11.13(c), or an individual who is a disabled veteran or the unmarried surviving spouse of a disabled veteran and qualified for an exemption under Tax Code 11.132 or 11.22, may pay district taxes imposed on the person's residence homestead property in four equal installments without penalty or interest if paid by the applicable dates set out in Tax Code 31.031. Tax Code 31.031

Disaster Area

A person may pay district taxes imposed on certain property the person owns in four equal installments without penalty or interest if paid by the applicable dates set out in Tax Code 31.032. This option applies to real or personal property described in Tax Code 31.032(a) and taxes that are imposed on the property by a district before the first anniversary of the disaster, as defined by Government Code 418.004. Tax Code 31.032

kgc 7/24/19: Moved from below and edited—it fits better here.

~~Performing~~ Services
in Lieu of Paying
Taxes

The board by resolution may permit certain individuals or business entities to perform certain services for the district in lieu of paying the district property taxes. While performing services for a district, the individual is not an employee of the district and is not entitled to any benefit, including workers' compensation coverage, that the district provides to its employees. *Tax Code 31.035, .036, .037*

Persons 65 and Over Subject to the requirements of Tax Code 31.035, the board by order or resolution may permit an individual who is at least 65 years of age to perform service for the district in lieu of paying taxes imposed by a district on property owned by the individual and occupied as the individual's residence homestead. Property owners performing services for a district under this provision may only supplement or complement the regular personnel of the district. A district may not reduce the number of persons the district employs or reduce the number of hours to be worked by employees of the district because the district permits property owners to perform services for the district under this provision. *Tax Code 31.035(a), (g)*

Teaching Services An individual is qualified to perform teaching services for a district under the provisions below only if the individual holds a baccalaureate or more advanced degree in a field related to each course to be taught and:

1. Is certified as a classroom teacher under Education Code Chapter 21, Subchapter B; or
2. Obtains a school district teaching permit under Education Code 21.055.

Tax Code 31.036(h), .037(i)

By Individual Subject to the requirements of Tax Code 31.036, the board by resolution may permit qualified individuals to perform teaching services for the district at a junior high school or high school of the district in lieu of paying taxes imposed by the district on property owned and occupied by the individual as a residence homestead. *Tax Code 31.036*

By Employee of Business Entity Subject to the requirements of Tax Code 31.037, a board by resolution may authorize a corporation or other business entity to permit a qualified individual employed by the business entity to perform teaching services in a high school or a junior high school for the district in lieu of paying taxes imposed by the district on property owned by the business entity. *Tax Code 31.037*

~~*Installment Payments*~~ ~~An individual who is disabled or at least 65 years of age and qualified for a homestead exemption under Tax Code 11.13(c), or an individual who is a disabled veteran or the unmarried surviving spouse of a disabled veteran and qualified for an exemption under Tax Code 11.132 or 11.22, may pay district taxes imposed on the person's residence homestead property in four equal installments without penalty or interest if paid by the applicable dates set out in Tax Code 31.031. *Tax Code 31.031*~~

~~*Disaster Area*~~ ~~A person may pay district taxes imposed on certain property the person owns in four equal installments without penalty or interest if~~

~~paid by the applicable dates set out in Tax Code 31.032. This option applies to:~~

- ~~1. Real property that is located in a disaster area; has been damaged as a direct result of the disaster; and is:
 - ~~a. The residence homestead of the owner or consists of property that is used for residential purposes and that has fewer than five living units; or~~
 - ~~b. Owned or leased by a business entity that had not more than the amount calculated as provided by Tax Code 31.032(h) in gross receipts in the entity's most recent federal tax year or state franchise tax annual period, according to the applicable federal income tax return or state franchise tax report of the entity;~~~~
- ~~2. Tangible personal property that is owned or leased by a business entity described above at 1b; and~~
- ~~3. Taxes that are imposed on the property by a district before the first anniversary of the disaster.~~

~~Tax Code 31.032(a)-(d)~~

Definitions

~~“Disaster” means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency. Gov’t Code 418.004(1)~~

~~“Disaster area” means an area declared a disaster area by the governor under Government Code Chapter 418; or an area declared a disaster area by the president of the United States under 42 U.S.C. Section 5141. Tax Code 151.350~~

~~Tax Code 31.032(g)~~

Delinquent Taxes

Delinquency Date

Except as provided by Tax Code 31.02(b) (regarding payment by certain eligible persons on active duty in the armed forces), 31.03 (regarding split payments), and 31.04 (regarding postponement of delinquency date based on mailing date of tax bills), taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed. *Tax Code 31.02*

Note: Delinquent taxes incur penalties and accrue interest in accordance with Tax Code 33.01, subject to any waiver by the board pursuant to Tax Code 33.011.

Delinquent Tax
Collection

A board may contract with any competent attorney to represent the district to enforce the collection of delinquent taxes. The attorney's compensation is set in the contract, but the total amount of compensation provided may not exceed 20 percent of the amount of delinquent tax, penalty, and interest collected. *Tax Code 6.30(c)* [\[See CH\(LEGAL\) at regarding Ccontingent Ffee Ccontracts for Llegal Sservices and Government Code 2254.102\(c\) for additional requirements.\]](#)

kgc 7/7/19: As I understand it, some requirements of HB 2826, effective 9.1.19, apply to these contracts.

Additional Penalties

The board may provide, by official action, that taxes that become delinquent at a certain time incur an additional penalty to defray costs of collection if the board has contracted with an attorney as provided above. *Tax Code 33.07, .08*

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**Tax Increment
Financing Act**

Board of Directors

Except as provided at Large Municipality below, each district that levies taxes on real property in a reinvestment zone designated by a county or municipality in accordance with the Tax Increment Financing Act, Tax Code Chapter 311, may appoint one member of the reinvestment zone board of directors if the district has approved the payment of all or part of the tax increment produced by the district into the tax increment fund for the zone. A district may waive its right to appoint a director. *Tax Code 311.009(a), (b)*

*Large
Municipality*

In a reinvestment zone designated by a municipality which is wholly or partially located in a county with a population of less than 1.8 million in which the principal municipality has a population of 1.1 million or more, each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint a number of members to the board in proportion to the taxing unit's pro rata share of the total anticipated tax increment to be deposited into the tax increment fund during the term of the zone. *Tax Code 311.0091(a)–(c)*

Tax Increments
Amount

The amount of a district's tax increment for a year is the amount of property taxes levied and assessed by the district for that year on the captured appraised value of real property taxable by the district and located in a reinvestment zone or the amount of property taxes levied and collected by the district for that year on the captured appraised value of real property taxable by the district and located in a reinvestment zone. The board of the district shall determine which of the methods is used to calculate the amount of the district's tax increment.

"Captured
Appraised
Value"

The captured appraised value of real property taxable by a district for a year is the total taxable value of all real property taxable by the district and located in a reinvestment zone for that year less the tax increment base of the district.

"Tax Increment
Base"

The tax increment base of a district is the total taxable value of all real property taxable by the district and located in a reinvestment zone for the year in which the zone was designated under Tax Code Chapter 311.

Tax Code 311.012

*Collection and
Deposit*

Each district that taxes real property located in a reinvestment zone shall provide for the collection of its taxes in the zone as for any other property taxed by the district. Each district shall pay into the tax increment fund for the zone an amount equal to the tax increment produced by the district, less the sum of:

1. Property taxes produced from the tax increments that are, by contract executed before the designation of the area as a re-investment zone, required to be paid by the district to another political subdivision; and
2. A portion, not to exceed 15 percent, of the tax increment produced by the district as provided by the reinvestment zone financing plan or a larger portion as provided at Agreement Required below.

Tax Code 311.013(a)–(b)

Notwithstanding any termination of the reinvestment zone and unless otherwise specified by an agreement between the district and the municipality or county that created the zone, a district shall make the required payment not later than the 90th day after the later of the delinquency date for district property taxes or the date the municipality or county that created the zone submits to the district an invoice specifying the tax increment produced by the district and the amount the district is required to pay into the tax increment fund for the zone. A district is not required to pay into a tax increment fund the applicable portion of a tax increment attributable to delinquent taxes until those taxes are collected. *Tax Code 311.013(c), (i)*

A district whose taxable value is reduced under Government Code 403.302(d)(4) (determination of district property values by the comptroller) shall pay into the tax increment fund, in addition to the amount otherwise required to be paid, an amount equal to the amount by which the amount of taxes the district would have been required to pay into the fund in the current year if the district levied taxes at the rate the district levied in 2005 exceeds the amount the district is otherwise required to pay into the fund in the year of the reduction. This additional amount may not exceed the amount the district receives in state aid for the current tax year under Education Code ~~42.2514~~[48.253](#) (additional state aid for tax increment financing payments). The district shall pay the additional amount after the district receives the state aid to which the district is entitled for the current tax year under Education Code ~~42.2514~~[48.253](#). *Tax Code 311.013(n)*

kgc 7/4/19: HB 3, generally effective 9.1.19

*Agreement
Required*

A district is not required to pay into the tax increment fund any of its tax increment produced from property located in a reinvestment zone designated under Tax Code 311.005(a) or in an area added to a reinvestment zone under Tax Code 311.007 unless the district enters into an agreement to do so with the governing body of the

municipality or county that designated the zone. *Tax Code 311.013(f)*

A district that participates in a zone is not required to increase the percentage or amount of the tax increment to be contributed by the district because of an amendment to the project plan or reinvestment zone financing plan for the zone unless the board by official action approves the amendment. *Tax Code 311.011(g)*

A district is not required to pay into the tax increment fund any of its tax increment produced from property located in an area added to the reinvestment zone under Tax Code 311.007(a) or (b) unless the board enters into an agreement to do so with the governing body of the municipality or county that created the zone. *Tax Code 311.013(k)*

If the governing body of the municipality or county that designated a reinvestment zone extends the term of all or a portion of the zone, a district is not required to participate in the zone or portion of the zone for the extended term unless the district enters into a written agreement to do so. *Tax Code 311.007(c)*

Notwithstanding the designation of a later termination date under Tax Code 311.017(a), a district that taxes real property located in the reinvestment zone is not required to pay any of its tax increment into the tax increment fund for the zone after the termination date designated in the ordinance or order creating the zone unless the board enters into an agreement to do so with the governing body of the municipality or county that created the zone. *Tax Code 311.017(a-1)*

**Property
Redevelopment and
Tax Abatement Act**

On or after September 1, 2001, a school district may not enter into a tax abatement agreement under Tax Code Chapter 312. *Tax Code 312.002(f)*

**Reinvestment Zone
for Chapter 313**

Notwithstanding any other provision of Tax Code Chapter 312 to the contrary, the board, in the manner required for official action and for purposes of Tax Code Chapter 313, Subchapter B or C [see Texas Economic Development Act below], may designate an area entirely within the territory of the district as a reinvestment zone if the board finds that, as a result of the designation and the granting of a limitation on appraised value, for property located in the reinvestment zone, the designation is reasonably likely to:

1. Contribute to the expansion of primary employment in the reinvestment zone; or
2. Attract major investment in the reinvestment zone that would:

- a. Be a benefit to property in the reinvestment zone and to the district; and
- b. Contribute to the economic development of the region of this state in which the district is located.

The board may seek the recommendation of the commissioners court of each county and the governing body of each municipality that has territory in the district before designating an area as a reinvestment zone.

Tax Code 312.0025

**Texas Economic
Development Act**

In implementing the Texas Economic Development Act, Tax Code Chapter 313, districts should strictly interpret the criteria and selection guidelines provided by Chapter 313 and approve only those applications for an ad valorem tax benefit that:

1. Enhance the local community;
2. Improve the local public education system;
3. Create high-paying jobs; and
4. Advance the economic development goals of Texas.

Tax Code 313.004(3)

Definitions

“Agreement”

“Agreement” means the written agreement between the board and the approved applicant on the form adopted by reference in 34 Administrative Code 9.1052 (relating to Forms) to implement a limitation on the appraised value for district maintenance and operations ad valorem property tax purposes on an entity’s qualified property, required by Tax Code 313.027(d).

“Agreement Holder”

“Agreement holder” means an entity that has executed an agreement with a district.

“Applicant”

“Applicant” means an entity that has applied for a limitation on appraised value for district maintenance and operations ad valorem property tax purposes on the entity’s property, as provided by Tax Code Chapter 313.

“Application”

“Application” means an application for limitation of appraised value for district maintenance and operations ad valorem property tax purposes on an entity’s qualified property on the form adopted by reference in 34 Administrative Code 9.1052 (relating to Forms), the schedules attached thereto, and the documentation submitted by an entity for the purpose of obtaining an agreement for a limitation on appraised value from a district.

~~“Application
Review Start
Date”~~

“Application review start date” means the later date of either the date on which the district issues its written notice that an applicant has submitted a completed application or the date on which the comptroller issues its written notice that an applicant has submitted a completed application.

~~“Completed
Application”~~

“Completed application” means an application in the form and number and containing all the information required pursuant to 34 Administrative Code 9.1053 (relating to Entity Requesting Agreement to Limit Appraised Value), that has been determined by the district and the comptroller to include all minimum requirements for consideration.

~~“Entity”~~

“Entity” means any entity upon which a tax is imposed by Tax Code 171.001, including a combined group as defined by Tax Code 171.0001(7) or members of a combined group, provided, however, an entity does not include a sole proprietorship, partnership, or limited liability partnership.

34 TAC 9.1051(1), (2), (3), (7), (10), (12), (20)

~~“Qualified
Investment”~~

“Qualified investment” means:

1. Tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is:
 - a. Described as Section 1245 property by Section 1245(a), Internal Revenue Code of 1986;
 - b. Used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually located in the cleanroom environment, including integrated systems, fixtures, and piping; all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances; and production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting;
 - c. Used in connection with the operation of a nuclear electric power generation facility, including property, including pressure vessels, pumps, turbines, generators, and condensers, used to produce nuclear electric power; and property and systems necessary to control radioactive contamination;

- d. Used in connection with operating an integrated gasification combined cycle electric generation facility, including property used to produce electric power by means of a combined combustion turbine and steam turbine application using synthetic gas or another product produced by the gasification of coal or another carbon-based feedstock; or property used in handling materials to be used as feedstock for gasification or used in the gasification process to produce synthetic gas or another carbon-based feedstock for use in the production of electric power in the manner described herein;
 - e. Used in connection with operating an advanced clean energy project, as defined by Health and Safety Code 382.003; or
2. A building or a permanent, nonremovable component of a building that is built or constructed during the applicable qualifying time period that begins on or after January 1, 2002, and that houses tangible personal property described by items 1a–e above.

Tax Code 313.021(1)

*“Qualified
Property”*

“Qualified property” means:

- 1. Land:
 - a. That is located in an area designated as a reinvestment zone under Tax Code Chapter 311 or 312 or as an enterprise zone under Government Code Chapter 2303;
 - b. On which a person proposes to construct a new building or erect or affix a new improvement that does not exist before the date the person submits a complete application for a limitation on appraised value under Tax Code Chapter 313, Subchapter B;
 - c. That is not subject to a tax abatement agreement entered into by a district under Tax Code Chapter 312; and
 - d. On which, in connection with the new building or new improvement described by item 1b above, the owner or lessee of, or the holder of another possessory interest in, the land proposes to:
 - (1) Make a qualified investment in an amount equal to at least the minimum amount required by Tax Code 313.023; and

- (2) Create at least 25 new qualifying jobs, except as provided at Exception below;
2. The new building or other new improvement described by item 1b above; and
3. Tangible personal property:
 - a. That is not subject to a tax abatement agreement entered into by a district under Tax Code Chapter 312;
 - b. For which a sales and use tax refund is not claimed under Tax Code 151.3186; and
 - c. Except for new equipment described in Tax Code 151.318(q) or (q-1), that is first placed in service in the new building, in the newly expanded building, or in or on the new improvement described by item 1b above, or on the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business conducted in that new building or in or on that new improvement.

Tax Code 313.021(2); see also 34 TAC 9.1051(16) (additional requirements for "Qualified Property")

Exception

For purposes of Tax Code Chapter 313, Subchapter C, applicable to certain rural districts, a property owner is required to create at least 10 qualifying jobs. *Tax Code 313.051(b)*

"Qualifying Job"

"Qualifying job" means a permanent full-time job that:

1. Requires at least 1,600 hours of work a year;
2. Is not transferred from one area in this state to another area in this state;
3. Is not created to replace a previous employee;
4. Is covered by a group health benefit plan for which the business offers to pay at least 80 percent of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage; and
5. Pays at least 110 percent of the county average weekly wage for manufacturing jobs in the county where the job is located.

Tax Code 313.021(3); 34 TAC 9.1051(30)

To be eligible for a limitation on appraised value under Tax Code Chapter 313, the property owner must create the required number

of new qualifying jobs and the average weekly wage for all jobs created that are not qualifying jobs must exceed the county average weekly wage for all jobs in the county where the jobs are located. *Tax Code 313.024(d)*

Waiver of New
Jobs Creation
Requirement

Notwithstanding any other provision of Tax Code Chapter 313 to the contrary, the board may waive the new jobs creation requirement and approve an application if the board makes a finding that the jobs creation requirement exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility of the property owner that is described in the application. *Tax Code 313.025(f-1)*

*“Qualifying Time
Period”*

“Qualifying time period” means:

1. The period that begins on the date that a person’s application for a limitation on appraised value under Tax Code Chapter 313 is approved by the board and ends on December 31 of the second tax year that begins after that date, except as provided by items 2 and 3 below or Tax Code 313.027(h);
2. In connection with a nuclear electric power generation facility, the first seven tax years that begin on or after the third anniversary of the date the district approves the property owner’s application for a limitation on appraised value, unless a shorter time period is agreed to by the board and the property owner; or
3. In connection with an advanced clean energy project, the first five tax years that begin on or after the third anniversary of the date the district approves the property owner’s application for a limitation on appraised value, unless a shorter time period is agreed to by the board and the property owner.

Tax Code 313.021(4)

*“Substantive
Document”*

“Substantive document” means a document or other information or data in electronic media determined by the comptroller to substantially involve or include information or data significant to an application, the evaluation or consideration of an application, or the agreement or implementation of an agreement for limitation of appraised value pursuant to Tax Code Chapter 313. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between applicant and the district and any subsequent amendments or assignments, any district written finding or report filed with the comptroller as required under 34 Administrative Code

Chapter 9, Subchapter F; and any completed annual eligibility report (Form 50-772A) submitted to the comptroller. *34 TAC 9.1051(19)*

School District
Categories

For purposes of determining the required minimum amount of a qualified investment and the minimum amount of a limitation on appraised value, districts to which Tax Code Chapter 313, Subchapter B applies are categorized according to the taxable value of property in the district for the preceding tax year under Government Code Chapter 403, Subchapter M (comptroller's study of school district property values), as set out in Tax Code 313.022. *Tax Code 313.022(b); 34 TAC 9.1058(d)*

For purposes of determining the required minimum amount of a qualified investment and the minimum amount of a limitation on appraised value, districts to which Tax Code Chapter 313, Subchapter C applies are categorized according to the taxable value of industrial property in the district for the preceding tax year under Government Code Chapter 403, Subchapter M (comptroller's study of school district property values), as set out in Tax Code 313.052. *Tax Code 313.052; 34 TAC 9.1058(d)*

Minimum Amounts
of Qualified
Investment

For each category of district established by Tax Code 313.022, the minimum amount of a qualified investment is set out in Tax Code 313.023. *Tax Code 313.023*

For each category of district established by Tax Code 313.052, the minimum amount of a qualified investment is set out in Tax Code 313.053. *Tax Code 313.053*

Eligibility

Tax Code Chapter 313, Subchapters B and C apply only to property owned by an entity subject to franchise tax (Tax Code Chapter 171). To be eligible for a limitation on appraised value, the entity must use the property for a purpose stated in Tax Code 313.024.

*Exception for
Wind-Powered
Energy Device*

An owner of a parcel of land that is located wholly or partly in a reinvestment zone, a new building constructed on the parcel of land, a new improvement erected or affixed on the parcel of land, or tangible personal property placed in service in the building or improvement or on the parcel of land may not receive a limitation on appraised value for the parcel of land, building, improvement, or tangible personal property under an agreement under Tax Code Chapter 313, Subchapter B that is entered into on or after September 1, 2017, if, on or after that date, a wind-powered energy device is installed or constructed on the same parcel of land at a location that is within 25 nautical miles of the boundaries of a military aviation facility located in this state. This prohibition applies regardless of whether the wind-powered energy device is installed or constructed at a location that is in the reinvestment zone.

Tax Code 313.024

Application for
Limitation on
Appraised Value

The owner or lessee of, or the holder of another possessory interest in, any qualified property may apply to the board for a limitation on the appraised value of the person's qualified property for district maintenance and operations ad valorem tax purposes. An application must be made on the form prescribed by the comptroller, must include the information required by the comptroller, and must be accompanied by:

1. The application fee established by the board;
2. Information sufficient to show that the real and personal property identified in the application as qualified property meets the applicable criteria established by Tax Code 313.021(2); and
3. Any information required by the comptroller for the purposes of Tax Code 313.026 (economic impact evaluation).

Tax Code 313.025(a)

*Required
Contents and
Format*

A completed application shall consist of, at a minimum, the items set forth in 34 Administrative Code 9.1053(a)(1) and shall be provided in the formats specified in 34 Administrative Code 9.1053(a)(2).

Optional
Requests

An applicant may include in an application:

1. A request that the district waive the applicable requirement to create new jobs. In order for a completed application to include a job waiver request, the applicant shall submit the information specified in 34 Administrative Code 9.1053(b)(1); or
2. A request to begin the qualifying time period on a date that is after the date that the application is approved. In order for a completed application to include a qualifying time period deferral request, the applicant shall submit the information specified in 34 Administrative Code 9.1053(b)(2).

34 TAC 9.1053(a), (b)

Changes

At the request of the district or the comptroller, or with the prior approval of the district and the comptroller, the applicant may submit an application amendment or application supplement at any time after the submission of the initial application. In order to be considered as part of the application, the application amendment or supplement shall:

1. Be submitted in the same form or schedule and manner as the information was initially submitted or should have been initially submitted;
2. Include a date for the submission and a sequential number identifying the number of submissions made by the applicant;
3. Have the signature of the authorized representative(s) by which the applicant confirms and attests to the truth and accuracy of the information submitted in the application amendment or supplement, as applicable, to the best knowledge and belief of the applicant and its representative(s); and
4. Be submitted before the 120th day after the application was accepted by the district or within another time period as provided in writing by the comptroller.

34 TAC 9.1053(c)

If a district receives an amended application or a supplemental application from an applicant after the district has prepared or sent written notice that the applicant has submitted a completed application, the district shall either:

1. Reject the amended application, supplemental application, or application, in whole or in part, and discontinue consideration of any submission by the applicant;
2. With the written concurrence of the comptroller, consider the completed application, as amended or supplemented, before the 151st day from the application review start date; or
3. Review the documents submitted by the applicant, issue an amended written notice of a completed application, and present the amended application to the board in the manner and time period authorized by 34 Administrative Code 9.1053(c)(5).

34 TAC 9.1054(e) [See Acting on Completed Application below]

Confidential
Business
Information

Information provided to a district in connection with an application for a limitation on appraised value that describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the application shall be segregated in the application from other information in the application and is confidential and not subject to public disclosure unless the board approves the application. Other information in the custody of a district or the comptroller in connection with the application, including information related to the economic impact of a project or the essential elements of eligibility

under Tax Code Chapter 313, such as the nature and amount of the projected investment, employment, wages, and benefits, may not be considered confidential business information if the board agrees to consider the application. Information in the custody of a district or the comptroller if the board approves the application is not confidential under this provision. *Tax Code 313.028; 34 TAC 9.1055(a)(1)–(4)*

At the time that the applicant submits its application, application amendment, or application supplement, the applicant may request that all or parts of such document not be posted on the internet and not otherwise be publicly released. In order to make such request, the applicant shall:

1. Submit a written request that:
 - a. Specifically lists each document or portion of document and each entry in any form prescribed by the comptroller that the applicant contends is confidential; and
 - b. Identifies specific detailed reasons stating why the applicant believes each item listed should be considered confidential and identifies any relevant legal authority in support of the request;
2. Segregate the documents which are subject to the request from the other documents submitted with the application, application amendment, or application supplement that are not subject to the request; and
3. Adequately designate the documents subject to the request as “confidential.”

34 TAC 9.1053(e)

Action on
Application
Initial Review

Within seven days of receipt of each document, the district shall submit to the comptroller a copy of the application and the proposed agreement between the applicant and the district. If the applicant submits an economic analysis of the proposed project, the district shall submit a copy of the analysis to the comptroller. In addition, the district shall submit to the comptroller any subsequent revision of or amendment to any of those documents within seven days of receipt. *Tax Code 313.025(a-1); 34 TAC 9.1054(b)*

*Acting on
Completed
Application*

If the board by official action elects to consider an application and determines that the application received is a completed application, the district shall:

1. Provide written notice to the applicant and to the comptroller, with a copy to the appraisal district, that the district has received and will be considering a completed application. The notice shall include:
 - a. The date on which the application was received;
 - b. The date on which the board elected to consider the application; and
 - c. The date on which the district determined that applicant has submitted a completed application;
2. At the time the district provides notice of a completed application, deliver to the comptroller:
 - a. A copy of the completed application including all material required by 34 Administrative Code 9.1053(a), and if applicable (b), (relating to Entity Requesting Agreement to Limit Appraised Value); and
 - b. A request to the comptroller to provide an economic impact evaluation;
3. If the district maintains a generally accessible internet web site, provide a clear and conspicuous link on its web site to the internet web site maintained by the comptroller where substantive documents for the value limitation application for such district are posted;
4. On request of the comptroller, provide such written documents containing information requested by the comptroller as necessary for the consideration of a limitation on appraised value pursuant to Tax Code Chapter 313 within 20 days of the date of the request.

34 TAC 9.1054(c)(1)–(4)

*Economic Impact
Evaluation and
Certification*

The board is not required to consider an application for a limitation on appraised value. If the board elects to consider an application, the board shall deliver a copy of the application to the comptroller and request that the comptroller conduct an economic impact evaluation of the proposed investment. The comptroller shall conduct or contract with a third person to conduct the economic impact evaluation, which shall be completed and provided to the board, along with the comptroller's certificate or written explanation of the decision not to issue a certificate, as soon as practicable but not later than the 90th day after the date the comptroller receives the application. The board shall provide to the comptroller or to a third

person contracted by the comptroller to conduct the economic impact evaluation any requested information. The board shall provide a copy of the economic impact evaluation to the applicant on request. *Tax Code 313.025(b); 34 TAC 9.1055(d)*

Supplemental application information, amended application information, and additional information requested by the comptroller shall be promptly forwarded to the comptroller within 20 days of the date of the request. On request of the district or applicant, the comptroller may extend the deadline for providing additional information for a period of not more than ten working days. *34 TAC 9.1055(b)(1)(A)–(B)*

After receiving a copy of the application, the comptroller shall determine whether the property meets the requirements for eligibility for a limitation on appraised value. The comptroller shall notify the board of the comptroller's determination and provide the applicant an opportunity for a hearing before the determination becomes final. If the comptroller's determination becomes final, the comptroller is not required to provide an economic impact evaluation of the application or to submit a certificate for a limitation on appraised value of the property or a written explanation of the decision not to issue a certificate, and the board may not grant the application. *Tax Code 313.025(h), (i); 34 TAC 9.1055(b)(3), (c), (d), .1056*

*Effect on
Instructional
Facilities*

The comptroller shall promptly deliver a copy of the application to the Texas Education Agency (TEA). TEA shall determine the effect that the applicant's proposal will have on the number or size of the district's instructional facilities and submit a written report containing TEA's determination to the district. The board shall provide any requested information to TEA. Not later than the 45th day after the date TEA receives the application, TEA shall make the required determination and submit the written report to the board. *Tax Code 313.025(b-1)*

Fees

The board by official action shall establish reasonable nonrefundable application fees to be paid by property owners who apply to the district for a limitation on the appraised value of the person's property. The amount of an application fee must be reasonable and may not exceed the estimated cost to the district of processing and acting on an application, including any cost to the district associated with the required economic impact evaluation. *Tax Code 313.031(b); 34 TAC 9.1054(a)*

The total fee shall be paid at the time the application is submitted to the district. Any fees not accompanying the original application shall be considered supplemental payments. *34 TAC 9.1054(a)*

The comptroller may charge the applicant a fee sufficient to cover the costs of providing the economic impact evaluation. *Tax Code 313.025(b)*

*Supplemental
Payments*

A person and the district may not enter into an agreement under which the person agrees to provide supplemental payments to a district or any other entity on behalf of a district in an amount that exceeds an amount equal to the greater of \$100 per student per year in average daily attendance or \$50,000 per year, or for a period that exceeds the period beginning with the qualifying time period and ending December 31 of the third tax year after the date the person's eligibility for a limitation under Tax Code Chapter 313 expires. This limit does not apply to amounts described below at item 4 at Contents, Required and item 1 at Contents, Optional. *Tax Code 313.027(i)*

Approval

The board shall approve or disapprove an application not later than the 150th day after the date the application is filed, unless the economic impact evaluation has not been received or an extension is agreed to by the board and the applicant. *Tax Code 313.025(b)*

The board may extend the time period to approve a completed application required only if:

1. Either:
 - a. An economic impact analysis has not been submitted to the district by the comptroller; or
 - b. By agreement with the applicant; and
2. Notice of the extension is provided to the comptroller within seven days of the decision to provide the extension.

34 TAC 9.1054(d)

Before approving or disapproving an application that the board elects to consider, the board must make a written finding as to any criteria considered by the comptroller in conducting the economic impact evaluation under Tax Code 313.026. The board shall deliver a copy of those findings to the applicant.

The board may approve an application only if the board finds that the information in the application is true and correct, finds that the applicant is eligible for the limitation on the appraised value of the person's qualified property, and determines that granting the application is in the best interest of the district and this state.

The board may not approve an application unless the comptroller submits to the board a certificate for a limitation on appraised value of the property.

Tax Code 313.025(d-1), (e), (f)

When presented a completed application for which the comptroller has submitted a certificate for a limitation, the board shall either:

1. By majority vote adopt a written resolution approving the application which shall include:
 - a. Written findings:
 - (1) As to each criterion listed in 34 Administrative Code 9.1055(d)(3)(B)–(D) (relating to Comptroller Application Review and Agreement to Limit Appraised Value);
 - (2) As to the criteria required by Tax Code 313.025(f-1) (regarding waiver of new jobs creation requirement) if applicable;
 - (3) That the information in the application is true and correct; and
 - (4) That the applicant is eligible for the limitation on the appraised value of the entity's qualified property;
 - b. A determination that granting the application is in the best interest of the district and this state; and
 - c. Designate and direct a representative of the board to execute the agreement for property tax limitation presented by the approved applicant that complies with 34 Administrative Code Chapter 9, Subchapter F and Tax Code Chapter 313;
2. By majority vote disapprove the application; or
3. Take no official action and the application shall be considered disapproved on the 151st day after the application review start date.

34 TAC 9.1054(c)(5), (f)

In determining whether to approve an application, the board is entitled to request and receive assistance from the comptroller, the Texas Economic Development and Tourism Office, the Texas Workforce Investment Council, and the Texas Workforce Commission. The Texas Economic Development and Tourism Office or its successor may recommend that a district approve an application under Tax Code Chapter 313. In determining whether to approve an application, the board shall consider any recommendation made by the Texas Economic Development and Tourism Office or its successor. *Tax Code 313.025(c), (g)*

Continued Eligibility	<p>In order to obtain and continue to receive a limitation on appraised value pursuant to Tax Code Chapter 313, an applicant shall:</p> <ol style="list-style-type: none">1. Have a completed application approved by the board in compliance with 34 Administrative Code 9.1054(f) (relating to School District Application Review and Agreement to Limit Appraised Value);2. At least 20 days prior to the meeting at which the board is scheduled to consider the application, provide to the district and the comptroller a Texas Economic Development Act Agreement, as specified in 34 Administrative Code 9.1052(a)(6), with terms acceptable to the applicant;3. If the applicant includes a combined group or members of the combined group, have the agreement executed by the authorized representative of each member of the combined group that owns a direct interest in property subject to the proposed agreement by which such members are jointly and severally liable for the performance of the stipulations, provisions, terms, and conditions of the agreement;4. Comply with all stipulations, provisions, terms, and conditions of the agreement for a limitation on appraised value executed with the district, 34 Administrative Code Chapter 9, Subchapter F, and Tax Code Chapter 313;5. Be and remain in good standing under the laws of this state and maintain legal status as an entity;6. Owe no delinquent taxes to the state;7. Maintain eligibility for limitation on appraised value pursuant to Tax Code Chapter 313; and8. Provide to the district, the comptroller, and the appraisal district any change to information provided in the application, including but not limited to changes of the authorized representative(s); changes to the location and contact information for the approved applicant including all members of the combined group participating in the limitation agreement; and copies of any valid assignments of the agreement and contact information for authorized representative(s) of any assignees. <p><i>34 TAC 9.1053(f)</i></p>
Agreement	<p>The board and the property owner shall enter into a written agreement for the implementation of the limitation on appraised value on the owner's qualified property. <i>Tax Code 313.027(d); 34 TAC 9.1054(g), .1060</i></p>

If the comptroller determines that the agreement as submitted by the applicant does not comply with Tax Code Chapter 313 or the applicable rules or that the agreement contains provisions that are not consistent with or represents information significantly different from that presented in the application as submitted, the comptroller may amend or withdraw the comptroller certificate for a limitation, and provide written notification to the district of the actions taken.
34 TAC 9.1055(e)(2)–(3)

*Limitation on
Appraised Value*

If the person's application is approved by the board, the appraised value for district maintenance and operations ad valorem tax purposes of the person's qualified property as described in the agreement between the person and the district may not exceed the lesser of:

1. The market value of the property; or
2. Subject to the minimum limitation amount below, the amount agreed to by the board.

Minimum
Limitation

The amount agreed to by the board must be an amount in accordance with Tax Code 313.027(b), according to the category to which the district belongs. [See School District Categories above] A district, regardless of category, may agree to a greater amount.

Tax Code 313.027(a), (b), (c)

For a district to which Tax Code Chapter 313, Subchapter C applies, the amount agreed to by the board must be an amount in accordance with Tax Code 313.054, according to the category to which the district belongs. [See School District Categories above] A district, regardless of category, may agree to a greater amount. *Tax Code 313.054*

Contents
Required

The agreement must:

1. Provide that the limitation applies for a period of ten years;
2. Specify the beginning date of the limitation, which must be January 1 of the first tax year that begins after the application date, the qualifying time period, or the date commercial operations begin at the site of the project;
3. Describe with specificity the qualified investment that the person will make on or in connection with the person's qualified property that is subject to the limitation; other property of the person that is not specifically described in the agreement is not subject to the limitation unless the board, by official action, provides that the other property is subject to the limitation;

4. Incorporate each relevant provision of Tax Code Chapter 313, Subchapter B, and, to the extent necessary, include provisions for the protection of future district revenues through the adjustment of the minimum valuations, the payment of revenue offsets, and other mechanisms agreed to by the property owner and the district;
5. Require the property owner to maintain a viable presence in the district for at least five years after the date the limitation on appraised value of the owner's property expires;
6. Provide for the termination of the agreement, the recapture of ad valorem tax revenue lost as a result of the agreement if the owner of the property fails to comply with the terms of the agreement, and payment of a penalty or interest, or both, on that recaptured ad valorem tax revenue;
7. Specify the ad valorem tax years covered by the agreement;
8. Be in a form approved by the comptroller; and
9. Disclose any consideration promised in conjunction with the application and the limitation.

Tax Code 313.027(a-1), (e), (f), (j)

Optional

The agreement may:

1. Provide that the property owner will protect the district in the event the district incurs extraordinary education-related expenses related to the project that are not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project.
2. Specify any conditions the occurrence of which will require the district and the property owner to renegotiate all or any part of the agreement.
3. Provide for a deferral of the date on which the qualifying time period for the project is to commence or, subsequent to the date the agreement is entered into, be amended to provide for such a deferral. The agreement may not provide for the deferral of the date on which the qualifying time period is to commence to a date later than January 1 of the fourth tax year that begins after the date the application is approved except that if the agreement is one of a series of agreements related to the same project, the agreement may provide for the defer-

ral of the date on which the qualifying time period is to commence to a date not later than January 1 of the sixth tax year that begins after the date the application is approved.

Tax Code 313.027(f), (h)

If an agreement for limitation on appraised value includes a provision in which the qualifying time period starts more than one year after the date that the application is approved, no earlier than 180 days and no later than 90 days prior to the start of the deferred qualifying time period:

1. The district shall provide the comptroller:
 - a. Copies of any documents or other information received from the applicant; and
 - b. After reviewing documents and information provided by the applicant, either:
 - (1) A written acknowledgment of receiving the application amendment or supplement; or
 - (2) A statement that no such amendment or supplement has been submitted; and
2. If the comptroller provides:
 - a. A comptroller certificate for a limitation with conditions different from the existing agreement, the board shall hold a meeting and determine whether to amend the agreement to include the conditions required by the comptroller or terminate the agreement; or
 - b. A written explanation of the comptroller's decision not to re-issue a certificate, the district shall terminate the agreement.

34 TAC 9.1054(h), .1055(g)

Compliance and
Enforcement

The district shall provide to the comptroller any documents that reasonably appear to be substantive documents, and, within seven days of executing the agreement, a copy of the executed agreement and any attachments thereto. The district shall provide a copy of the executed agreement to the appraisal district.

The district shall comply with and enforce the stipulations, provisions, terms, and conditions of the agreement for limitation of the appraised value, 34 Administrative Code Chapter 9, Subchapter F, and Tax Code Chapter 313. To determine and obtain compliance with each agreement, for each calendar year during the term of the

agreement the district shall require the approved applicant to submit:

1. Either the information necessary to complete the annual eligibility report, or a completed annual eligibility report;
2. A completed job creation compliance report (Form 50-825); and
3. Any information required by the state auditor office or its designee.

34 TAC 9.1054(i)

Disclosure of
Appraised Value
Limitation
Information

If a district maintains a generally accessible internet website, the district shall maintain a link on its internet website to the area of the comptroller's internet website where information on each of the district's agreements to limit appraised value is maintained. *Tax Code 313.0265(c)*

Accessibility of
Documents

Any documents submitted in an electronic format (including searchable pdfs) to the comptroller must comply with the accessibility standards and specifications described in 1 Administrative Code Chapters 206 and 213. *34 TAC 9.1055(a)(5)*

kgc 7/24/19: The conflicts arising over the restriction on employment provision below & white settlement isd have caused me to rethink keeping this policy. I've tried to trim it to info relevant to a school board. I feel a little better about it since BDAF is being eliminated.

kgc 7/4/19: I'm renewing my position that we don't need this in the PRM.

Appraisal Function

The county appraisal district is responsible for appraising property in the appraisal district for ad valorem tax purposes of each taxing unit in the appraisal district. *Tax Code 6.01(b)*

Restrictions on
Employment

An individual may not be employed by an appraisal district if the individual is an officer or employee of a taxing unit that participates in the appraisal district. *Tax Code 6.054*

kgc 7/4/19: Added by SB 2, generally effective 1.1.20

Notice of Boundary
Change

If a new taxing unit is formed or an existing taxing unit's boundaries are altered, the unit shall notify the appraisal office of the new boundaries within 30 days after the date the unit is formed or its boundaries are altered. *Tax Code 6.07*

**Appraisal District
Board of Directors**

The appraisal district is governed by a board of directors. Five directors are appointed by the taxing units that participate in the appraisal district as provided by Tax Code 6.03.

Eligibility

To be eligible to serve on the appraisal district board, an individual other than a county assessor-collector serving as a nonvoting director must be a resident of the appraisal district and must have resided in the appraisal district for at least two years immediately preceding the date the individual takes office. An individual who is otherwise eligible to serve on the appraisal district board is not ineligible because of membership on the governing body of a taxing unit.

An employee of a taxing unit is not eligible to serve on the appraisal district board unless the employee is also a member of the governing body or an elected official of a taxing unit that participates in the appraisal district.

Tax Code 6.03(a)

Restrictions
Nepotism

An individual is ineligible to serve on an appraisal district board if the individual is related within the second degree by consanguinity or affinity, as determined under Government Code Chapter 573 [see DBE], to an individual who is engaged in the business of appraising property for compensation for use in proceedings under

Tax Code Title 1 (the Property Tax Code) or of representing property owners for compensation in proceedings under the Property Tax Code in the appraisal district.

Delinquent Taxes An individual is ineligible to serve on an appraisal district board if the individual owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless the delinquent taxes and any penalties and interest are being paid under an installment payment agreement, or a suit to collect the delinquent taxes is deferred or abated.

Tax Code 6.035(a)

Prior Property Appraiser or Owner Representative An individual is ineligible to serve on an appraisal district board if the individual has engaged in the business of appraising property for compensation for use in proceedings under the Property Tax Code or of representing property owners for compensation in proceedings under the Property Tax Code in the appraisal district at any time during the preceding ~~five~~three years. *Tax Code 6.035(a-1)*

kgc 7/4/19: SB 2, generally effective 1.1.20

Conflict of Interest An individual is not eligible to be appointed to or to serve on an appraisal district board if the individual or a business entity in which the individual has a substantial interest is a party to a contract with :

~~1. the appraisal district;~~ or a

~~A taxing unit that participates in the appraisal district, if the contract relates to the performance of an activity governed by the Property Tax Code.~~

~~2. A taxing unit may not enter into a contract relating to the performance of an activity governed by the Property Tax Code with a member of the appraisal district board or with a business entity in which an appraisal district board member has a substantial interest.~~

An individual has a substantial interest in a business entity if the combined ownership of the individual and the individual's spouse is at least ten percent of the voting stock or shares of the business entity, or the individual or the individual's spouse is a partner, limited partner, or officer of the business entity.

"Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.

~~A school district may not enter into a contract relating to the performance of an activity governed by the Property Tax Code with a member of the appraisal district board or with a business entity in which an appraisal district board member has a substantial interest.~~

Tax Code 6.036

kgc 7/23/19: This was duplicated at BDAE, which is being deleted in its entirety.

Recall

In accordance with Tax Code 6.033, the governing body of a taxing unit, by resolution filed with the chief appraiser, may call for the recall of a member of the appraisal district board for whom the unit cast any of its votes in the appointment of the appraisal district board. *Tax Code 6.033(a)*

Ownership or Lease of Real Property

~~The acquisition or conveyance of real property or the construction or renovation of a building or other improvement by an appraisal district must be approved by the governing bodies of three-fourths of the taxing units entitled to vote on the appointment of appraisal district board members.~~

~~The appraisal district board by resolution may propose a property transaction or other action for approval of the taxing units. The chief appraiser shall notify the presiding officer of each governing body entitled to vote on the proposal by delivering a copy of the appraisal district board's resolution, together with information showing the costs of other available alternatives to the proposal.~~

~~On or before the 30th day after the date the presiding officer receives notice of the proposal, the governing body of a taxing unit by resolution may approve or disapprove the proposal. If a governing body fails to act on or before that 30th day or fails to file its resolution with the chief appraiser on or before the 10th day after that 30th day, the proposal is treated as if it were disapproved by the governing body.~~

Proceeds

~~The proceeds of a conveyance of appraisal district real property shall be credited to each taxing unit that participates in the appraisal district in proportion to the unit's allocation of the appraisal district budget in the year in which the transaction occurs.~~

~~*Tax Code 6.051(b), (c)*~~

kgc 7/24/19: Not super relevant to school boards.

Budget and Financing

Each year the chief appraiser shall prepare a proposed budget for the operations of the appraisal district for the following tax year as

	<p>described in Tax Code 6.06(a) and shall submit copies to each taxing unit and the appraisal district board before June 15.</p>
Public Inspection	<p>Each taxing unit shall maintain a copy of the proposed budget for public inspection at its principal administrative office.</p>
Budget Adoption	<p>The appraisal district board shall hold a public hearing to consider the budget. The secretary of the appraisal district board shall deliver to the presiding officer of the governing body of each taxing unit not later than the tenth day before the date of the hearing a written notice of the date, time, and place fixed for the hearing. The appraisal district board of directors shall complete its hearings, make any amendments to the proposed budget it desires, and finally approve a budget before September 15.</p> <p>If governing bodies of a majority of the taxing units adopt resolutions disapproving a budget and file them with the secretary of the appraisal district board within 30 days after its adoption, the budget does not take effect, and the appraisal district board shall adopt a new budget within 30 days of the disapproval.</p>
Amendments	<p>The appraisal district board may amend the approved budget at any time, but the secretary of the appraisal district board must deliver a written copy of a proposed amendment to the presiding officer of the governing body of each taxing unit not later than the 30th day before the date the appraisal district board acts on it.</p>
Allocation	<p>Each taxing unit participating in the appraisal district is allocated a portion of the amount of the budget equal to the proportion that the total dollar amount of property taxes imposed in the appraisal district by the unit for the tax year in which the budget proposal is prepared bears to the sum of the total dollar amount of property taxes imposed in the district by each participating unit for that year. Unless the governing body of a unit and the chief appraiser agree to a different method of payment, each taxing unit shall pay its allocation in four equal payments to be made at the end of each calendar quarter, and the first payment shall be made before January 1 of the year in which the budget takes effect.</p> <p><i>Tax Code 6.06(a)–(e)</i></p>
Changes in Method of Financing	<p>The appraisal district board, by resolution adopted and delivered to each taxing unit after June 15 and before August 15 <u>in accordance with Tax Code 6.061(a)</u>, may prescribe a different method of allocating the costs of operating the appraisal district unless the governing body of any taxing unit adopts a resolution opposing the different method, and files it with the appraisal district board before September 1. If an appraisal district board proposal is rejected, the</p>

~~appraisal district board shall notify, in writing, each taxing unit before September 15.~~

The taxing units may adopt a different method of allocating the costs of operating the appraisal district in accordance with Tax Code 6.061.

Tax Code 6.061

**Disapproval of
Appraisal District
Board Actions**

If the governing bodies of a majority of the taxing units adopt resolutions disapproving an action, other than adoption of the budget, by the appraisal district board and file them with the secretary of the appraisal district board within 15 days after the action is taken, the action is revoked effective the day after the day on which the required number of resolutions is filed. *Tax Code 6.10*

**Appraisal Review
Board**

An appraisal review board is established for each appraisal district. This does not preclude the boards of directors of two or more adjoining appraisal districts from providing for the operation of a consolidated appraisal review board by interlocal contract.

Appointment

Counties of Less
than 120,000

~~Except as provided below by Tax Code 6.41(d-1) (for counties with population under 120,000), m~~Members of the appraisal review board are appointed by resolution of a majority of the appraisal district board of directors.

Counties of
120,000 or More

Members of the board are appointed by the local administrative law judge under Government Code Chapter 74, Subchapter D in the county in which the appraisal district is established.

Tax Code 6.41

kgc 7/4/19: statutory tightening

~~Exception~~

~~In a county with a population of 120,000 or more, the members of the appraisal review board are appointed by the local administrative district judge under Government Code Chapter 74, Subchapter D, in the county in which the appraisal district is established. Tax Code 6.41(d-1)~~

Eligibility

Appraisal review board members are subject to the eligibility restrictions described in Tax Code 6.412 and the conflict of interest provisions set forth in Tax Code 6.413. *Tax Code 6.412, .413*

Prohibition on
Contracts

A school district may not enter into a contract with a member of the appraisal review board established for an appraisal district in which the school district participates or with a business entity in which a member of the appraisal review board has a substantial interest as defined in Tax Code 6.413(d). *Tax Code 6.413(c)*

**Auxiliary Appraisal
Review Board
Members**

The appraisal district board by resolution may provide for a number of auxiliary appraisal review board members that the board considers appropriate to hear taxpayer protests before the appraisal review board and to assist the board in performing its duties.

~~An auxiliary board member is appointed in the same manner and for the same term as an appraisal review board member and is subject to the same eligibility requirements and restrictions.~~

Tax Code 6.414(a)

kgc 7/4/19: statutory tightening

**Special Appraisal
Review Board Panels**

~~The appraisal district board for a district established in a county with a population of one million or more shall establish special panels to conduct protest hearing under Tax Code Chapter 41 relating to property described in Tax Code 6.425(b). Tax Code 6.41(b-2), -425(a)-(b)~~

kgc 7/24/19: I accepted the NEW material above so I could delete it. I will add this back at U115.

kgc 7/4/19: Added by SB 2, but NOT EFFECTIVE UNTIL 9.1.20. How can we hold this only for U115?

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All investments made by a district shall comply with the Public Funds Investment Act (Texas Government Code Chapter 2256, Subchapter A) and all federal, state, and local statutes, rules, or regulations. *Gov't Code 2256.026*

Definitions

Bond Proceeds

“Bond proceeds” means the proceeds from the sale of bonds, notes, and other obligations issued by a district, and reserves and funds maintained by a district for debt service purposes.

kgc 7/3/19: Not new, but I added it bc of HB 2706.

Investment Pool

“Investment pool” means an entity created under the Texas Government Code to invest public funds jointly on behalf of the entities that participate in the pool and whose investment objectives in order of priority are preservation and safety of principal, liquidity, and yield.

Pooled Fund Group

“Pooled fund group” means an internally created fund of a district in which one or more institutional accounts of a district are invested.

Separately Invested Asset

“Separately invested asset” means an account or fund of a district that is not invested in a pooled fund group.

Gov't Code 2256.002(1), (6), (9), (12)

Pledged Revenue

“Pledged revenue” means money pledged to the payment of or as security for:

1. ~~b~~ Bonds or other indebtedness issued by a district;
2. ~~e~~ Obligations under a lease, installment sale, or other agreement of a district; or
3. ~~e~~ Certificates of participation in a debt or obligation described by 1 or 2.

Gov't Code 2256.008(a)

kgc 7/2/19: HB 2706, effective 9.1.19.

Repurchase Agreement

“Repurchase agreement” means a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations, described by Government Code 2256.009(a)(1) (obligations of governmental entities) or 2256.013 (commercial paper) or if applicable, 2256.0204 (corporate bonds), ~~at Obligations of Governmental Entities, below,~~ at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement. *Gov't Code 2256.011(b)*

KGC 6/22/19: Amended by HB 2706, effective 9.1.19. Since this has gotten a little clunky to refer to 3 margin notes, I changed to reference statutory sections with parentheticals like 3.c. at Securities Lending Program.

Hedging

“Hedging” means acting to protect against economic loss due to price fluctuation of a commodity or related investment by entering into an offsetting position or using a financial agreement or producer price agreement in a correlated security, index, or other commodity.

Eligible Entity

“Eligible entity” means a political subdivision that has:

1. A principal amount of at least \$250 million in outstanding long-term indebtedness, long-term indebtedness proposed to be issued, or a combination of outstanding long-term indebtedness and long-term indebtedness proposed to be issued; and
2. Outstanding long-term indebtedness that is rated in one of the four highest rating categories for long-term debt instruments by a nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with the obligation.

Eligible Project

“Eligible project” has the meaning assigned by Government Code 1371.001 (regarding issuance of obligations for certain public improvements).

Gov’t Code 2256.02076(a)

kgc 7/5/19: Redesignated by HB 4170, effective 9.1.19

Corporate Bond

“Corporate bond” means a senior secured debt obligation issued by a domestic business entity and rated not lower than “AA-” or the equivalent by a nationally recognized investment rating firm. The term does not include a debt obligation that, on conversion, would result in the holder becoming a stockholder or shareholder in the entity, or any affiliate or subsidiary of the entity, that issued the debt obligation, or is an unsecured debt obligation. *Gov’t Code 2256.0204(a)*

Written Policies

The board shall adopt by rule, order, ordinance, or resolution, as appropriate, a written investment policy regarding the investment of its funds and funds under its control. The investment policies must primarily emphasize safety of principal and liquidity and must address investment diversification, yield, and maturity and the quality and capability of investment management. The policies must include:

1. A list of the types of authorized investments in which the district's funds may be invested;
2. The maximum allowable stated maturity of any individual investment owned by the district;
3. For pooled fund groups, the maximum dollar-weighted average maturity allowed based on the stated maturity date of the portfolio;
4. Methods to monitor the market price of investments acquired with public funds;
5. A requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery versus payment basis; and
6. Procedures to monitor rating changes in investments acquired with public funds and the liquidation of such investments consistent with the provisions of Government Code 2256.021 [see Loss of Required Rating, below].

Gov't Code 2256.005(a), (b)

Annual Review

The board shall review its investment policy and investment strategies not less than annually. The board shall adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy and investment strategies and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies. *Gov't Code 2256.005(e)*

Annual Audit

A district shall perform a compliance audit of management controls on investments and adherence to the district's established investment policies. The compliance audit shall be performed in conjunction with the annual financial audit. *Gov't Code 2256.005(m)*

Investment
Strategies

As an integral part of the investment policy, the board shall adopt a separate written investment strategy for each of the funds or group of funds under the board's control. Each investment strategy must describe the investment objectives for the particular fund using the following priorities in order of importance:

1. Understanding of the suitability of the investment to the financial requirements of the district;
2. Preservation and safety of principal;
3. Liquidity;
4. Marketability of the investment if the need arises to liquidate the investment before maturity;

5. Diversification of the investment portfolio; and
6. Yield.

Gov't Code 2256.005(d)

Investment Officer

A district shall designate by rule, order, ordinance, or resolution, as appropriate, one or more officers or employees as investment officer(s) to be responsible for the investment of its funds consistent with the investment policy adopted by the board. If the board has contracted with another investing entity to invest its funds, the investment officer of the other investing entity is considered to be the investment officer of the contracting board's district. In the administration of the duties of an investment officer, the person designated as investment officer shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs, but the board retains the ultimate responsibility as fiduciaries of the assets of the district. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the district. Authority granted to a person to invest the district's funds is effective until rescinded by the district or until termination of the person's employment by a district, or for an investment management firm, until the expiration of the contract with the district. *Gov't Code 2256.005(f)*

A district or investment officer may use the district's employees or the services of a contractor of the district to aid the investment officer in the execution of the officer's duties under Government Code, Chapter 2256. *Gov't Code 2256.003(c)*

Investment Training

[Investment training must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with the Public Funds Investment Act. Gov't Code 2256.008\(c\)](#)

[kgc 7/8/19: moved from below](#)

Initial

Within 12 months after taking office or assuming duties, the treasurer, the chief financial officer if the treasurer is not the chief financial officer, and the investment officer of a district shall attend at least one training session from an independent source approved by the board or a designated investment committee advising the investment officer. This initial training must contain at least ten hours of instruction relating to their respective responsibilities under the Public Funds Investment Act. *Gov't Code 2256.008(a)*

Ongoing

The treasurer, or the chief financial officer if the treasurer is not the chief financial officer, and the investment officer of a district shall

attend an investment training session not less than once in a two-year period that begins on the first day of the district's fiscal year and consists of the two consecutive fiscal years after that date, and receive not less than eight hours of instruction relating to investment responsibilities under the Public Funds Investment Act from an independent source approved by the board or by a designated investment committee advising the investment officer. *Gov't Code 2256.008(a-1)*

Exception

The ongoing training requirement does not apply to the treasurer, chief financial officer, or investment officer of a district if:

1. ~~†~~The district does not invest district funds or only deposits those funds in interest-bearing deposit accounts or certificates of deposit as authorized by Government Code 2256.010; and
2. ~~†~~The treasurer, chief financial officer, or investment officer annually submits to the agency a sworn affidavit identifying the applicable criteria under ~~paragraph~~ item 1 that apply to the district.

Gov't Code 2256.008(g)

kgc 7/5/19: Added by HB 293, effective 6.7.19; I don't know who "the agency" is here. The term is not defined in the PFIA (that I saw), and there are frequent references to "state agency."

~~Investment training must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with the Public Funds Investment Act. *Gov't Code 2256.008(e)*~~

Standard of Care

Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived. Investment of funds shall be governed by the following objectives, in order of priority:

1. Preservation and safety of principal;
2. Liquidity; and
3. Yield.

In determining whether an investment officer has exercised prudence with respect to an investment decision, the following shall be taken into consideration:

1. The investment of all funds, or funds under the district's control, over which the officer had responsibility rather than the prudence of a single investment; and
2. Whether the investment decision was consistent with the district's written investment policy.

Gov't Code 2256.006

Personal Interest

A district investment officer who has a personal business relationship with a business organization offering to engage in an investment transaction with the district shall file a statement disclosing that personal business interest. An investment officer who is related within the second degree by affinity or consanguinity, as determined by Government Code Chapter 573 (regarding nepotism prohibition), to an individual seeking to sell an investment to the investment officer's district shall file a statement disclosing that relationship. A required statement must be filed with the board and with the Texas Ethics Commission. For purposes of this policy, an investment officer has a personal business relationship with a business organization if:

1. The investment officer owns ten percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
2. Funds received by the investment officer from the business organization exceed ten percent of the investment officer's gross income for the previous year; or
3. The investment officer has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the investment officer.

Gov't Code 2256.005(i)

Quarterly Reports

Not less than quarterly, the investment officer shall prepare and submit to the board a written report of investment transactions for all funds covered by the Public Funds Investment Act for the preceding reporting period. This report shall be presented not less than quarterly to the board and the superintendent within a reasonable time after the end of the period. The report must:

1. Describe in detail the investment position of the district on the date of the report;
2. Be prepared jointly and signed by all district investment officers;

3. Contain a summary statement of each pooled fund group that states the:
 - a. Beginning market value for the reporting period;
 - b. Ending market value for the period; and
 - c. Fully accrued interest for the reporting period;
4. State the book value and market value of each separately invested asset at the end of the reporting period by the type of asset and fund type invested;
5. State the maturity date of each separately invested asset that has a maturity date;
6. State the account or fund or pooled group fund in the district for which each individual investment was acquired; and
7. State the compliance of the investment portfolio of the district as it relates to the investment strategy expressed in the district's investment policy and relevant provisions of the Public Funds Investment Act.

If a district invests in other than money market mutual funds, investment pools or accounts offered by its depository bank in the form of certificates of deposit, or money market accounts or similar accounts, the reports prepared by the investment officers shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the board by that auditor.

Gov't Code 2256.023

Selection of Broker

The board or the designated investment committee shall, at least annually, review, revise, and adopt a list of qualified brokers that are authorized to engage in investment transactions with a district.
Gov't Code 2256.025

Bond Proceeds

The investment officer of a district may invest bond proceeds or pledged revenue only to the extent permitted by the Public Funds Investment Act, in accordance with:

1. §Statutory provisions governing the debt issuance or the agreement, as applicable; and
2. ‡The district's investment policy regarding the debt issuance or the agreement, as applicable.

Gov't Code 2256.008(a)

kgc 7/2/19: HB 2706, effective 9.1.19.

**Authorized
Investments**

A board may purchase, sell, and invest its funds and funds under its control in investments described below, in compliance with its adopted investment policies and according to the standard of care set out in this policy. *Gov't Code 2256.003(a)*

In the exercise of these powers, the board may contract with an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to provide for the investment and management of its public funds or other funds under its control. A contract made under this authority may not be for a term longer than two years. A renewal or extension of the contract must be made by the board by order, ordinance, or resolution. *Gov't Code 2256.003(b)*

The board may specify in its investment policy that any authorized investment is not suitable. *Gov't Code 2256.005(j)*

Obligations of
Governmental
Entities

The following are authorized investments:

1. Obligations, including letters of credit, of the United States or its agencies and instrumentalities, including the Federal Home Loan Banks;
2. Direct obligations of this state or its agencies and instrumentalities;
3. Collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
4. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state, the United States, or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation (FDIC) or by the explicit full faith and credit of the United States;
5. Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent;
6. Bonds issued, assumed, or guaranteed by the state of Israel;
7. Interest-bearing banking deposits that are guaranteed or insured by the FDIC or its successor, or the National Credit Union Share Insurance Fund or its successor; and

8. Interest-bearing banking deposits other than those described at item 7 above if:
 - a. The funds are invested through a broker with a main office or a branch office in this state that the district selects from a list the board or designated investment committee of the district adopts as required at Selection of Broker above or a depository institution with a main office or a branch office in this state and that the district selects;
 - b. The broker or depository institution selected as described above arranges for the deposit of the funds in the banking deposits in one or more federally insured depository institutions, regardless of where located, for the district's account;
 - c. The full amount of the principal and accrued interest of the banking deposits is insured by the United States or an instrumentality of the United States; and
 - d. The district appoints as the district's custodian of the banking deposits issued for the district's account the depository institution selected as described above, an entity described by Government Code 2257.041(d) (regarding a custodian with which to deposit securities), or a clearing broker-dealer registered with the Securities and Exchange Commission and operating under Rule 15c3-3 (17 C.F.R. Section 240.15c3-3).

Gov't Code 2256.009(a)

*Unauthorized
Obligations*

The following investments are not authorized:

1. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
3. Collateralized mortgage obligations that have a stated final maturity date of greater than ten years; and
4. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

Gov't Code 2256.009(b)

Certificates of
Deposit and Share
Certificates

A certificate of deposit or share certificate is an authorized investment if the certificate is issued by a depository institution that has its main office or a branch office in Texas and is:

1. Guaranteed or insured by the FDIC or its successor or the National Credit Union Share Insurance Fund or its successor;
2. Secured by obligations described at Obligations of Governmental Entities, above, including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates, but excluding those mortgage backed securities described at Unauthorized Obligations, above; or
3. Secured in accordance with Government Code Chapter 2257 (Public Funds Collateral Act) or in any other manner and amount provided by law for the deposits of the district.

Gov't Code 2256.010(a)

In addition to the authority to invest funds in certificates of deposit under the previous section, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment:

1. The funds are invested by the district through a broker that has its main office or a branch office in this state and is selected from a list adopted by the district as required at Selection of Broker, above or a depository institution that has its main office or a branch office in this state and that is selected by the district;
2. The broker or depository institution selected by the district arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the district;
3. The full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States; and
4. The district appoints the depository institution selected by the district, an entity described by Government Code 2257.041(d) (regarding a custodian with which to deposit securities), or a clearing broker-dealer registered with the Securities and Exchange Commission and operating pursuant to Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. Section 240.15c3-3) as custodian for the district with respect to the certificates of deposit issued for the account of the district.

Gov't Code 2256.010(b)

The district's investment policies may provide that bids for certificates of deposit be solicited orally, in writing, electronically, or in any combination of those methods. *Gov't Code 2256.005(c)*

Repurchase
Agreements

A fully collateralized repurchase agreement is an authorized investment if it:

1. Has a defined termination date;
2. Is secured by a combination of cash and obligations described by [Government Code 2256.009\(a\)\(1\) \(obligations of governmental entities\)](#) or [2256.013 \(commercial paper\)](#) or ~~at [Obligations of Governmental Entities, above](#)~~; if applicable, [2256.0204 \(corporate bonds\)](#);

2. [KGC 6/22/19: Amended by HB 2706, effective 9.1.19. Since this has gotten a little clunky to refer to 3 margin notes, I changed to references to statutory sections with parentheticals like 3.c. at Securities Lending Program.](#)

3. Requires the securities being purchased by the district or cash held by the district to be pledged to the district, held in the district's name, and deposited at the time the investment is made with the district or a third party selected and approved by the district; and
4. Is placed through a primary government securities dealer, as defined by the Federal Reserve or a financial institution doing business in Texas.

The term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. Money received by a district under the terms of a reverse security repurchase agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

Government Code 1371.059(c) (regarding validity and incontestability of obligations for certain public improvements) applies to the execution of a repurchase agreement by a district.

Gov't Code 2256.011

Securities Lending
Program

A securities lending program is an authorized investment if:

1. The value of securities loaned is not less than 100 percent collateralized, including accrued income;

2. A loan allows for termination at any time;
3. A loan is secured by:
 - a. Pledged securities described at Obligations of Governmental Entities, above;
 - b. Pledged irrevocable letters of credit issued by a bank that is organized and existing under the laws of the United States or any other state, and continuously rated by at least one nationally recognized investment rating firm at not less than A or its equivalent; or
 - c. Cash invested in accordance with Government Code 2256.009 (obligations of governmental entities), 2256.013 (commercial paper), 2256.014 (mutual funds), or 2256.016 (investment pools);
4. The terms of a loan require that the securities being held as collateral be pledged to the district, held in the district's name, and deposited at the time the investment is made with the district or with a third party selected by or approved by the district; and
5. A loan is placed through a primary government securities dealer, as defined by 5 C.F.R. Section 6801.102(f), as that regulation existed on September 1, 2003, or a financial institution doing business in this state.

An agreement to lend securities under a securities lending program must have a term of one year or less.

Gov't Code 2256.0115

Banker's
Acceptances

A banker's acceptance is an authorized investment if it:

1. Has a stated maturity of 270 days or fewer from the date of issuance;
2. Will be, in accordance with its terms, liquidated in full at maturity;
3. Is eligible for collateral for borrowing from a Federal Reserve Bank; and
4. Is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least on nationally recognized credit rating agency.

Gov't Code 2256.012

Commercial Paper

Commercial paper is an authorized investment if it has a stated maturity of ~~365~~²⁷⁰ days or fewer from the date of issuance; and is rated not less than A-1 or P-1 or an equivalent rating by at least:

1. Two nationally recognized credit rating agencies; or
2. One nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States law or any state.

Gov't Code 2256.013

KGC 6/22/19: Amended by HB 2706, effective 9.1.19.

Mutual Funds

A no-load money market mutual fund is an authorized investment if the mutual fund:

1. Is registered with and regulated by the Securities and Exchange Commission;
2. Provides the district with a prospectus and other information required by the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.); and
3. Complies with federal Securities and Exchange Commission Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.).

Gov't Code 2256.014(a)

In addition to the no-load money market mutual fund authorized above, a no-load mutual fund is an authorized investment if it:

1. Is registered with the Securities and Exchange Commission;
2. Has an average weighted maturity of less than two years; and
3. Either has a duration of:
 - a. One year or more and is invested exclusively in obligations approved by the Public Funds Investment Act, or
 - b. Less than one year and the investment portfolio is limited to investment grade securities, excluding asset-backed securities.

Gov't Code 2256.014(b)

Limitations

A district is not authorized to:

1. Invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in mutual funds described in Government Code 2256.014(b);
2. Invest any portion of bond proceeds, reserves and funds held for debt service, in mutual funds described in Government Code 2256.014(b); or
3. Invest its funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one mutual fund described in Government Code 2256.014(a) or (b) in an amount that exceeds ten percent of the total assets of the mutual fund.

Gov't Code 2256.014(c)

Guaranteed
Investment
Contracts

A guaranteed investment contract is an authorized investment for bond proceeds if the guaranteed investment contract:

1. Has a defined termination date;
2. Is secured by obligations described at Obligations of Governmental Entities, above, excluding those obligations described at Unauthorized Obligations, in an amount at least equal to the amount of bond proceeds invested under the contract; and
3. Is pledged to the district and deposited with the district or with a third party selected and approved by the district.

Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested in a guaranteed investment contract with a term longer than five years from the date of issuance of the bonds.

To be eligible as an authorized investment:

1. The board must specifically authorize guaranteed investment contracts as eligible investments in the order, ordinance, or resolution authorizing the issuance of bonds;
2. The district must receive bids from at least three separate providers with no material financial interest in the bonds from which proceeds were received;
3. The district must purchase the highest yielding guaranteed investment contract for which a qualifying bid is received;

4. The price of the guaranteed investment contract must take into account the reasonably expected drawdown schedule for the bond proceeds to be invested; and
5. The provider must certify the administrative costs reasonably expected to be paid to third parties in connection with the guaranteed investment contract.

Government Code 1371.059(c) (regarding validity and incontestability of obligations for certain public improvements) applies to the execution of a guaranteed investment contract by a district.

Gov't Code 2256.015

Investment Pools

A district may invest its funds or funds under its control through an eligible investment pool if the board by rule, order, ordinance, or resolution, as appropriate, authorizes the investment in the particular pool. *Gov't Code 2256.016, .019*

To be eligible to receive funds from and invest funds on behalf of a district, an investment pool must furnish to the investment officer or other authorized representative of the district an offering circular or other similar disclosure instrument that contains the information specified in Government Code 2256.016(b). To maintain eligibility, an investment pool must furnish to the investment officer or other authorized representative investment transaction confirmations and a monthly report that contains the information specified in Government Code 2256.016(c). A district by contract may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds. *Gov't Code 2256.016(b)-(d)*

Corporate Bonds

A district that qualifies as an issuer as defined by Government Code 1371.001 [see CCF], may purchase, sell, and invest its funds and funds under its control in corporate bonds (as defined above) that, at the time of purchase, are rated by a nationally recognized investment rating firm "AA-" or the equivalent and have a stated final maturity that is not later than the third anniversary of the date the corporate bonds were purchased.

A district is not authorized to:

1. Invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds, reserves, and other funds held for the payment of debt service, in corporate bonds; or
2. Invest more than 25 percent of the funds invested in corporate bonds in any one domestic business entity, including subsidiaries and affiliates of the entity.

A district subject to these provisions may purchase, sell, and invest its funds and funds under its control in corporate bonds if the board:

1. Amends its investment policy to authorize corporate bonds as an eligible investment;
2. Adopts procedures to provide for monitoring rating changes in corporate bonds acquired with public funds and liquidating the investment in corporate bonds; and
3. Identifies the funds eligible to be invested in corporate bonds.

The district investment officer, acting on behalf of the district, shall sell corporate bonds in which the district has invested its funds not later than the seventh day after the date a nationally recognized investment rating firm:

1. Issues a release that places the corporate bonds or the domestic business entity that issued the corporate bonds on negative credit watch or the equivalent, if the corporate bonds are rated "AA-" or the equivalent at the time the release is issued; or
2. Changes the rating on the corporate bonds to a rating lower than "AA-" or the equivalent.

~~Corporate bonds are not an eligible investment for a public funds investment pool.~~

Gov't Code 2256.0204

KGC 6/22/19: Repealed by HB 2706, effective 9.1.19

Hedging
Transactions

The board of an eligible entity (as defined above) shall establish the entity's policy regarding hedging transactions. An eligible entity may enter into hedging transactions, including hedging contracts, and related security, credit, and insurance agreements in connection with commodities used by an eligible entity in the entity's general operations, with the acquisition or construction of a capital project, or with an eligible project. A hedging transaction must comply with the regulations of the federal Commodity Futures Trading Commission and the federal Securities and Exchange Commission.

Government Code 1371.059(c) (regarding validity and incontestability of obligations for certain public improvements) applies to the execution by an eligible entity of a hedging contract and any related security, credit, or insurance agreement.

An eligible entity may:

1. Pledge as security for and to the payment of a hedging contract or a security, credit, or insurance agreement any general or special revenues or funds the entity is authorized by law to pledge to the payment of any other obligation.
2. Credit any amount the entity receives under a hedging contract against expenses associated with a commodity purchase.

An eligible entity's cost of or payment under a hedging contract or agreement may be considered an operation and maintenance expense, an acquisition expense, or construction expense of the eligible entity; or a project cost of an eligible project.

*Gov't Code 2256.020*⁶

kgc 7/5/19: Redesignated by HB 4170, effective 9.1.19

Prohibited
Investments

Except as provided by Government Code 2270 (regarding prohibited investments), a district is not required to liquidate investments that were authorized investments at the time of purchase. *Gov't Code 2256.017*

Note: As an "investing entity" under Government Code 2270.0001(7)(A), a district must comply with Chapter 2270, including reporting requirements, regarding prohibited investments in scrutinized companies listed by the comptroller in accordance with Government Code 2270.0201.

Loss of Required
Rating

An investment that requires a minimum rating does not qualify as an authorized investment during the period the investment does not have the minimum rating. A district shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not have the minimum rating. *Gov't Code 2256.021*

**Sellers of
Investments**

A written copy of the investment policy shall be presented to any business organization (as defined below) offering to engage in an investment transaction with a district. The qualified representative of the business organization offering to engage in an investment transaction with a district shall execute a written instrument in a form acceptable to the district and the business organization substantially to the effect that the business organization has:

1. Received and reviewed the district investment policy; and
2. Acknowledged that the business organization has implemented reasonable procedures and controls in an effort to

preclude investment transactions conducted between the district and the organization that are not authorized by the district's investment policy, except to the extent that this authorization:

- a. Is dependent on an analysis of the makeup of the district's entire portfolio;
- b. Requires an interpretation of subjective investment standards; or
- c. Relates to investment transactions of the entity that are not made through accounts or other contractual arrangements over which the business organization has accepted discretionary investment authority.

The investment officer of a district may not acquire or otherwise obtain any authorized investment described in the district's investment policy from a business organization that has not delivered to the district the instrument required above.

Gov't Code 2256.005(k)-(l)

Nothing in this section relieves the district of the responsibility for monitoring investments made by the district to determine that they are in compliance with the investment policy.

Business
Organization

For purposes of the provisions at Sellers of Investments above, "business organization" means an investment pool or investment management firm under contract with a district to invest or manage the district's investment portfolio that has accepted authority granted by the district under the contract to exercise investment discretion in regard to the district's funds.

Gov't Code 2256.005(k)

Donations

A gift, devise, or bequest made to a district to provide college scholarships for district graduates may be invested by the board as provided in Property Code 117.004 (Uniform Prudent Investor Act), unless otherwise specifically provided by the terms of the gift, devise, or bequest. *Education Code 45.107*

Investments donated to a district for a particular purpose or under terms of use specified by the donor are not subject to the requirements of the Public Funds Investment Act. *Gov't Code 2256.004(b)*

**Electronic Funds
Transfer**

A district may use electronic means to transfer or invest all funds collected or controlled by the district. *Gov't Code 2256.051*

Authorized Expenditures

A district shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. *Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)*

A district shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. Nor shall a district pay or authorize the payment of any claim against the district under any agreement or contract made without authority of law. *Tex. Const. Art. III, Sec. 53; Harlingen Indep. Sch. Dist. v. C.H. Page and Bro., 48 S.W.2d 983 (Comm. App. 1932)*

The state and county available funds may be used only for the payment of teachers' and superintendents' salaries and interest on money borrowed on short time to pay those salaries that become due before school funds for the current year become available. Loans for the purpose of payment of teachers may not be paid out of funds other than those for the current year. *Education Code 45.105(b)*

Local funds from district taxes, tuition fees, other local sources, and state funds not designated for a specific purpose may be used for purposes listed above for state and county available funds and for purchasing appliances and supplies; paying insurance premiums; paying janitors and other employees; buying school sites; buying, building, repairing, and renting school buildings, including acquiring school buildings and sites by leasing through annual payments with an ultimate option to purchase [see CHG]; and for other purposes necessary in the conduct of the public schools determined by [thea](#) board. *Education Code 45.105(c)*

Public funds of a district may not be spent in any manner other than as provided for in the budget adopted by the board, but the board may amend a budget or adopt a supplementary emergency budget to cover necessary unforeseen expenses. *Education Code 44.006(a)*

Fiscal Year

The fiscal year of a district begins on July 1 or September 1 of each year, as determined by the board. *Education Code 44.0011*

Budget Preparation

On or before the date set by the State Board of Education ([SBOE](#)) (~~currently August 20 [June 19 for a district with a fiscal year beginning July 1]~~), a superintendent shall prepare, or cause to be prepared, a proposed budget covering all estimated revenue and proposed expenditures of a district for the following fiscal year. The budget must be prepared according to generally accepted accounting principles, rules adopted by the ~~State Board~~ [SBOE](#), and

adopted policies of the board of trustees. *Education Code 44.002; 19 TAC 109.1(a), .41*

kgc 8/13/19: Because the SBOE apparently adopted the new FASRG (at the June meeting but no minutes available & no TxReg publication), we are deleting these dates because the budgeting module is gone. I'm leaving the rules reference until they are amended later in the fall.

kgc 7/8/19: Those dates are from the budgeting module of the FASRG, which is set for repeal, but let's just leave them for now.

Funds for Accelerated Instruction

A district that is required to provide accelerated instruction under Education Code 29.081(b-1) [see EHBC] shall separately budget sufficient funds, including funds under Education Code ~~48.104~~42.152, for that purpose. ~~A district may not budget funds received under Education Code 42.152 for any other purpose until the district adopts a budget to support additional accelerated instruction.~~ *Education Code 29.081(b-2)*

kgc 7/4/19: HB 3, generally effective 9.1.19

Public Notice Itemization of Certain Expenditures

The proposed budget of a district must include, in a manner allowing as clear a comparison as practicable between those expenditures in the proposed budget and actual expenditures for the same purpose in the preceding year, a line item indicating expenditures for:

1. ~~Not~~ices required by law to be published in a newspaper by the district or a representative of the district; ~~and that allows as clear a comparison as practicable between those expenditures in the proposed budget and actual expenditures for the same purpose in the preceding year~~
2. ~~Directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action, as those terms are defined in Government Code 305.002.~~

Local Gov't Code 140.0045

kgc 7/5/19: HB 1495, effective 6.14.19. I personally don't think the defns of legislation and administrative action are very helpful to understanding this provision, but I can add them, if necessary.

Public Meeting on Budget and Proposed Tax Rate

When the budget has been prepared, the board president shall call a board meeting for the purpose of adopting a budget for the succeeding fiscal year. Any taxpayer of a district may be present and participate in the meeting. *Education Code 44.004(a), (f)* [See CCG for provisions governing tax rate adoption.]

The meeting must comply with the notice requirements of the Open Meetings Act. *Gov't Code 551.041, .043* [See BE]

Published Notice

The board president shall provide for publication of notice of the budget and proposed tax rate meeting in ~~a daily, weekly, or bi-weekly newspaper published in a district. If no daily, weekly, or bi-weekly newspaper is published in a district, the president shall provide for publication of notice in at least one newspaper of general circulation in the county in which the district's central administrative office is located. The notice shall be published not earlier than the 30th day or later than the tenth day before the date of the hearing~~accordance with Education Code 44.004. ~~(b)~~ [For specific requirements regarding the form, contents, and publication of the notice, see CCG(LEGAL) at Published Notice.]

kgc 7/8/19: I want to do this like this (as we did with CCA & BBBB) to avoid unnecessary duplication and a risk that things don't get updated everywhere.

~~Form of Notice~~

~~The notice of the public meeting to discuss and adopt the budget and the proposed tax rate must meet the size, format, and contents required by law. Education Code 44.004(c)-(c-1)~~

~~The notice is not valid if it does not substantially conform to the language and format prescribed by the comptroller. Education Code 44.004(d)~~

~~Taxpayer Injunction~~

~~A person who owns taxable property in a district is entitled to an injunction restraining the collection of taxes by the district if the district has not complied with the notice requirements and the failure to comply was not in good faith. An action to enjoin the collection of taxes must be filed before the date the district delivers substantially all of its tax bills. Education Code 44.004(e)~~

Publication of Proposed Budget Summary

Concurrently with the publication of notice of the budget under Education Code 44.004, ~~as described above~~, a district shall post a summary of the proposed budget on the school district's ~~i~~nternet website or, if the district has no ~~i~~nternet website, in the district's central administrative office.

The budget summary must include a comparison to the previous year's actual spending and information relating to per student and aggregate spending on:

1. Instruction;
2. Instructional support;
3. Central administration;

4. District operations;
5. Debt service; and
6. Any other category designated by the commissioner.

Education Code 44.0041

~~Decrease in Debt
Service Rate~~

~~If the interest and sinking fund rate calculated under Education Code 44.004(c)(5)(A)(ii)(b) decreases after the publication of the required notice, the board president is not required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate. Education Code 44.004(g-1)~~

Budget Adoption

The board, at the meeting called for that purpose, shall adopt a budget to cover all expenditures for the succeeding fiscal year. The budget must be adopted before the adoption of the tax rate for the tax year in which the fiscal year covered by the budget begins.
Education Code 44.004(f)–(g)

**Districts with July 1
Fiscal Year**

A district with a fiscal year beginning July 1 may use the certified estimate of the taxable value of district property [\[see CCG\(LEGAL\) at Certified Estimate of Values\]](#) in preparing the ~~published~~ [required](#) notice if the district does not receive the certified appraisal roll on or before June 7. A district that uses a certified estimate may adopt a budget at the public meeting designated in the published notice prepared using the estimate, but the district may not adopt a tax rate before the district receives the certified appraisal roll for the district. *Education Code 44.004(h)–(i)*

~~Certified Estimate~~

~~By April 30, the chief appraiser shall prepare and certify an estimate of the taxable value of school district property. Tax Code 26.01(e)~~

**Budget Adoption
After Tax Rate
Adoption**

Notwithstanding Education Code 44.004(g), (h), and (i), above, a district may adopt a budget after the district adopts a tax rate for the tax year in which the fiscal year covered by the budget begins if the district elects to adopt a tax rate before receiving the certified appraisal roll for the district ~~as provided by Tax Code 26.05(g)~~. If a district elects to adopt a tax rate before adopting a budget, the district must publish notice and hold a meeting for the purpose of discussing the proposed tax rate. Following adoption of the tax rate [see CCG], the district must publish notice and hold another public meeting before the district may adopt a budget. The comptroller shall prescribe the language and format to be used in the notices. The district may use the certified estimate of taxable value in preparing a notice under this provision. *Education Code 44.004(j)*

**Publication of
Adopted Budget**

On final approval of the budget by the board, the district shall post on the district's ~~I~~nternet website a copy of the budget adopted by the board. The district's website must prominently display the electronic link to the adopted budget. A district shall maintain the adopted budget on the district's website until the third anniversary of the date the budget was adopted. *Education Code 44.0051*

On or before a date set by the SBOE, ~~t~~he ~~adopted~~ budget must be filed with the Texas Education Agency ~~on or before the date established in the Financial Accountability System Resource Guide according to rules established by the SBOE.~~ *Education Code 44.005; ~~19 TAC 109.1(a)~~*

kgc 7/8/19: Since the FASRG budgeting module is set to be repealed, I'd rather just track the statute here and see what SBOE does.

**Internet Posting of
Tax Rate and Budget
Information**

Each district shall maintain an ~~I~~nternet website or have access to a generally accessible ~~I~~nternet website that may be used for the purposes of these provisions. Each district shall post or cause to be posted on the ~~I~~nternet website the following information in a format prescribed by the comptroller:

1. ~~t~~The name of each member of the board;
2. ~~t~~The mailing address, e-mail address, and telephone number of the district;
3. ~~t~~The official contact information for each member of the board, if that information is different from the information described by ~~paragraph~~ item 2;
4. ~~t~~The district's budget for the preceding two years;
5. ~~t~~The district's proposed or adopted budget for the current year;
6. ~~t~~The change in the amount of the district's budget from the preceding year to the current year, by dollar amount and percentage;
7. ~~t~~The tax rate for maintenance and operations adopted by the district for the preceding two years;
8. ~~t~~The interest and sinking fund tax rate adopted by the district for the preceding two years;
9. ~~t~~The tax rate for maintenance and operations proposed by the district for the current year;

10. ~~†~~The interest and sinking fund tax rate proposed by the district for the current year; and

11. ~~†~~The most recent financial audit of the district.

Tax Code 26.18

kgc 7/4/19: SB 2, generally effective 1.1.20

I've been torn about whether to say "website posting" or "internet posting," and I don't think I've been consistent. Feel free to make any necessary changes for consistency.

Amendment of Approved Budget

The board may amend a budget or adopt a supplementary emergency budget to cover necessary unforeseen expenses. Any amendment or supplementary budget must be prepared and filed in accordance with ~~State Board~~SBOE rules. *Education Code 44.006*

Failure to Comply with Budget Requirements

A board member who votes to approve any expenditure of school funds in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget commits a misdemeanor offense. *Education Code 44.052(c)*

Certain Donations

A district may donate funds or other property or service to the adjutant general's department, the Texas National Guard, or the Texas State Guard. *Gov't Code 437.111(b), .252, .304(a)*

Commitment of Current Revenue

A contract for the acquisition, including lease, of real or personal property is a commitment of a district's current revenue only, provided the contract contains either or both of the following provisions:

1. Retains to a board the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.
2. Is conditioned on a best-efforts attempt by the board to obtain and appropriate funds for payment of the contract.

Local Gov't Code 271.903

Prohibited Uses of Resources

Improvements to Real Property

Except as provided below or by Education Code 45.109(a-1), (a-2), or (a-3) [see CX], the board may not enter into an agreement authorizing the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district.

This ~~provision~~section does not prohibit the board from entering into an agreement for the design, construction, or renovation of improvements to real property not owned or leased by the district if the improvements benefit real property owned or leased by the district. Benefits to real property owned or leased by the district include the design, construction, or renovation of highways, roads, streets, sidewalks, crosswalks, utilities, and drainage improvements that serve or benefit the real property owned or leased by the district.

Education Code 11.168

Hotels

The board may not impose taxes; issue bonds; use or authorize the use of district employees; use or authorize the use of district property, money, or other resources; or acquire property for the design, construction, renovation, or operation of a hotel. The board may not enter into a lease, contract, or other agreement that obligates the board to engage in an activity prohibited by this provision or obligates the use of district employees or resources in a manner prohibited by this provision.

“Hotel” means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a motel.

Education Code 11.178

Electioneering

~~A board may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party. Education Code 11.169~~For restrictions on using district funds for electioneering, see BBBD.

Annual Audit

The board shall have a district's fiscal accounts audited annually at district expense by a Texas certified or public accountant holding a permit from the State Board of Public Accountancy.

The audit shall be completed following the close of each fiscal year, and shall meet at least the minimum requirements and be in the format prescribed by the State Board of Education (SBOE), subject to review and comment by the state auditor. The audit shall include an audit of the accuracy of the fiscal information provided by a district through the Public Education Information Management System (PEIMS).

Education Code 44.008(a), (b)

**Audit Requirements
and Procedures**

A district must file with [the Texas Education Agency \(TEA\)](#) an annual financial and compliance report and, if applicable, a state compensatory agreed-upon procedures report. These reports must be audited by an independent auditor, and the audit must be reviewed by TEA, including review of auditors' working papers, in accordance with the *Financial Accountability System Resource Guide (FASRG)*.

The annual financial audit report and state compensatory agreed-upon procedures report are due 150 days after the end of the fiscal year.

*Independent
Auditor*

A district must hire at its own expense an independent auditor to conduct an independent audit of its financial statements and provide an opinion on its annual financial and compliance report.

The independent auditor must:

1. Be associated with a certified public accountancy (CPA) firm that has a current valid license issued by the Texas State Board of Public Accountancy;
2. Be a certified public accountant with a current valid license issued by the Texas State Board of Public Accountancy, as required under Education Code 44.008; and
3. Adhere to the generally accepted auditing standards (GAAS), adopted by the American Institute of CPAs (AICPA), as amended, and the generally accepted government auditing standards (GAGAS), adopted by the U.S. Government Accountability Office, as amended.

The CPA firm must:

1. Be a member of the AICPA Governmental Audit Quality Center (GAQC);

2. Adhere to GAQC's membership requirements; and
3. Collectively have the knowledge, skills, and experience to be competent for the audit being conducted, including thorough knowledge of the government auditing requirements and:
 - a. Texas public school district environment; or
 - b. Public sector; or
 - c. Nonprofit sector.

If at any time the TEA division responsible for financial compliance reviews an audit firm's working papers and finds that the firm or the quality of the work does not meet the required standards, the division may require the district to change its audit firm.

19 TAC 109.23

Financial
Accountability
System Resource
Guide

The rules for financial accounting, including the selection of an auditor and the requirements for the audit, are described in the official TEA publication, *Financial Accountability System Resource Guide*, as amended, which is adopted as the SBOE's official rule. *19 TAC 109.41*

Filing of Report

A copy of the annual audit report, approved by the board, shall be filed with TEA not later than the 150th day after the end of the fiscal year for which the audit was made. If a board does not approve the audit report, it shall nevertheless file a copy of it with TEA, accompanied by a statement detailing its reasons for failing to approve the report. *Education Code 44.008(d)*

[Internet Posting of Audit](#)

[Each district shall maintain an internet website or have access to a generally accessible internet website that may be used for the purposes of this provision. Each district shall post or cause to be posted on the internet website the information required by Tax Code 26.18, including the district's most recent financial audit, in a format prescribed by the comptroller. Tax Code 26.18 \[See CE for other required information\]](#)

[kgc 7/4/19: SB 2, generally effective 1.1.20](#)

[Note:](#) [For information on the efficiency audit required before a district may hold an election to seek voter approval to adopt a maintenance and operations tax rate, see CCG.](#)

[KGC 6/27/19: Required by HB 3, effective 1.1.20. I'm not wed to a note here, but we need some kind of pointer.](#)

Financial Records	Each treasurer receiving or having control of any school fund shall keep a full and separate itemized account of each of the different classes of school funds received, and these records shall be available to audit. <i>Education Code 44.008(c)</i>
Financial Accountability Rating System	TEA will assign a financial accountability rating to each district. The commissioner of education will evaluate the rating system every three years and may modify the system to improve the effectiveness of the rating system. <i>Education Code 39.082; 19 TAC 109.1001(b), (c)</i>
Data Reviewed	TEA will use the following sources of data in calculating the financial accountability indicators for school districts: <ol style="list-style-type: none">1. Audited financial data in a district's annual financial report, the audited annual report required by Education Code 44.008 [see Audit Requirements and Procedures above].2. PEIMS data submitted by a district.3. Warrant holds as reported by the comptroller.4. The average daily attendance information used for foundation school program purposes for a district. <i>19 TAC 109.1001(d)</i>
Basis for Rating	TEA will base the financial accountability rating of a district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year. <i>19 TAC 109.1001(e)</i>
Types of Ratings	<p>The types of financial accountability ratings a district may receive are A for superior achievement, B for above standard achievement, C for standard achievement, and F for substandard achievement. A school district receiving territory due to an annexation order by the commissioner under Education Code 13.054, or consolidation under Education Code Chapter 41, Subchapter H, will not receive a rating for two consecutive years beginning with the rating year that is based on financial data from the fiscal year in which the order of annexation becomes effective. After the second rating year, the receiving district will be subject to the financial accountability rating system.</p> <p>The commissioner may lower a financial accountability rating based on the findings of an action conducted under Education Code Chapter 39, or change a financial accountability rating in</p>

cases of disaster, flood, extreme weather conditions, fuel curtailment, or another calamity. A financial accountability rating remains in effect until replaced by a subsequent rating.

19 TAC 109.1001(i), (k), (l)

Issuance of Ratings

TEA will issue a preliminary financial accountability rating to a district on or before August 8 of each year. TEA will not delay the issuance of a preliminary or final rating if a district fails to meet the statutory deadline under Education Code 44.008 for submitting the annual financial report. Instead, the district will receive an F rating for substandard achievement.

If TEA receives an appeal of a preliminary rating under 19 Administrative Code 109.1001(n), TEA will issue a final rating to a district no later than 60 days after the deadline for submitting appeals. If TEA does not receive an appeal of a preliminary rating, the preliminary rating automatically becomes a final rating 31 days after issuance of a preliminary rating.

19 TAC 109.1001(m)

Appeals

A district may appeal its preliminary financial accountability rating through the appeals process described at 19 Administrative Code 109.1001(n).

A final rating issued by TEA may not be appealed under Education Code 7.057 or any other law or rule. *19 TAC 109.1001(o)*

**Annual Audit of
Dropout Records**

The commissioner shall develop a process for auditing district dropout records electronically. The commissioner shall also develop a system and standards for review of the audit or use systems already available at TEA. The system must be designed to identify districts that are at high risk of having inaccurate dropout records and that, as a result, require on-site monitoring of dropout records.

If the electronic audit of a district's dropout records indicates that the district is not at high risk of having inaccurate dropout records, the district may not be subject to on-site monitoring. If the risk-based system indicates that a district is at high risk of having inaccurate dropout records, the district is entitled to an opportunity to respond to the commissioner's determination before on-site monitoring may be conducted. A district must respond not later than the 30th day after the date the commissioner notifies the district of the commissioner's determination. If a district's response does not change the commissioner's determination that the district is at high risk of having inaccurate dropout records or if the district does not respond in a timely manner, the commissioner shall order TEA staff to conduct on-site monitoring.

Education Code 39.308(a)–(c)

Income Tax	Except as otherwise provided in 26 U.S.C. 3402, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary of the Treasury. <i>26 U.S.C. 3401–3402</i>
Medicare Tax	The tax imposed by 26 U.S.C. 3101(b) shall be collected by the employer of the taxpayer hired after March 31, 1986, by deducting the amount of the tax from the wages as and when paid. <i>26 U.S.C. 3102(a), 3121(u)</i>
Teacher Retirement System	<p>Each payroll period, each employer shall deduct from the compensation of each member employed by the employer the amount required by Government Code 825.402. <i>Gov't Code 825.403</i></p> <p>Each employer shall pick up the employee contribution required of each of its employees by Government Code 825.403. Employers shall pay to the retirement system the picked-up contributions from the same source of funds that is used in paying earnings to the employees. Such payments shall be in lieu of contributions by the employees. An employer shall pick up these contributions by a corresponding reduction in the cash salary of the employees, by an offset against a future salary increase, or by a combination of a salary reduction and offset against a future salary increase. Employees do not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system. <i>Gov't Code 825.409(a)</i></p>
Retired School Employees Group Insurance Fund	<p>The employer of an active employee shall monthly:</p> <ol style="list-style-type: none">1. Deduct the employee's contribution from the employee's salary and remit the contribution to the Teacher Retirement System of Texas (TRS) in the manner required by TRS; or2. Assume and pay the total contributions due from its active employees. <p>“Active employee” means a contributing member of the TRS who is employed by a public school and is not entitled to coverage under a plan provided under Insurance Code Chapter 1551 (Texas Employees Group Benefits Act) or 1601 (State University Employees Uniform Insurance Benefits Act).</p> <p><i>Insurance Code 1575.002(1), (7), .203(b)</i></p>
Child Support Payments	An employer shall begin to withhold income in accordance with an order or writ of withholding issued under Family Code Chapter 158 not later than the first pay period following the date on which the order or writ was delivered to the employer and shall continue to withhold income as required by the order or writ as long as the obligor is employed by the employer. The employer shall remit the

amount to be withheld to the person or office named in the order or writ on each pay date. The payment must include the date on which the withholding occurred.

An employer may deduct an administrative fee of not more than \$10 from the obligor's disposable earnings in addition to the amount to be withheld as child support.

Family Code 158.202–.204

**Spousal
Maintenance**

An employer shall begin to withhold income in accordance with an order or writ of withholding issued under Family Code Chapter 8 not later than the first pay period after the date the order or writ was delivered to the employer. The employer shall continue to withhold income as required by the order or writ as long as the obligor is employed by the employer. The employer shall remit to the person or office named in the order or writ of withholding the amount of income withheld from an obligor on each pay date. The remittance must include the date on which the withholding occurred.

An employer may deduct an administrative fee of not more than \$5 each month from the obligor's disposable earnings in addition to the amount withheld as spousal maintenance.

Family Code 8.202–.204

Professional Dues

A district employee is entitled to have an amount deducted from the employee's salary for membership fees or dues to a professional organization. The employee must:

1. File with the district a signed written request identifying the organization and specifying the number of pay periods per year the deductions are to be made; and
2. Inform the district of the total amount of the fees and dues for each year or have the organization notify the district of the amount.

The district shall deduct the total amount of the fees or dues for a year in equal amounts per pay period for the number of periods specified by the employee. The deductions shall be made until the employee requests in writing that the deductions be discontinued.

The district may charge an administrative fee for making the deduction. A fee imposed may not exceed either the actual administrative cost of making the deduction or the lowest fee the district charges for similar salary deductions, whichever is less.

Education Code 22.001 [But see Atty. Gen. Op. No. GA-774 (2010) (The legislature has not expressly authorized school districts to process payroll deductions for contributions to political committees.)]

Social Security	The tax imposed by 26 U.S.C. 3101(a) shall be collected by the employer of designated taxpayers by deducting the amount of the tax from the wages as and when paid. <i>26 U.S.C. 3101–3102, 3121(b)(7)(E); 26 C.F.R. 31.3121(b)(7)-2</i>
Federal Education Loans	An employer shall pay to the U.S. Secretary of Education or the guaranty agency as directed in a withholding order issued in an action to recover delinquent federal education loan payments. <i>20 U.S.C. 1095a(a)(6)</i>
Prepaid Higher Education Tuition Program	An employee of a district may make payments under a prepaid tuition contract by payroll deductions made by the appropriate officer of the district. <i>Education Code 54.626(c)</i>
Higher Education Savings Plan	An employee of a district may make contributions to a higher education savings trust account established under the higher education savings plan by payroll deductions made by the appropriate officer of the district. <i>Education Code 54.701(10), .708(a)</i>
Assignments	<p>An employee's assignment, pledge, or transfer, as security for indebtedness, of any interest in or part of the employee's salary or wages then due or that may become due under an existing contract of employment is enforceable only:</p> <ol style="list-style-type: none">1. If before or at the time of execution, delivery, or acceptance of an assignment, pledge, or transfer written approval is obtained in accordance with the policy of the employing district; and2. To the extent that the indebtedness it secures is a valid and enforceable obligation. <p>A district shall honor an assignment, pledge, or transfer fulfilling the conditions above without incurring any liability to the employee executing the assignment, pledge, or transfer. Payment to any assignee, pledgee, or transferee in accordance with the terms of the instrument constitutes payment to or for the account of the assignor, pledgor, or transferor. An assignment, pledge, or transfer is enforceable only to the extent of salary due or that may become due during continuation of the assignor's employment as a school employee.</p> <p><i>Education Code 22.002</i></p>
Insurance	A district may withhold from an employee's salary contributions for participation in approved insurance programs. <i>Insurance Code 1579.253; Education Code 22.005</i> [See CRD]
Deferred Compensation	A district may enter into a salary reduction agreement to reduce an employee's salary for the purpose of making direct contributions to

or purchases of a qualified investment product only if the qualified investment product is an eligible qualified investment ~~and is registered with TRS under V.A.T.S. Article 6228a-5, Section 8A.~~ To the greatest degree possible, districts that enter into a salary reduction agreement with employers of employees who participate in the program offered under this provision shall require that contributions to eligible qualified investments be made by automatic payroll deduction and deposited directly in the investment accounts. *Art. 6228a-5, Secs. 4(75), 5(a), (f) V.A.T.S.*

kgc 7/7/19: HB 2820, effective 9.1.19

A district may contract with an employee for the deferment of any part of the employee's compensation. To participate in a deferred compensation plan, an employee must consent in the contract to automatic payroll deductions in an amount equal to the deferred amount. *Gov't Code 609.007(a), (c)* [See CRG]

Cafeteria Plans

A district shall withhold from an employee's salary amounts designated by the employee for participation in the district's cafeteria plan authorized under 26 U.S.C. 125.

"Cafeteria plan" means a written plan under which all participants are employees, and the participants may choose among two or more benefits consisting of cash and qualified benefits.

26 U.S.C. 125

Administrative Fee

A district that is required by state or federal law to deduct from the current wages of an employee an amount garnished under a withholding order may deduct monthly an administrative fee from the employee's disposable earnings in addition to the amount required to be withheld under the withholding order. This does not apply to income withholding under Family Code Chapter 158. [See Child Support Payments, above]

The administrative fee may not exceed the lesser of:

1. The actual administrative cost incurred by the district in complying with the withholding order; or
2. \$10.

Civil Practice and Remedies Code 63.006

Child Care

The board may authorize a district employee to enter into an agreement with the district to reduce the periodic compensation paid the employee by the district by an amount to be paid for child care expenses. *Gov't Code 610.021(a)*

kgc 7/24/19: At U116 we will move contracting provisions and vendor disclosure requirements from this policy and CV to CHE, which will be renamed Vendor Disclosure and Contracts (unless we think of something preferable between now and then).

All of the other revisions below will be issued at U114.

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Note: For additional legal requirements applicable to purchases with federal funds, see CBB. For additional legal requirements applicable to school nutrition procurement, see COA.

Board Authority

A board may adopt rules and procedures for the acquisition of goods and services. *Education Code 44.031(d)*

Delegation of Authority

A board may delegate its authority regarding an action authorized or required to be taken by a district by Education Code Chapter 44, Subchapter B, to a designated person, representative, or committee.

A board may not delegate the authority to act regarding an action authorized or required to be taken by the board by Education Code Chapter 44, Subchapter B.

Disaster Exception

Notwithstanding any other provision of the Education Code, in the event of a catastrophe, emergency, or natural disaster affecting a district, the board may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under Education Code Chapter 44, Subchapter B if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.

Education Code 44.0312

Purchases Valued at or Above \$50,000

All district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period, shall be made by the method that provides the best value for a district:

1. Competitive bidding for services other than construction services.
2. Competitive sealed proposals for services other than construction services.
3. A request for proposals for services other than construction services.
4. An interlocal contract.
5. The reverse auction procedure as defined by Government Code 2155.062(d).
6. The formation of a political subdivision corporation under Local Government Code 304.001 (regarding the purchase of electricity).

Education Code 44.031(a)

[See COA for requirements applicable to school nutrition purchases, including produce, using federal funds.]

Note: Regarding construction of school facilities, see CV generally; CVA for competitive bidding; CVB for competitive sealed proposals; CVC and CVD for contracts using a construction manager; CVE for design/build contracts; and CVF for job order contracts for minor repairs/alterations.

Factors

In awarding a contract, a district shall consider:

1. Purchase price.
2. The reputation of the vendor and of the vendor's goods or services.
3. The quality of the vendor's goods or services.
4. The extent to which the goods or services meet the district's needs.
5. The vendor's past relationship with the district.
6. The impact on the ability of the district to comply with laws relating to historically underutilized businesses.
7. The total long-term cost to the district to acquire the goods or services.
8. For a contract that is not for goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.
9. Any other relevant factor specifically listed in the request for bids or proposals.

Education Code 44.031(b)

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code 271.9051. This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153. *Education Code 44.031(b-1)*

The factors listed above are the only criteria that may be considered by a district in its decision to award a contract. *R.G.V. Vending v. Weslaco Indep. Sch. Dist.*, 995 S.W.2d 897 (Tex. App.—Corpus Christi 1999, no pet.)

Out-of-State Bidders

A board shall not award a contract for services or for purchase of supplies, materials, or equipment to a bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located, or a state in which a majority of the manufacturing relating to the contract will be performed. *Gov't Code 2252.001–.002*

This requirement shall not apply to a contract involving federal funds. A district shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003–.004*

Required Contract Provisions

No Israel Boycott

A district may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it does not boycott Israel and will not during the term of the contract. *Gov't Code 2270.002*

The requirement above applies only to a contract that:

1. is between a district and a company with 10 or more full-time employees; and
2. Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the district.

Gov't Code 2271.002

“Company” has the meaning assigned by Government Code 808.001, except that the term does not include a sole proprietorship. ~~means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.~~ *Gov't Code 8082271.001(2)*

kgc 7/7/19: I decided to delete this in CV and add an xref.

kgc 7/5/19: HB 793, effective 5.7.19. I've revised this at both CV & here, but I wonder if there is a way to house it in one code with a pointer from the other?

kgc 7/6/19: Also, this was redesignated as 2271 rather than 2270 in HB 4170, effective 9.1.19.

Retention of Contracting Information

Application

These provisions apply to a contract that:

1. ~~h~~Has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the district; or
2. ~~r~~Results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the district in a fiscal year of the district.

A board may not accept a bid for a contract described above or award the contract to an entity that the board has determined has knowingly or intentionally failed to comply with Government Code Chapter 552, Subchapter J (Additional Provisions Relating to Contracting Information) in a previous bid or contract described above unless the board determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of that subchapter. ~~[See GBA for the definition of "contracting information" and GBAA at (margin note where MT puts this material (sec 552.771)) for additional requirements]~~ For additional information and requirements, see GBA and GBAA.]

Requirements

A contract described above must require a contracting entity to:

1. ~~p~~Preserve all contracting information related to the contract as provided by the records retention requirements applicable to the district for the duration of the contract;
2. ~~p~~Promptly provide to the district any contracting information related to the contract that is in the custody or possession of the entity on request of the district; and
3. ~~e~~On completion of the contract, either:
 - a. ~~p~~Provide at no cost to the district all contracting information related to the contract that is in the custody or possession of the entity; or
 - b. ~~p~~Preserve the contracting information related to the contract as provided by the records retention requirements applicable to the district.

Bid and Contract Language

Except as described at Exception, below, a bid for a contract described above and the contract must include the following statement: "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter."

Notice of
Noncompliance

A board that is the party to a contract described above shall provide notice to the entity that is a party to the contract if the entity fails to comply with a requirement of Government Code Chapter 552, Subchapter J applicable to the entity. The notice must:

1. ~~b~~Be in writing;
2. ~~s~~State the requirement that the entity has violated; and
3. ~~u~~Unless the exception described below applies, advise the entity that the board may terminate the contract without further obligation to the entity if the entity does not cure the violation on or before the ~~10th~~tenth business day after the date the board provides the notice.

Contract
Termination

Except as provided below, a governmental body may terminate a contract described above if:

1. ~~t~~The board provides the required notice to the entity that is party to the contract;
2. ~~t~~The contracting entity does not cure the violation in the prescribed period;
3. ~~t~~The board determines that the contracting entity has intentionally or knowingly failed to comply with a requirement of Government Code Chapter 552, Subchapter J; and
4. ~~t~~The board determines that the entity has not taken adequate steps to ensure future compliance with the requirements of that subchapter.

An entity has taken adequate steps to ensure future compliance with Government Code Chapter 552, Subchapter J if:

1. ~~t~~The entity produces contracting information requested by the board that is in the custody or possession of the entity not later than the 10th business day after the date the board makes the request; and
2. ~~t~~The entity establishes a records management program to enable the entity to comply with Government Code Chapter 552, Subchapter J.

Exception

A board may not terminate a contract under these provisions if the contract is related to the purchase or underwriting of a public security, the contract is or may be used as collateral on a loan, or the contract's proceeds are used to pay debt service of a public security or loan.

Gov't Code 552.371(a), ~~.372~~-.374 [See GBA]

kgc 7/7/19: SB 943, effective 1.1.20. Please verify that my xrefs are in sync with how MT handled this bill (this is all from section 9 of the bill). Also, I didn't include the two provisions below.

The places where it says "district" are places where the statute says "governmental body," which is defined as the board, but that just doesn't make sense to say in most places. Is everyone ok with my choice of when to say district and when to say board?

Sec. 552.375. OTHER CONTRACT PROVISIONS. Nothing in this subchapter prevents a governmental body from including and enforcing more stringent requirements in a contract to increase accountability or transparency.

Sec. 552.376. CAUSE OF ACTION NOT CREATED. This subchapter does not create a cause of action to contest a bid for or the award of a contract with a governmental body.

kgc 7/6/19: Would the 1295 material below be appropriate in CHE with appropriate pointers from other codes? Perhaps that is the location for some of the other general requirements like Boycott Israel (see chatter elsewhere here or CV for more on my concerns about duplication, etc.) and the more global prohibited transactions and contract terms. That would help with the length of this policy.

Disclosure of Interested Parties

A district may not enter into a contract described below ~~that requires an action or vote of the board before the contract may be signed, or has a value of at least \$1 million,~~ with a business entity unless the business entity submits a disclosure of interested parties to the district at the time the business entity submits the signed contract to the district.

The requirement above applies only to a contract of a district that:

1. ~~r~~Requires an action or vote by the board before the contract may be signed;
2. ~~h~~Has a value of at least \$1 million; or
3. ~~i~~Is for services that would require a person to register as a lobbyist under Government Code Chapter 305.

Gov't Code 2252.908

kgc 7/5/19: The 3rd item was added by HB 1495, effective 6.14.19, and SB 65, effective 9.1.19. I don't see this in CV, but it would be another one appropriate for inclusion in a more general code (see chatter at end after abortion provider contract prohibition)

A contract does not require an action or vote by the board if the board has legal authority to delegate to its staff the authority to execute the contract, the board has delegated this authority, and the board does not participate in the selection of the business entity with which the contract is entered into. *1 TAC 46.1(c)*

Exclusions

The disclosure requirement does not apply to a contract with:

1. A publicly traded business entity, including a wholly owned subsidiary of the entity;
2. An electric utility, as defined by Utilities Code 31.002; or
3. A gas utility, as defined by Utilities Code 121.001.

Gov't Code 2252.908(c)(4)–(6)

Required Form

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (TEC) that includes a list of each interested party for the contract of which the contracting business entity is aware; and a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is in substantially the form set out in Government Code 2252.908(e)(2). *Gov't Code 2252.908(e); 1 TAC 46.5(a)*

The certification of filing and the completed disclosure of interested parties form generated by TEC's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the district that is the party to the contract for which the form is being filed. *1 TAC 46.5(b)*

Deadline

A district that receives a completed disclosure of interested parties form and certification of filing shall notify TEC, in an electronic format prescribed by TEC, of the receipt of those documents not later than the 30th day after the date the board receives the disclosure. *1 TAC 46.5(c); Gov't Code 2252.908(f)*

Contract Changes

The disclosure requirements do not apply to a change made to an existing contract, including an amendment, change order, or extension of a contract except as set out below.

The disclosure requirements apply to a change made to an existing contract, including an amendment, change order, or extension of a contract if:

1. A disclosure of interested parties form was not filed for the existing contract; and either the changed contract requires an action or vote by the board or the value of the changed contract is at least \$1 million; or

2. The business entity submitted a disclosure of interested parties form to the district that is a party to the existing contract; and either there is a change to the disclosure; or the changed contract requires an action or vote by the board; or the value of the changed contract is at least \$1 million greater than the value of the existing contract.

1 TAC 46.4

Definitions

“Contract” means a contract between a board and a business entity at the time it is voted on by the board or at the time it binds the board, whichever is earlier, and includes an amended, extended, or renewed contract. *1 TAC 46.3(a)*

“Business entity” means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. The term includes an entity through which business is conducted with a district, regardless of whether the entity is a for-profit or nonprofit entity, and does not include a governmental entity or state agency. *Gov’t Code 2252.908(a)(1); 1 TAC 46.3(b)*

“Interested party” means a person who has a controlling interest in a business entity with whom a district contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. *Gov’t Code 2252.908(a)(3); 1 TAC 46.3(d), (e)*

“Controlling interest” means:

1. An ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds ten percent;
2. Membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than ten members; or
3. Service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. This subsection does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

1 TAC 46.3(c)

“Signed” includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature. *1 TAC 46.3(f)*

“Value” of a contract is based on the amount of consideration received or to be received by a business entity from a board under the contract. *1 TAC 46.3(g)*

[See BBFA for additional conflict of interest disclosures.]

**Contract with Person
Indebted to District**

A board may, by resolution, establish regulations permitting a school district to refuse to enter into a contract or other transaction with a person indebted to the school district. A district may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the district.

The term “person” includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that seeks to enter into a contract or other transaction with a district requiring board approval.

Education Code 44.044

Notice Publication

Notice of when and where bids or proposals or the responses to a request for qualifications will be received and opened shall be published in the county where a district’s central administrative office is located, once a week for at least two weeks prior to the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is no newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district’s central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g)*

**Electronic Bids or
Proposals**

A district may receive bids or proposals through electronic transmission if the board adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

An electronic bid or proposal is not required to be sealed. A provision of Education Code Chapter 44 that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted by the board.

Education Code 44.0313

**Professional
Services**

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect, attorney, certified public accountant, engineer, or fiscal agent.

A district may contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031.

Education Code 44.031(f)

An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. Gov't Code 791.011(h)

kgc 7/8/19: moved from below

Professional
Services
Procurement Act
Selection

A district may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of ~~C~~competitive bids submitted for the contract or for the services, but ~~shall not be solicited for professional services of any licensed or registered certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse. Contracts for these professional services shall be made~~ make the selection and award on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. Gov't Code 2254.~~002~~, .003(a)

kgc 7/7/19: statutory tightening.

Definition

"Professional services" means services:

1. ~~w~~Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing;
2. ~~p~~Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse; or
3. ~~p~~Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Occupations Code 1053.

Gov't Code 2254.002

kgc 7/7/19: HB 2868, effective 9.1.19

~~An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. Gov't Code 791.011(h)~~

kgc 7/7/19: I moved this up.

**Prohibited
Contracts**

~~For provisions regarding prohibited contracts, see CV(LEGAL).~~

kgc 7/7/19: I moved this below. I don't know why it was an m2 here.

Contingent Fee
Contract for Legal
Services

Government Code Chapter 2254, Subchapter C provides the manner in which and the situations under which a district may compensate a public contractor under a contingent fee for legal services. That subchapter does not apply to a contract for legal services entered into under Tax Code 6.30 (regarding delinquent tax collection) or Government Code 1201.027 (regarding issuance of public securities), except that Government Code sections 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract. Gov't Code 2254.102(e)

A district may select an attorney or law firm to award a contingent fee contract only in accordance with Government Code 2254.003(a) (see Selection, above) and Government Code 2254.1032. Gov't Code 2254.1032(a)

kgc 7/7/19: I wanted this to function as a pointer because I don't want to add all of that detail for something that doesn't happen very often. HB 2826, effective 9.1.19.

**Emergency Damage
or Destruction**

If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and a board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. *Education Code 44.031(h)*

Computers

A district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts with the DIR in accordance with Government Code Chapter 2054 or 2157. *Education Code 44.031(i)*

**Automated
Information System**

A district may purchase an automated information system using the purchasing method described by Government Code 2157.068 for

commodity items or a purchasing method designated by the controller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method listed above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.391*

Automated External Defibrillators

A school that purchases or leases an automated external defibrillator, as defined by Health and Safety Code 779.001, shall ensure that the defibrillator meets standards established by the federal Food and Drug Administration. *Education Code 44.047*

Sole Source

Compliance with Education Code 44.031 is not required for purchases that are available from only one source, including:

1. An item for which competition is precluded because of a patent, copyright, secret process, or monopoly.
2. A film, manuscript, or book.
3. A utility service, including electricity, gas, or water.
4. A captive replacement part or component for equipment.

The sole source exception shall not apply to mainframe data processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.

Education Code 44.031(j)–(k)

Insurance

A contract for the purchase of insurance is a contract for the purchase of personal property and shall be made in accordance with Education Code 44.031. *Education Code 44.031; Atty. Gen. Op. DM-347 (1995)*

Multiyear Contracts

A district may execute an insurance contract for a period longer than 12 months, if the contract contains either or both of the provisions described at Commitment of Current Revenue, below. If a district executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the district will be executing a new insurance contract. *Atty. Gen. Op. DM-418 (1996)*

Competitive Bidding

Except to the extent prohibited by other law and to the extent consistent with Education Code Chapter 44, Subchapter B, a school district may use competitive bidding to select a vendor as authorized by Education Code 44.031(a)(1).

A district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining

the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Education Code 44.031(b) [see Factors, above].

Except as provided below, Local Government Code Chapter 271, Subchapter B does not apply to a competitive bidding process under this policy.

Education Code 44.0351

Opening Bids Bids may be opened only by a board at a public meeting or by an officer or employee of a district at or in an office of the district. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. *Local Gov't Code 271.026*

A board shall have the right to reject any and all bids. *Local Gov't Code 271.027(a)*

Safety Record In determining who is a responsible bidder, a board may take into account the safety record of the bidder; of the firm, corporation, partnership, or institution represented by the bidder; or of anyone acting for such firm, corporation, partnership, or institution, provided that:

1. The board has adopted a written definition and criteria for accurately determining the safety record of the bidder.
2. The board has given notice in the bid specifications that the safety record of a bidder may be considered in determining the bidder's responsibility.
3. The determinations are not arbitrary and capricious.

Local Gov't Code 271.0275

Identical Bids If a district receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, it shall select only one bidder from the identical bids.

If only one of the bidders submitting identical bids is a resident of a district, that bidder shall be selected. If two or more such bidders are residents of a district, one shall be selected by the casting of lots. In all other cases, one of the identical bids shall be selected by the casting of lots.

A board shall prescribe the manner of casting lots and shall be present when the lots are cast. All qualified bidders or their representatives may be present at the casting of lots.

Local Gov't Code 271.901

Competitive Sealed Proposals	In selecting a vendor through competitive sealed proposals as authorized by Education Code 44.031(a)(2), a school district shall follow the procedures prescribed below.
Request for Proposals	The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.
Opening Proposals	The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.
Selection	The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.
Best Value Determination	In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. <i>Education Code 44.0352</i>
Interlocal Agreements	To increase efficiency and effectiveness, a district may contract or agree with other local governments and with state agencies, including the comptroller, to perform some of its purchasing functions. <i>Gov't Code 791.001, .011, .025</i> An interlocal contract must be authorized by a board and the governing body of each contracting party; must state the purpose, terms, rights, and duties of the contracting parties; and must specify that each party paying for the performance of governmental functions or services shall make those payments from current revenues available to the paying party. An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. The contract may be renewed and may have a specified term of years.

Gov't Code 791.011(d)–(f), (i)

A district may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and services reasonably required for the installation, operation, or maintenance of the goods. Such an agreement may not, however, apply to services provided by firefighters, police officers, or emergency medical personnel.

A district that purchases goods and services by agreement with another local government or with the state or state agency satisfies the requirement to seek competitive bids for the purchase of goods and services.

Gov't Code 791.025(b)–(c); Atty. Gen. Op. JC-37 (1999)

A district may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000 unless a person designated by the district certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or
2. The plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

“Purchasing cooperative” means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

*Gov't Code 791.011(j)***State Purchasing Program**

Purchasing services performed for a district by the comptroller shall include:

1. The extension of state contract prices to a district when the comptroller considers it feasible.
2. Solicitation of bids on items desired by a district if the solicitation is considered feasible by the comptroller and is desired by the district.
3. Provision of information and technical assistance to a district about the purchasing program.

The comptroller may charge a district its actual costs in providing purchasing services.

*Local Gov't Code 271.082***District
Requirements**

A district may participate in the purchasing program, including participation in purchases that use the reverse auction procedure, by filing with the comptroller a resolution adopted by the board requesting that the district be allowed to participate on a voluntary basis, to the extent the comptroller deems feasible, and stating that the board shall:

1. Designate an official to act for the district in all matters relating to the program, including the purchase of items from the vendor under any contract.
2. Direct the decisions of its representative.
3. Be responsible for:
 - a. Submitting requisitions to the commission under contract(s) and for payment directly to the vendor; and
 - b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse auction purchase, and electronically sending the comptroller reports on actual purchases.
4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

A purchase made through participation in this program meets any state requirement to seek competitive bids for the purchase of the item.

*Local Gov't Code 271.083***Multiple Award
Contract Schedule**

The comptroller shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government or any other governmental entity in any state. *Gov't Code 2155.502*

A district may purchase goods or services directly from a vendor under a contract listed on a schedule. A district contracting for the purchase of an automated information system under a contract listed on a schedule shall comply with Government Code 2157.068(e-1) (regarding purchase of information technology commodity items) [see Automated Information System, above]. An authorized purchase satisfies any requirement of state law relating to competitive bids or proposals.

The price listed for a good or service under a multiple award contract is a maximum price. A district may negotiate a lower price for goods or services under a contract listed on a schedule.

*Gov't Code 2155.504***Cooperative
Purchasing Program**

A district may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state. If a district does so, it may sign an agreement with another participating local government or a local cooperative stating that the district will:

1. Designate a person to act on behalf of the district in all matters relating to the program.
2. Make payments to another participating local government or local cooperative organization or directly under a contract, as provided in the agreement.
3. Be responsible for the vendor's compliance.

If a district participates in a cooperative purchasing program, it satisfies any law requiring it to seek competitive bids.

*Local Gov't Code 271.102; Atty. Gen. Op. JC-37 (1999)***Contract-Related Fee**

A school district that enters into a purchasing contract valued at \$25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Local Government Code Chapter 271, Subchapter F (cooperative purchasing program), or under any other cooperative purchasing program authorized for school districts by law shall document any contract-related fee, including any management fee, and the purpose of each fee under the contract.

The amount, purpose, and disposition of any fee described above must be presented in a written report and submitted annually in an open meeting of the board. The written report must appear as an agenda item. The commissioner of education may audit the written report.

*Education Code 44.0331***Reverse Auction**

A district that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the district and fair to vendors. *Local Gov't Code 271.906(b)*

Reverse auction procedure means:

1. A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or

2. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

Gov't Code 2155.062(d)

**Commitment of
Current Revenue**

A contract for the acquisition, including lease, of real or personal property is a commitment of a district's current revenue only, provided the contract contains either or both of the following provisions:

1. Retains to the board the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.
2. Is conditioned on a best efforts attempt by the board to obtain and appropriate funds for payment of the contract.

Local Gov't Code 271.903

Change Orders

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

Education Code 44.0411

**Energy or Water
Conservation
Measures**

A district may contract for energy or water conservation measures. Such a contract shall be let according to the procedures established for professional services by Government Code 2254.004.

A board shall establish a long-range energy plan to reduce a district's annual electric consumption by five percent beginning with the 2008 state fiscal year and consume electricity in subsequent fiscal years in accordance with the district's energy plan.

Education Code 44.901–.902 [See policy CL for legal requirements pertaining to such contracts and plans.]

Recycled Products

A district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. A district ~~shall~~ regularly shall review and revise its ~~purchasing~~ procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

1. Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials.
2. Encourage the use of products made of recycled materials.
3. Ensure to the maximum extent economically feasible that the district purchases products that may be recycled when they have served their intended use.

In developing new procedures and specifications, the district shall encourage the use of recycled products and products that may be recycled or reused.

~~3.~~ kgc 7/5/19: statutory tightening

The Texas Commission on Environmental Quality (TCEQ) by order shall exempt ~~A district may seek an exemption~~ from compliance with these provisions a district with a student enrollment of fewer than 10,000 students. ~~if it has a population of less than 5,000 within its geographic boundaries and demonstrates to the Water Commission that compliance would work a hardship on the district.~~

Health and Safety Code 361.426

kgc 7/5/19: SB 1376, effective 6.4.19.

Agricultural Products

If the cost and quality are equal, a district shall give preference in purchasing to agricultural products, including textiles and other similar products, that are produced, processed, or grown in Texas. "Processed" means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form. If Texas agricultural products are not equal in cost and quality to other agricultural products, a district shall give preference in purchasing to agricultural products produced, processed, or grown in the United States, if the cost and quality of the U.S. and foreign products are equal.

A district may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in Texas.

Vegetation for Landscaping	<p>If cost is equal and the quality is not inferior, a district shall give preference to Texas vegetation when it purchases vegetation for landscaping purposes.</p> <p><i>Education Code 44.042</i></p>
Bus Purchase or Lease	<p>Each contract proposed for the purchase or lease of one or more school buses, including a lease with an option to purchase, shall be submitted to competitive bidding when the contract is valued at \$20,000 or more. <i>Education Code 44.031(l)</i> [See CNB]</p>
Right to Work	<p>While engaged in procuring goods and services or awarding a contract, a district:</p> <ol style="list-style-type: none"> 1. May not consider whether a vendor is a member of or has another relationship with any organization; and 2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization. <p><i>Education Code 44.043</i></p>
Lobbying Restriction— Tobacco Education Grant Funds	<p>A district may not spend grant funds it receives from the Permanent Fund for Tobacco Education and Enforcement to pay:</p> <ol style="list-style-type: none"> 1. Lobbying expenses incurred by the district; 2. A person or entity that is required under Government Code Chapter 305 to register as a lobbyist with the Texas Ethics Commission; 3. Any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity of a registered lobbyist (as described in item 2); or 4. A person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies. <p><i>Gov't Code 403.1067</i></p>
Criminal History	<p>For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).</p>
Impermissible Practices	<p>A board member, employee, or agent shall not, with criminal negligence, make or authorize separate, sequential, or component purchases to avoid the purchasing requirements set out in Education Code 44.031. An officer or employee shall not knowingly violate Education Code 44.031 in any other manner.</p>

“Component purchases” means purchases of the component parts of an item that in normal purchasing practices would be made in one purchase. “Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be made in one purchase. “Sequential purchases” means purchases, over a period, of items that in normal purchasing practices would be made in one purchase.

Violation of this provision is a Class B misdemeanor and an offense involving moral turpitude, conviction of which shall result in removal from office or dismissal from employment. A board member who is convicted of a violation of this provision is considered to have committed official misconduct and for four years after the date of final conviction, the removed person is ineligible to be appointed or elected to public office in Texas, is ineligible to be employed by or act as an agent for the state or a political subdivision, and is ineligible to receive any compensation through a contract with the state or a political subdivision. [See BBC]

Education Code 44.032

Injunction

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which a district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney’s fees as approved by the court. *Education Code 44.032(f)*

Prohibitions

Entertainment Event Contracts

A person, including a board, may not include a provision in a contract related to a parade, concert, or other entertainment event paid for in whole or in part with public funds that prohibits or would otherwise prevent the disclosure of information relating to the receipt or expenditure of public or other funds by a board for the event. A contract provision that violates ~~this subsection~~ Government Code 552.104(c) is void. Gov’t Code 552.104(c) [See GBA atfor linformation ~~That Advantages Competitors or Bidders~~ related to competition or bidding.]

kgc 7/6/19: I don’t love this here, but I guess it’s necessary. It’s quite editorial in its rearrangement of the subsection, but I don’t think I can avoid that. This is from HB 81, effective 5.17.19. Please confirm the xref.

This could be organized with the info below under Prohibited Contracts or Prohibited Transactions or something like that, but I don’t really want abortion in a margin note. This could also be moved to/included in a general code like I’ve suggested in other chatter.

In this code, both of these could be moved closer to the Boycott Israel provision or it could be moved down. Again, margin notes get a little tricky.

Taxpayer Resource Transactions

A district may not enter into a taxpayer resource transaction with an abortion provider or an affiliate of an abortion provider. Gov't Code 2272.003(a)

"Taxpayer resource transaction" means a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity receives something of value in return.

kgc 7/5/19: I left out a chunk of this definition that I thought was unlikely to apply. I also chose to leave the term governmental entity in the definition.

"Affiliate" means a person or entity who enters into with another person or entity a legal relationship created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

1. ~~e~~Common ownership, management, or control between the parties to the relationship;
2. ~~a~~A franchise granted by the person or entity to the affiliate; or
3. ~~t~~The granting or extension of a license or other agreement authorizing the affiliate to use the other person's or entity's brand name, trademark, service mark, or other registered identification mark.

Gov't Code 2272.001(3), (5)

kgc 7/5/19: SB 22, effective 9.1.19

I didn't put anything about this in CV. In fact, because these policies are so long and have some duplication (see my chatter about Boycott Israel law), I'm wondering if we might consider (U115 or U116 perhaps?) creating some sort of general code that contains the provisions common to all (state) procurement and/or contracts. When I have time, I'd like to give the CH and CV policies a thorough review anyway.

Prohibited Contracts

For provisions regarding other prohibited contracts, see CV(LEGAL).

kgc 7/24/19: Specifics re: use of school safety allotment won't be included here per CVC.

kgc 7/3/19: SB 11, effective 6.6.19 (sec. 20). Ed. Code ch. 42 is gone under HB 3, but I don't know what that means for this section number. I guess it will stay until they clean up next session.

Safety and Security Committee

Responsibilities

In accordance with guidelines established by the Texas School Safety Center (TxSSC), each district shall establish a school safety and security committee. The committee shall:

1. Participate on behalf of the district in developing and implementing emergency plans consistent with the district multihazard emergency operations plan to ensure that the plans reflect specific campus, facility, or support services needs;
- ~~1-2.~~ Periodically provide recommendations to the board and district administrators regarding updating the district multihazard emergency operations plan [see CKC] in accordance with best practices identified by the Texas Education Agency (TEA), the TxSSC, or a person included in the registry of persons providing school safety or security consulting services established by the TxSSC;
- ~~2-3.~~ Provide the district with any campus, facility, or support services information required in connection with a safety and security audit, a safety and security audit report, or another report required to be submitted by the district to the TxSSC; ~~and~~
4. Review each report required to be submitted by the district to the TxSSC to ensure that the report contains accurate and complete information regarding each campus, facility, or support service in accordance with criteria established by the center; and
5. ~~Consult with local law enforcement agencies on methods to increase law enforcement presence near district campuses.~~

Membership

The committee, to the greatest extent practicable, must include:

1. ~~One or more representatives of an office of emergency management of a county or city in which the district is located;~~
2. ~~One or more representatives of the local police department or sheriff's office;~~
3. ~~One or more representatives of the district's police department, if applicable;~~
4. ~~The president of the board;~~

5. ~~a~~ A member of the board other than the president;
6. ~~t~~ The superintendent;
7. ~~e~~ One or more designees of the superintendent, one of whom must be a classroom teacher in the district;
8. ~~i~~ If the district partners with an open-enrollment charter school to provide instruction to students, a member of the open-enrollment charter school's governing body or a designee of the governing body; and
9. ~~t~~ Two parents or guardians of students enrolled in the district.

Meetings

Except as otherwise provided for year-round schools, the committee shall meet at least once during each academic semester and at least once during the summer. A committee established by a district that operates schools on a year-round system or in accordance with another alternative schedule shall meet at least three times during each calendar year, with an interval of at least two months between each meeting.

~~3-~~ The committee is subject to the Open Meetings Act (Government Code Chapter 551), and may meet in executive session as provided by that chapter. Notice of a committee meeting must be posted in the same manner as notice of a board meeting. [See BE]

Education Code 37.109

kgc 7/2/19: Lots added by SB 11, effective 6.6.19.

Safety and Security Audit

At least once every three years, each district shall conduct a safety and security audit of the district's facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the TxSSC or a person included in the registry of persons providing school safety or security consulting services established by TxSSC. ~~comparable public or private entity. A school district shall report the results of the safety and security audit to the board and, in the manner required by the TxSSC, to the TxSSC. Education Code 37.108 (b)-(c)~~

In a district's safety and security audit, the district must certify that the district used the funds provided through the school safety allotment only for the purposes provided by Education Code 42.168.

kgc 7/24/19: reference to statute added here rather than setting out purposes in this policy.

A district shall report the results of the safety and security audit to the board and, in the manner required by the TxSSC, to the TxSSC. The report provided to the TxSSC must be signed by the board and the superintendent.

Education Code 37.108(b), (b-1), (c)

In addition to a review of a district's multihazard emergency operations plan under Education Code 37.2071 [see ~~CKC-at Plan Review~~], the TxSGSC may require a district to submit its plan for immediate review if the district's audit results indicate that the district is not complying with applicable standards. Education Code 37.207(c)

Failure to Report Audit Results

If a district fails to report the results of its audit, the TxSGSC shall provide the district with written notice that the district has failed to report its audit results and must immediately report the results to the center.

If six months after the date of the initial notification the district has still not reported the results of its audit to the TxSGSC, the TxSGSC shall notify TEA and the district of the district's requirement to conduct a public hearing under Education Code 37.1081. [See ~~CKC-at Public Hearing on Noncompliance~~]

Education Code 37.207(d)-(e)

KGC 6/27/19: SB 11, effective 6.6.19

Disclosure

Except as provided by Education Code 37.108(c-2) ~~regarding certain emergency operations plans~~ [see ~~CKC-at Disclosure~~], any document or information collected, developed, or produced during a safety and security audit is not subject to disclosure under Government Code Chapter 552. *Education Code 37.108(c-1)*

Agreements

Each ~~school~~ district that enters into a memorandum of understanding or mutual aid agreement addressing issues that affect school safety and security shall, at the TxSSC's request, provide the following information to the TxSSC:

1. The name of each entity with which the ~~school~~ district has entered into a memorandum of understanding or mutual aid agreement;
2. The effective date of each memorandum or agreement; and
3. A summary of each memorandum or agreement.

Education Code 37.2121

Notice of Bomb
Threat or Terroristic
Threat

A district that receives a bomb threat or terroristic threat relating to a campus or other district facility at which students are present shall provide notification of the threat as soon as possible to the parent or guardian of or other person standing in parental relation to each student who is assigned to the campus or who regularly uses the facility, as applicable. *Education Code 37.113*

kgc 7/2/19: added by SB 11, effective 6.6.19

**Emergency
Operations Plan**

Each district shall adopt and implement a multihazard emergency operations plan for use in the district's facilities. The plan must address prevention, mitigation, preparedness, response, and recovery as defined by the Texas School Safety Center (TxSSC) in conjunction with the governor's office of homeland security and the commissioner ~~in conjunction with the governor's office of homeland security~~. The plan must provide for:

1. ~~District employee t~~ Training in responding to an emergency for district employees, including substitute teachers;
2. ~~m~~ Measures to ensure district employees, including substitute teachers, have classroom access to a telephone, including a cellular telephone, or another electronic communication device allowing for immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments;
- ~~1-3.~~ ~~m~~ Measures to ensure district communications technology and infrastructure are adequate to allow for communication during an emergency;
4. Mandatory school drills and exercises, including drills required under Education Code 37.114 (regarding emergency evacuations), to prepare district students and employees for responding to an emergency;

2. kgc 7/5/19: under SB 11, 37.114 charges the commissioner with adopting rules for drills.

- ~~3-5.~~ Measures to ensure coordination with the Texas Department of State Health Services (TDSHS) and local emergency management agencies, law enforcement, health departments, and fire departments in the event of an emergency; and
- ~~4-6.~~ The implementation of a required safety and security audit [see CK].

Education Code 37.108(a)

CKC 6/27/19: SB 11, effective 6.6.19

A district shall include in its multihazard emergency operations plan:

1. ~~a~~ A chain of command that designates the individual responsible for making final decisions during a disaster or emergency situation and identifies other individuals responsible for making those decisions if the designated person is unavailable;
2. ~~p~~ Provisions that address physical and psychological safety for responding to a natural disaster, active shooter, and any other dangerous scenario identified for purposes of these provisions by the Texas Education Agency (TEA) or TxSSC;
3. ~~p~~ Provisions for ensuring the safety of students in portable buildings;
4. ~~p~~ Provisions for ensuring that students and district personnel with disabilities are provided equal access to safety during a disaster or emergency situation;
5. ~~p~~ Provisions for providing immediate notification to parents, guardians, and other persons standing in parental relation in circumstances involving a significant threat to the health or safety of students, including identification of the individual with responsibility for overseeing the notification;
6. ~~p~~ Provisions for supporting the psychological safety of students, district personnel, and the community during the response and recovery phase following a disaster or emergency situation that:
 - a. ~~a~~ Are aligned with best practice-based programs and research-based practices recommended under Health and Safety Code 161.325;
 - b. ~~i~~ Include strategies for ensuring any required professional development training for suicide prevention and grief-informed and trauma-informed care is provided to appropriate school personnel;
 - c. ~~i~~ Include training on integrating psychological safety and suicide prevention strategies into the district's plan, such as psychological first aid for schools training, from an approved list of recommended training established by the commissioner and TxSSC for:
 - (1) ~~m~~ Members of the district's school safety and security committee [see CK];

- (2) ~~d~~District school counselors and mental health professionals; and
- (3) ~~e~~Educators and other district personnel as determined by the district;
- d. ~~i~~Include strategies and procedures for integrating and supporting physical and psychological safety that align with the provisions described by ~~paragraph~~item 2, above; and
- e. ~~i~~Implement trauma-informed policies;
- 7. ~~a~~A policy for providing a substitute teacher access to school campus buildings and materials necessary for the substitute teacher to carry out the duties of a district employee during an emergency or a mandatory emergency drill; and
- 8. ~~t~~The name of each individual on the district's school safety and security committee and the date of each committee meeting during the preceding year. [See CK]

Education Code 37.108(f)

kgc 7/2/19: added by SB 11, effective 6.6.19.

Active Shooter
Emergency

A district shall include in its multihazard emergency operations plan a policy for responding to an active shooter emergency. The district may use any available community resources in developing the policy. Education Code 37.108(g)

KGC 6/27/19: HB 2195, effective 6.14.19.

Train Derailment

A district shall include in its multihazard emergency operations plan a policy for responding to a train derailment near a district school. A district is only required to adopt the policy if a district school is located within 1,000 yards of a railroad track, as measured from any point on the school's real property boundary line. A district may use any available community resources in developing the policy.
Education Code 37.108(d)

Polling Place
Security

A district shall include in its multihazard emergency operations plan a policy for district property selected for use as a polling place under Election Code 43.031. In developing the policy, the board may consult with the local law enforcement agency with jurisdiction over the district property selected as a polling place regarding reasonable security accommodations that may be made to the property. This requirement may not be interpreted to require the board to obtain or contract for the presence of law enforcement or security personnel for the purpose of securing a polling place located on

district property. Failure to comply with this subsection does not affect the requirement of the board to make a school facility available for use as a polling place under Election Code 43.031. *Education Code 37.108(e)*- [See GKD]

Disclosure

A document relating to a school multihazard emergency operations plan is subject to disclosure ~~under Government Code Chapter 552~~ if the document enables a person to:

1. Verify that the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including TDSHS, local emergency services agencies, law enforcement agencies, health departments, and fire departments;
2. Verify that the district's plan was reviewed within the last 12 months and determine the specific review dates;
3. Verify that the plan addresses the four phases of emergency management listed [above](#) at Emergency Operations Plan;
4. Verify that district employees have been trained to respond to an emergency and determine the types of training, the number of employees trained, and the person conducting the training;
5. Verify that each campus in the district has conducted mandatory emergency drills and exercises in accordance with the plan and determine the frequency of the drills;
6. Verify that the district has established a plan for responding to a train derailment if required [see Train Derailment, [above](#)];
7. Verify that the district has completed a safety and security audit and determine the date the audit was conducted, the person conducting the audit, and the date the district presented the results of the audit to the board [see CK];
8. Verify that the district has addressed any recommendations by the board for improvement of the plan and determine the district's progress within the last 12 months; and
9. Verify that the district has established a visitor policy and identify the provisions governing access to a district building or other district property.

Education Code 37.108(c-2)

[See GRC for emergency management training requirements and response to requests from other governmental entities for mutual aid]

Plan Review

A district shall submit its multihazard emergency operations plan to the TxSGSC on request and in accordance with the TxSGSC review cycle developed under Education Code 37.2071(a).

Any document or information collected, developed, or produced during the review and verification of multihazard emergency operations plans is not subject to disclosure under the Public Information Act (Government Code, Chapter 552).

Notice of
Noncompliance

Plan
Deficiencies

The TxSGSC shall review each district's multihazard emergency operations plan and verify the plan meets the requirements or provide the district with written notice describing the plan's deficiencies and stating that the district must correct the deficiencies in its plan and resubmit the revised plan to the TxSGSC.

The TxSGSC may approve a district multihazard emergency operations plan that has deficiencies if the district submits a revised plan that the center determines will correct the deficiencies.

Failure to
Submit Plan

If a district fails to submit its multihazard emergency operations plan to the TxSGSC for review, the TxSGSC shall provide the district with written notice stating that the district has failed to submit a plan and must submit a plan to the center for review and verification.

Failure to Comply
after Notice

Three Months

If three months after the date of initial notification outlined at Notice of Noncompliance, above, a district has not corrected the plan deficiencies or has failed to submit a plan, the TxSGSC shall provide written notice to the district and TEA that the district has not complied with the requirements and must comply immediately.

Six Months

If a district still has not corrected the plan deficiencies or has failed to submit a plan six months after the date of initial notification, the TxSGSC shall provide written notice to the district stating that the district must hold a public hearing as outlined at Public Hearing on Noncompliance, below.

If a school district has failed to submit a plan, the notice must state that the commissioner is authorized to appoint a conservator under Education Code 37.1082.

Education Code 37.2071

kgc 7/3/19: SB 11, effective 6.6.19 (Sec. 15). It was tricky to decide how much to include about the obligations of TxSCC so that districts are informed about THEIR obligations. I've tried to err on the side of

overinclusion bc it's easier to delete than add later. See chatter below re: commissioner authority re: conservator & bd of mgrs.

Public Hearing on
Noncompliance

If the board receives notice of noncompliance under Education Code 37.207(e) [see ~~CK-at Failure to Report Audit Results~~] or 37.2071(g) [see above at Six Months], the board shall hold a public hearing to notify the public of:

1. ~~‡~~The district's failure to submit or correct deficiencies in a multihazard emergency operations plan or report the results of a safety and security audit to the TxSSC as required by law;
2. ~~‡~~The dates during which the district has not been in compliance; and
3. ~~‡~~The names of each member of the board and the superintendent serving in that capacity during the dates the district was not in compliance. The district shall provide this information in writing to each person at the hearing.

The board shall give members of the public a reasonable opportunity to appear before the board and to speak on the issue of the district's failure to submit or correct deficiencies in a multihazard emergency operations plan or report the results of a safety and security audit during a hearing held under this provision. A district required to hold a public hearing shall provide written confirmation to the TxSSC that the district held the hearing.

Education Code 37.1081

kgc 7/24/19: Joy suggested that something be added at the policy code re: board of managers (AIC?) referencing this code and the possibility of a BOM. I emailed Jasmine about that today.

kgc 7/2/19: Added by SB 11, effective 6.6.19. The next section (37.1082) authorizes the commissioner to appoint a conservator or board of managers if a board fails to submit a plan. I didn't include that here, but it's referenced above at Six Months. Do we want to include more detail? (Bill section 11)

Traumatic Injury
Response Protocol

Each district shall develop and annually make available a protocol for employees and volunteers to follow in the event of a traumatic injury. The protocol must:

1. Provide for a district to maintain and make available to employees and volunteers bleeding control stations, as described below, for use in the event of a traumatic injury involving blood loss;
2. Ensure that bleeding control stations are stored in easily accessible areas of the campus that are selected by the district's school safety and security committee;
3. Require that TEA-approved training on the use of a bleeding control station in the event of an injury to another person be provided to:
 - a. Each district peace officer commissioned under Education Code 37.081 or school security personnel employed under that section who provides security services at the campus;
 - b. Each school resource officer who provides law enforcement at the campus; and
 - a. All other district personnel who may be reasonably expected to use a bleeding control station; and
4. Require the district to annually offer instruction on the use of a bleeding control station from a school resource officer or other appropriate district personnel who has received the training described above to students enrolled at the campus in grade seven or higher.

Bleeding Control
Stations

Location

A district's school safety and security committee may select, as easily accessible areas of the campus at which bleeding control stations may be stored, areas of the campus where automated external defibrillators are stored.

Contents

A bleeding control station must contain all of the following required supplies in quantities determined appropriate by the superintendent:

1. Tourniquets approved for use in battlefield trauma care by the armed forces of the United States;
- e. Chest seals;
- e. Compression bandages;
- b. Bleeding control bandages;

5. Space emergency blankets;
6. Latex-free gloves;
7. Markers;
8. Scissors; and
9. Instructional documents developed by the American College of Surgeons or the United States Department of Homeland Security detailing methods to prevent blood loss following a traumatic event.

A district may also include in a bleeding control station any medical material or equipment that:

1. May be readily stored in a bleeding control station;
2. May be used to adequately treat an injury involving traumatic blood loss; and
3. Is approved by local law enforcement or emergency medical services personnel.

Immunity

The good faith use of a bleeding control station by a district employee to control the bleeding of an injured person is incident to or within the scope of the duties of the employee's position of employment and involves the exercise of judgment or discretion on the part of the employee for purposes of Education Code 22.0511, and a district and district employees are immune from civil liability, as provided by that section, from damages or injuries resulting from that good faith use of a bleeding control station. A district volunteer is immune from civil liability from damages or injuries resulting from the good faith use of a bleeding control station to the same extent as a professional employee of the district or school, as provided by Education Code 22.053.

Education Code 38.030

kgc 6/30/19: HB 496, effective 6.15.19; protocol must be implemented not later than 1.1.20.

I wasn't sure about including this immunity provision, but we include similar provisions elsewhere. I did not include the following:

(j) Nothing in this section limits the immunity from liability of a school district, open-enrollment charter school, or district or school employee or volunteer under:

(1) Sections 22.0511 and 22.053;

(2) Section 101.051, Civil Practice and Remedies Code; or

(3) any other applicable law.

(k) This section does not create a cause of action against a school district or open-enrollment charter school or the employees or volunteers of the district or school.

**Automated External
Defibrillators**

Availability

Campus

Each school district shall make available at each campus in the district at least one automated external defibrillator, as defined by Health and Safety Code 779.001. A campus defibrillator must be readily available during any University Interscholastic League (UIL) athletic competition held on the campus. In determining the location at which to store a campus defibrillator, the principal shall consider the primary location on campus where students engage in athletic activities.

Athletic Practice

To the extent practicable, each school district, in cooperation with the UIL, shall make reasonable efforts to ensure that a defibrillator is available at each UIL athletic practice held at a district campus. If a school district is not able to make a defibrillator available in such a manner, the district shall determine the extent to which a defibrillator must be available at each UIL athletic practice held at a district campus. The determination must be based, in addition to any other appropriate considerations, on relevant medical information.

*Athletic
Competition*

Each school district, in cooperation with the UIL, shall determine the extent to which a defibrillator must be available at each UIL athletic competition held at a location other than a district campus. The determination must be based, in addition to any other appropriate considerations, on relevant medical information and whether emergency services personnel are present at the athletic competition under a contract with the school district.

Trained Staff

Each school district shall ensure the presence at each location at which a defibrillator is required above of at least one campus or district employee trained in the proper use of the defibrillator at any time a substantial number of district students are present at the location.

Use and
Maintenance

A school district shall ensure that an automated external defibrillator is used and maintained in accordance with standards established under Health and Safety Code Chapter 779.

Education Code 38.017

Instruction

A school district shall annually make available to district employees and volunteers instruction in the principles and techniques of cardi-

opulmonary resuscitation and the use of an automated external defibrillator, as defined by Health and Safety Code 779.001. The instruction must meet the guidelines approved under Health and Safety Code 779.002.

Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other school employee specified by the Commissioner and each student who serves as an athletic trainer must participate and must receive and maintain certification in the use of an automated external defibrillator from the American Heart Association, the American Red Cross, or a similar nationally recognized association.

Education Code 22.902

[See CH for information regarding purchase and lease of automated external defibrillators.]

Response to Cardiac Arrest

Each school district shall develop safety procedures for a district or school employee or student to follow in responding to a medical emergency involving cardiac arrest, including the appropriate response time in administering cardiopulmonary resuscitation, using an automated external defibrillator, as defined by Health and Safety Code 779.001, or calling a local emergency medical services provider. *Education Code 38.018*

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**School District
Peace Officers,
School Resource
Officers, and
Security Personnel**

~~The~~A board may employ security personnel, enter into a memorandum of understanding with a local law enforcement agency for the provision of school resource officers, and commission peace officers to carry out ~~the provisions of~~ Education Code Chapter 37, Subchapter C, relating to law and order.

kgc 7/3/19: Do we need a note or other xrefs here to point to the new specific policies: CKEA Commissioned Peace Officers, CKEB School Marshals, CKEC SROs. Also, is that the sequence we want for the new policies. I just did that because that was the order in this policy.

Jurisdiction

~~A board shall determine the~~The jurisdiction of a peace officer, a school resource officer, or security personnel, ~~which shall be determined by the board and~~ may include all territory in the boundaries of the district and all property outside the boundaries of the district that is owned, leased, or rented by or otherwise under the control of the district and the board that employ the peace officer or security personnel or that enter into a memorandum of understanding for the provision of a school resource officer.

Education Code 37.081(a)

Duties

The board shall determine the law enforcement duties of peace officers, school resource officers, and security personnel. The duties must be included in:

1. ~~t~~The district improvement plan under ~~Section~~Education Code 11.252 [see BQ];
2. ~~t~~The student code of conduct adopted under ~~Section~~Education Code 37.001 [see FO];
3. ~~a~~Any memorandum of understanding providing for a school resource officer; and
4. ~~a~~Any other campus or district document describing the role of peace officers, school resource officers, or security personnel in the district.

A district peace officer, a school resource officer, and security personnel shall perform law enforcement duties for the school district that must include protecting the safety and welfare of any person in the jurisdiction of the peace officer, resource officer, or security personnel; and the property of the school district.

In determining the law enforcement duties, the board shall coordinate with district campus behavior coordinators and other district employees to ensure that district peace officers, school resource officers, and security personnel are tasked only with duties related

to law enforcement intervention and not tasked with behavioral or administrative duties better addressed by other district employees.

Education Code 37.081(d), (d-1), (d-4)

Prohibited Duties

A district may not assign or require as duties of a district peace officer, a school resource officer, or security personnel:

1. ~~f~~Routine student discipline or school administrative tasks; or
2. ~~e~~Contact with students unrelated to the law enforcement duties of the peace officer, resource officer, or security personnel.

This provision does not prohibit a district peace officer, a school resource officer, or security personnel from informal contact with a student unrelated to:

1. ~~t~~The assigned duties of the officer or security personnel; or
2. ~~a~~An incident involving student behavior or law enforcement.

Education Code 37.081(d-2), (d-3)

kgc 7/5/19: SB 1707, effective 6.2.19

Refusal or Removal
from District
Property

A school resource officer or district peace officer may refuse to allow a person to enter on or may eject a person from property under the district's control in accordance with Education Code 37.105. Education Code 37.105(a); 19 TAC 103.1207 [See GKA]

kgc 7/3/19: moved from below where it appeared twice - once for each type of officer.

~~Commissioned
Peace
Officers~~Weapons

~~If a board authorizes a person employed as security personnel to carry a weapons, they person must be a commissioned peace officers. Any peace officer commissioned by the board must meet all minimum standards for peace officers established by the Texas Commission on Law Enforcement (TCOLE).~~

~~Education Code 37.081(a) [See CKEA], (h)~~

kgc 6/30/19: SB 1707, effective 6.2.19 (and a bit of statutory tightening).

Training

A district peace officer or school resource officer shall complete an active shooter response training program approved by the Texas Commission on Law Enforcement (TCOLE).

kgc 7/2/19: Added by HB 2195, effective 6.14.19

A district that commissions a school district peace officer or at which a school resource officer provides law enforcement shall adopt a policy requiring the officer to complete the education and training program required by Occupations Code 1701.263.

Education Code 37.0812

kgc 7/2/19: moved from below bc it's more general. Amended by SB 11, effective 6.6.19, to delete 30,000 student threshold; other changes are statutory tightening.

TCOLE shall require a district peace officer or school resource officer to successfully complete an education and training program under Occupations Code 1701.263 before or within 180 days of the officer's commission by or placement in the district or a campus of the district. Occupations Code 1701.263(b)

kgc 7/2/19: SB 11, effective 6.6.19, changes the time from 120 to 180 days. The rule is at 37 TAC 218.3(d)(5), but it's out of date now. I'll watch for it to be amended, and then replace this language from the statute with the rule, which is currently stated as a mandate on the officer. There's another rule that is older, but duplicates the requirement at 37 TAC 221.43.

From the bill on the applicability of these reqts:

Notwithstanding Section 1701.263(b), Occupations Code, as amended by this Act, a school district peace officer or school resource officer who commences employment with or commences providing law enforcement at a school district with an enrollment of fewer than 30,000 students on a date occurring before September 1, 2019, shall complete the training required by Section 1701.263, Occupations Code, as amended by this Act, as soon as practicable and not later than August 31, 2020. This subsection does not apply to an officer who is exempt from the training established under Section 1701.263, Occupations Code, as amended by this Act, because the officer has completed the training described by Subsection (b-1) of that section.

Not later than October 1, 2019, a school district with an enrollment of fewer than 30,000 students shall adopt the training policy for school district peace officers and school resource officers required by Section 37.0812, Education Code, as amended by this Act.

**Notice of Exposure
to Communicable
Disease**

A district that employs emergency medical service employees, paramedics, firefighters, law enforcement officers or correctional officers must post the required notice regarding work-related exposure to communicable disease, in its workplace to inform employees

about Health and Safety Code requirements which may affect qualifying for workers' compensation benefits following a work-related exposure to a reportable communicable disease. 28 TAC 110.108

kgc 7/3/19: moved from below because it seems a little broader than just peace officers. Is there a better place than this?

Handgun Licensees

~~By written regulations or written authorization, a district may permit a person to possess a firearm on the physical premises of a school, any grounds or building on which a school-sponsored activity is being conducted, or a passenger transportation vehicle of a school. Penal Code 46.03(a)(1); Education Code 11.151(b)~~

kgc 7/2/19: These cited statutes don't say this (the deleted paragraph), and stating it this way is inconsistent with our commitment to adhering to statutory language and stating offenses as they appear in the statute. The AG's opinion suggests this, so I'd prefer to cite it for this proposition with a parenthetical regarding the statutes; I propose the following language instead of the paragraph above.

A board may promulgate written regulations or written authorization allowing the holder of a handgun license to carry a handgun on school premises pursuant to Penal Code 46.03(a)(1).

A board may promulgate written regulations or written authorization allowing the holder of a handgun license to carry a handgun on school premises pursuant to Penal Code 46.03(a)(1).

A board may appoint a school marshal (see CKEB) and authorize another person to serve under the district's regulations and authorization under Penal Code 46.03(a)(1).

The holder of a handgun license does not commit a criminal offense under Penal Code 46.035 by carrying a handgun in a building where a high school sporting event or interscholastic event is taking place or at an open meeting of the board when the person is lawfully carrying a handgun pursuant to a board's written regulations and authorization.

Att'y Gen. Op. GA-1051 (2014) (citing Education Code 11.151(b))

kgc 7/28/19: per 7/26/19 email from LRS: "The ultimate conclusion (final word) was to have CKE keep the Handgun Licensee language. The shelter language will not be in policy at all (MT knows to delete from GKA)."

kgc 7/24/19: I think we are again leaning toward this going to GKA, but I haven't gotten the final word, so I'm leaving it here.

kgc 7/24/19: I understood from my meeting with Joy/LRS that this was moving to GKA, but then I got email from Mark that they wanted me to add the new provision re: disaster at this code and hadn't mentioned moving this to GKA. Thus, I've changed it as I suggested.

kgc 7/2/19: moved from below. Should this even be here? Is GKA the better location? Is it currently presented in both locations in the best way?

**Handgun
Possession During a
State of Disaster**

~~Penal Code 46.03 does not apply to a person who carries a handgun if:~~

- ~~— The person carries the handgun on the premises of a location operating as an emergency shelter during a state of disaster declared under Government Code 418.014, or a local state of disaster declared under Government Code 418.108;~~
- ~~— The owner, controller, or operator of the premises or a person acting with the apparent authority of the owner, controller, or operator, authorized the carrying of the handgun;~~
- ~~— The person carrying the handgun complies with any rules and regulations of the owner, controller, or operator of the premises that govern the carrying of a handgun on the premises; and~~
- ~~— The person is not prohibited by state or federal law from possessing a firearm.~~

~~Penal Code 46.15(l)~~

kgc 7/28/19: per 7/26/19 email from LRS: "The ultimate conclusion (final word) was to have CKE keep the Handgun Licensee language. The shelter language will not be in policy at all (MT knows to delete from GKA)." Thus, I accepted what I had added so that I could delete it.

kgc 7/24/19: I think we are leaning toward this going back to GKA, but I haven't gotten a final word, so I'm leaving it here to ensure it doesn't fall through the cracks.

kgc 7/24/19: Per email from MT, Joy/LRS suggested this move here from GKA. I don't think this is the best placement as this isn't about school security personnel.

MT 7/7/19: HB 1177, effective 9/1/19, permits carry during declared disaster.

~~*Powers and
Duties*~~

~~Code of Criminal
Procedure~~

~~Officers commissioned by the board are subject to the general duties of officers set out in Chapter 2 of the Code of Criminal Procedure. *Code of Criminal Procedure 2.12(8)*~~

~~A peace officer has the duty to preserve the peace within the officer's jurisdiction by using all lawful means.~~

~~The peace officer shall:~~

- ~~1. In every case authorized by the Code of Criminal Procedure, interfere without warrant to prevent or suppress crime;~~
- ~~2. Execute all lawful process issued to the officer by any magistrate or court;~~
- ~~3. Give notice to some magistrate of all offenses committed within the officer's jurisdiction, where the officer has good reason to believe there has been a violation of the penal law; and~~
- ~~4. Arrest offenders without warrant in every case where the officer is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.~~

~~It is the duty of every officer to take possession of a missing child under Code of Criminal Procedure 63.009(g).~~

~~On a request made by the Texas Civil Commitment Office, a peace officer shall execute an emergency detention order issued by that office under Health and Safety Code 841.0837.~~

~~In the course of investigating an alleged criminal offense, a peace officer may inquire as to the nationality or immigration status of a victim or witness to the offense only if the officer determines that the inquiry is necessary to:~~

- ~~1. Investigate the offense; or~~
- ~~2. Provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.~~

~~This does not prevent a peace officer from conducting a separate investigation of any other alleged criminal offense, or inquiring as to the nationality or immigration status of a victim or witness to a criminal offense if the officer has probable cause to believe that the victim or witness has engaged in specific conduct constituting a separate criminal offense.~~

~~*Code of Criminal Procedure 2.13*~~

~~Determined by
the Board~~

~~A district peace officer shall also perform law enforcement duties as determined by the board, which shall include protecting the~~

~~safety and welfare of any person in the officer's jurisdiction and protecting property of the district. *Education Code 37.081(d)*~~

~~Within the officer's jurisdiction, a peace officer commissioned by the board:~~

- ~~1. Has the powers, privileges, and immunities of peace officers;~~
- ~~2. May enforce all laws, including municipal ordinances, county ordinances, and state laws;~~
- ~~3. May take a child into custody in accordance with Chapter 52 of the Family Code [see GRA] or Article 45.058 of the Code of Criminal Procedure; and~~
- ~~4. May dispose of cases in accordance with Family Code 52.03 or 52.031.~~

~~*Education Code 37.081(b); Family Code 52.01(a)*~~

~~A board shall determine the scope of the on-duty and off-duty law enforcement activities of its peace officers, and a district must authorize in writing any off-duty law enforcement activities performed by a district peace officer. *Education Code 37.081(e)*~~

~~A district peace officer may provide assistance to another law enforcement agency, and a district may contract with a political subdivision for the jurisdiction of district peace officers to include all territory in the jurisdiction of the political subdivision. *Education Code 37.081(e)*~~

kgc 7/3/19: All of this deleted material re: commissioned peace officers moved to CKEA.

~~*Refusal or
Removal by
Peace Officer*~~

~~A district peace officer may refuse to allow a person to enter on or may eject a person from property under the district's control in accordance with Education Code 37.105. *Education Code 37.105(a); 19 TAC 103.1207 [See GKA]*~~

kgc 7/3/19: moved up.

~~Chief of Police~~

~~A district police department's chief of police is accountable to the superintendent and shall report to the superintendent. District police officers shall be licensed by TCOLE and be supervised by the district chief of police or the chief's designee. *Education Code 37.081(f)*~~

~~Memorandum of
Understanding~~

~~A district police department and the law enforcement agencies with which it has overlapping jurisdiction shall enter into a memorandum~~

~~of understanding that outlines reasonable communication and coordination efforts among the department and the agencies. *Education Code 37.081(g)*~~

kgc 7/3/19: moved to CKEA

Training

~~A district with an enrollment of 30,000 or more students that commissions a school district peace officer shall adopt a policy requiring the officer to complete the education and training program developed by TCOLE as required by Occupations Code 1701.263 before or within 120 days of the officer's commission by or placement in the district or a campus of the district. *Education Code 37.0812; Occupations Code 1701.262, .263*~~

kgc 7/2/19: moved up & revised per SB 11, effective 6.6.19.

**Body-Worn
Cameras**

~~A law enforcement agency that operates a body-worn camera program shall adopt a policy for the use of body-worn cameras that must ensure that a body-worn camera is activated only for a law enforcement purpose and must include guidelines and provisions required by Occupations Code 1701.655(b).~~

~~A policy may not require a peace officer to keep a body-worn camera activated for the entire period of the officer's shift.~~

~~A policy must be consistent with the Federal Rules of Evidence and Texas Rules of Evidence.~~

~~Before a law enforcement agency may operate a body-worn camera program, the agency must provide training to peace officers who will wear the body-worn cameras and any other personnel who will come into contact with video and audio data obtained from the use of body-worn cameras.~~

~~Peace officers equipped with a body-worn camera must act consistent with policy and Occupations Code Chapter 1701, Subchapter N.~~

~~*Occupations Code 1701.655, .656, .657*~~

**Motor Vehicle Stops
Reports Required**

~~A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:~~

- ~~1. A physical description of any person operating the motor vehicle who is detained as a result of the stop, including:
 - ~~a. The person's gender; and~~~~

- ~~b. The person's race or ethnicity, as stated by the person or, if the person does not state his or her race or ethnicity, as determined by the officer to the best of the officer's ability;~~
- ~~2. The initial reason for the stop;~~
- ~~3. Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;~~
- ~~4. Whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;~~
- ~~5. The reason for the search, including whether:
 - ~~a. Any contraband or other evidence was in plain view;~~
 - ~~b. Any probable cause or reasonable suspicion existed to perform the search; or~~
 - ~~c. The search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;~~~~
- ~~6. Whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;~~
- ~~7. The street address or approximate location of the stop;~~
- ~~8. Whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and~~
- ~~9. Whether the officer used physical force that resulted in bodily injury, as defined under Penal Code 1.07, during the stop.~~

~~The district chief of police is responsible for auditing these reports to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.~~

~~*Code of Criminal Procedure 2.133*~~

~~A district police department shall compile and analyze the incident-based data contained in each report received by the department. Not later than March 1 of each year, each district police department shall submit a report containing the information compiled during the previous calendar year, in accordance with Code of Criminal Procedure 2.134, to TCOLE and to the governing body of each county~~

	or municipality served by the department. <i>Code of Criminal Procedure 2.134</i>
<i>Civil Penalty</i>	If a district's chief of police intentionally fails to submit the incident-based data as required by <i>Code of Criminal Procedure 2.134</i>, the department is liable to the state for a civil penalty in an amount not to exceed \$5,000 for each violation. <i>Code of Criminal Procedure 2.1385(a)</i>
<i>Racial Profiling Prohibition</i>	A peace officer may not engage in racial profiling. <i>Code of Criminal Procedure 2.131</i>
<i>Departmental Policy Required</i>	Each district police department that employs peace officers who make traffic stops in the routine performance of the officer's official duties shall adopt a detailed written policy on racial profiling. The policy must: <ol style="list-style-type: none">1. Clearly define acts constituting racial profiling;2. Strictly prohibit peace officers employed by the department from engaging in racial profiling;3. Implement a process by which an individual may file a complaint with the department if the individual believes that a peace officer employed by the department has engaged in racial profiling with respect to the individual;4. Provide public education relating to the department's complaint and complaint process, including providing the telephone number, mailing address, and email address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;5. Require appropriate corrective action to be taken against a peace officer employed by the department who, after an investigation, is shown to have engaged in racial profiling in violation of the department's policy adopted under this article;6. Require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of these stops, including information relating to:<ol style="list-style-type: none">a. The race or ethnicity of the individual detained;b. Whether a search was conducted and, if so, whether the individual detained consented to the search;c. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;

- ~~d.—Whether the peace officer used physical force that resulted in body injury, as defined in Penal Code 1.07, during the stop;~~
- ~~e.—The location of the stop; and~~
- ~~f.—The reason for the stop; and~~
- ~~7.—Require the district's chief of police to submit an annual report of the information collected under item 6 to:~~
 - ~~a.—TCOLE; and~~
 - ~~b.—The governing body of each county or municipality served by the agency.~~

~~On adoption of a racial profiling policy, the department shall examine the feasibility of installing video camera and transmitter activated equipment in each department law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each department law enforcement motorcycle regularly used to make motor vehicle stops. The department also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body-worn camera. [See Body-Worn Cameras, above] If the department installs video or audio equipment or equips peace officers with body-worn cameras as provided by this provision, the policy adopted by the department must include standards for reviewing video and audio documentation.~~

~~A department shall review the data collected under item 6 above to identify any improvements the department could make in its practices and policies regarding motor vehicle stops.~~

~~A report required under item 7 above may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer.~~

~~*Code of Criminal Procedure 2.132*~~

~~Mental Health Crisis
or Substance Abuse
Issue~~

~~A law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:~~

- ~~1.—There is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;~~
- ~~2.—It is reasonable to divert the person;~~

- ~~3.—The offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence;~~
- ~~4.—The mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense; and~~
- ~~5.—The person is not accused of specified offenses involving intoxication.~~

~~*Code of Criminal Procedure 16.23*~~

~~Officer-Involved
Injury or Death~~

~~“Officer-involved injury or death” means an incident during which a peace officer discharges a firearm causing injury or death to another.~~

~~Not later than the 30th day after the date of an officer-involved injury or death, the law enforcement agency employing an officer involved in the incident must complete and submit a written or electronic report to the office of the attorney general. The report must include all information required by Code of Criminal Procedure 2.139(b).~~

~~*Code of Criminal Procedure 2.139*~~

~~Not later than the 30th day after the date of the occurrence of an incident in which, while a peace officer is performing an official duty, a person who is not a peace officer discharges a firearm and causes injury or death to the officer, the law enforcement agency employing the injured or deceased officer at the time of the incident must complete and submit a written or electronic report to the office of the attorney general. The report must include all information required by Code of Criminal Procedure 2.1395(a). *Code of Criminal Procedure 2.1395(b)*~~

~~*Failure to Report*~~

~~A law enforcement agency that fails to submit the required report on or before the seventh day after the date of receiving notice of failure to report from the office of the attorney general, is liable for a civil penalty in the amount of \$1,000 for each day after the seventh day that the agency fails to submit the report. Beginning on the day after the date of receiving notice of failure to report, a law enforcement agency that, in the preceding five-year period, has been liable for a civil penalty is liable for a civil penalty for each day the agency fails to submit the required report in the amount of \$10,000 for the first day and \$1,000 for each additional day that the agency fails to submit the report. *Code of Criminal Procedure 2.13951(b), (c)*~~

~~Bonding~~

~~A commissioned and assigned peace officer shall take and file the oath required of peace officers and execute and file the required~~

	<p>\$1,000 bond, payable to the board, conditioned on the officer's performance of his or her duties. <i>Education Code 37.081(h)</i></p>
Continuing Education	<p>If a district employs peace officers, it shall provide each officer with a continuing education program as required by Occupations Code Title 10, Chapter 1701, Subchapter H. <i>Occupations Code 1701, Subch.-H</i></p>
Complaints Against Peace Officers	<p>To be considered by the head of the district's police department, a complaint against a district peace officer must be in writing and signed by the person making the complaint. A copy of the complaint shall be given to the officer within a reasonable time after it is filed. Disciplinary action may not be taken against the officer unless a copy of the signed complaint is given to the officer. The officer may not be indefinitely suspended or terminated based on the subject matter of the complaint unless the complaint is investigated and there is evidence to prove the allegation of misconduct. <i>Gov't Code Ch. 614, Subch. B; Colorado County v. Staff, 510 S.W.3d 435 (Tex. 2017); Atty. Gen. Op. GA-251 (2004)</i></p> <p>On the commencement of an investigation by a district police department of a complaint that alleges that a peace officer employed by the department has engaged in racial profiling with respect to an individual and in which a video or audio recording of the occurrence on which the complaint is based was made, the department shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer. <i>Code of Criminal Procedure 2.132(f)</i></p> <p>[See DGBA, FNG, and GF for appeals]</p>
Legal Representation	<p>A district shall provide a district employee who is a peace officer with legal counsel without cost to the employee to defend the employee against a suit for damages by a party other than a governmental entity if legal counsel is requested by the employee, and the suit involves an official act of the employee within the scope of the employee's authority.</p> <p>To defend the employee against the suit, the district may provide counsel already employed by it or may employ private counsel.</p> <p>An employee may recover from a district that fails to provide counsel as required the reasonable attorney's fees incurred in defending the suit if the trier of fact finds that the fees were incurred in defending a suit and the employee is without fault or that the employee acted with a reasonable good faith belief that the employee's actions were proper.</p> <p><i>Local Gov't Code 180.002(b)-(d)</i></p>

~~Notice of Exposure
to Communicable
Disease~~

~~A district that employs emergency medical service employees, paramedics, firefighters, law enforcement officers or correctional officers must post the required notice in the form specified by administrative rule, in its workplace to inform employees about Health and Safety Code requirements which may affect qualifying for workers' compensation benefits following a work-related exposure to a reportable communicable disease. 28 TAC 110.108~~

~~kgc 7/3/19: Material deleted above moved to CKEA~~

~~kgc 7/3/19: School marshals are moved to CKEB~~

School Marshals

~~A school marshal is a person who is appointed to serve as a school marshal by the board under Education Code 37.0811, is licensed under Occupations Code 1701.260, and has powers and duties described by Code of Criminal Procedure Article 2.127. Occupations Code 1701.001(8)~~

~~Eligibility~~

~~The board may appoint a person as a school marshal if the person is an employee of the district and certified by TCOLE as eligible for appointment. TCOLE shall license an eligible person who:~~

- ~~1. Completes required training; and~~
- ~~2. Is psychologically fit to carry out the duties of a school marshal as indicated by the results of a required psychological examination.~~

~~The TCOLE training program is open to any employee of a school district who holds a license to carry a handgun issued under Government Code Chapter 411, Subchapter H.~~

~~A person may not serve as a school marshal unless the person is licensed by TCOLE and appointed by the board. A school district shall not appoint or employ an ineligible person as a school marshal.~~

~~Reimbursement for
Training~~

~~The board may, but shall not be required to, reimburse the amount paid by the applicant to participate in the training program under Occupations Code 1701.260.~~

~~Education Code 37.0811(b); Occupations Code 1701.260, .301; Code of Criminal Procedure 2.127(d); 37 TAC 227.1(b), .3(a), .5(a)~~

~~District
Responsibilities~~

~~A district shall:~~

- ~~1. Submit and receive approval for an application to appoint a person as a school marshal;~~
- ~~2. Upon authorization, notify TCOLE using approved format prior to appointment;~~

- ~~3.— Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the district;~~
- ~~4.— Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the district, TCOLE standards, another state agency, or under other law; and~~
- ~~5.— Immediately report to the commission a school marshal's violation of any commission standard, including the discharge of a firearm carried under the authorization of these provisions outside of a training environment.~~

~~For five years, the district must retain documentation that the district has met all requirements under law in a format readily accessible to TCOLE. This requirement does not relieve a district from retaining all other relevant records not otherwise listed.~~

~~37 TAG 227.1~~

**Limitation on
Number**

~~The board may appoint not more than the greater of one school marshal per 200 students in average daily attendance per campus; or for each campus, one school marshal per building of the campus at which students regularly receive classroom instruction.
Education Code 37.0811(a)~~

Powers and Duties

~~A school marshal may make arrests and exercise all authority given to peace officers under the Code of Criminal Procedure, subject to written regulations adopted by the board.~~

~~A school marshal may only act as necessary to prevent or abate the commission of an offense that threatens serious bodily injury or death of students, faculty, or visitors on school premises.~~

~~A school marshal may not issue a traffic citation for a violation of the Transportation Code.~~

~~*Code of Criminal Procedure 2.127*~~

***Reporting
Requirements***

~~Once appointed, a school marshal shall:~~

- ~~1.— Immediately report to TCOLE and the district any circumstance which would render them unauthorized to act as a school marshal by virtue of their employment with the district, failure to meet the standards of TCOLE, another state agency, or under law;~~
- ~~2.— Immediately report to TCOLE any violation of applicable TCOLE standards, including any discharge of a firearm carried under the authorization of these provisions outside of training environment; and~~

	<p>3.— Comply with all requirements under law, including Education Code 37.0811.</p> <p>37 TAC 227.3(b)</p>
Handgun Possession	<p>A school marshal may carry or possess a handgun on the physical premises of a school, but only:</p> <p>1.— In the manner provided by written regulations adopted by the board; and</p> <p>2.— At a specific school as specified by the board.</p>
Accessing Handgun	<p>A school marshal may access a handgun only under circumstances that would justify the use of deadly force under Penal Code 9.32 or 9.33.</p>
Board Regulations Locked Gun Safe	<p>A board's written regulations must provide that if the primary duty of the school marshal involves regular, direct contact with students, the marshal may not carry a concealed handgun but may possess a handgun on the physical premises of a school in a locked and secured safe within the marshal's immediate reach when conducting the marshal's primary duty.</p>
Frangible Ammunition	<p>The written regulations must also require that a handgun carried by or within access of a school marshal may be loaded only with frangible duty ammunition approved for that purpose by TCOLE.</p>
Inactive Status	<p>A school district employee's status as a school marshal becomes inactive on:</p> <p>1.— Expiration of the employee's school marshal license under Occupations Code 1701.260;</p> <p>2.— Suspension or revocation of the employee's handgun license;</p> <p>3.— Termination of the employee's employment with the district; or</p> <p>4.— Notice from the board that the employee's services as school marshal are no longer required.</p> <p>Education Code 37.0811(c)–(f)</p>
Identity Confidential	<p>The identity of a school marshal is confidential and is not subject to a request under the Public Information Act, except that the person's name, date of birth, and handgun license number, and the address of the person's place of employment must be provided by TCOLE to:</p> <p>1.— The director of the Department of Public Safety;</p> <p>2.— The district;</p>

- ~~3.—The chief law enforcement officer of the local municipal law enforcement agency if the person is employed at a campus of a district located within a municipality;~~
- ~~4.—The sheriff of the county if the person is employed at a campus of a district that is not located within a municipality; and~~
- ~~5.—The chief administrator of any school district-commissioned peace officer, if the person is employed at a district that has commissioned peace officers.~~

~~If a parent or guardian of a student enrolled at a school inquires in writing, the district shall provide the parent or guardian written notice indicating whether any employee of the school is currently appointed as a school marshal. The notice may not disclose information that is confidential.~~

~~Education Code 37.0811(g), (h); Occupations Code 1701.260(j)~~

~~No State Benefits~~

~~A school marshal is not entitled to state benefits normally provided by the state to a peace officer. Code of Criminal Procedure 2.127(e)~~

~~Handgun Licensees~~

~~Written Permission~~

~~By written regulations or written authorization, a district may permit a person to possess a firearm on the physical premises of a school, any grounds or building on which a school-sponsored activity is being conducted, or a passenger transportation vehicle of a school. Penal Code 46.03(a)(1); Education Code 11.151(b)~~

~~The holder of a handgun license does not commit a criminal offense under Penal Code 46.035 by carrying a handgun in a building where a high school sporting event or interscholastic event is taking place or at any meeting of the board when the person is lawfully carrying a handgun pursuant to a board's written regulations and authorization.~~

~~A board may appoint a school marshal and authorize another person to serve under the district's regulations and authorization under Penal Code 46.03(a)(1).~~

~~Att'y Gen. Op. GA-1051 (2014)~~

kgc 7/3/19: SROs moved to CKEC.

~~School Resource Officers~~

~~Definition~~

~~A school resource officer is a peace officer who is assigned by the officer's employing political subdivision to provide:~~

- ~~1.—A police presence at a public school;~~
- ~~2.—Safety or drug education to students of a public school; or~~

~~3.—Other similar services.~~

~~Occupations Code 1701.601~~

~~Refusal or Removal
by School Resource
Officer~~

~~A school resource officer may refuse to allow a person to enter on or may eject a person from property under the district's control in accordance with Education Code 37.105. Education Code 37.105(a); 19 TAC 103.1207 [See GKA]~~

~~License Required~~

~~A peace officer who is a visiting school resource officer in a public school must be licensed as provided by Occupations Code Chapter 1701. Occupations Code 1701.602~~

~~Firearms Accident
Prevention Program~~

~~A peace officer who is a visiting school resource officer in a public elementary school shall at least once each school year offer to provide instruction to students in a firearms accident prevention program, as determined by the district.~~

~~A firearms accident prevention program must include the safety message, "Stop! Don't Touch. Leave the Area. Tell an Adult.", and may include instructional materials from the National Rifle Association Eddie Eagle Gun Safe Program, including animated videos and activity books.~~

~~Occupations Code 1701.603~~

~~Training~~

~~A district with an enrollment of 30,000 or more students at which a school resource officer provides law enforcement shall require the officer to complete the education and training program developed by TCOLE. [See Training, above] Education Code 37.0812; Occupations Code 1701.262, .263~~

kgc 7/2/19: moved up and not split for peace officers & SROs.

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**School District
Peace Officers and
Security Personnel**

~~A board may employ security personnel and commission peace officers to carry out the provisions of Education Code Chapter 37, Subchapter C, relating to law and order.~~

Jurisdiction

~~A board shall determine the jurisdiction of a peace officer or security personnel, which may include all territory in the boundaries of the district and all property outside the boundaries of the district that is owned, leased, or rented by or otherwise under the control of the district.~~

Commissioned
Peace Officers

~~If a board authorizes security personnel to carry weapons, they must be commissioned peace officers. Any peace officer commissioned by the board must meet all minimum standards for peace officers established by the Texas Commission on Law Enforcement (TCOLE).~~

~~Education Code 37.081(a), (h)~~

kgc 7/3/19: Amy D: in these CK policies, sometimes if I deleted a paragraph marker, it really messed up the formatting, so I just left paragraphs markers in place; consequently, in some places, there are too many lines between paragraphs.

Note: For general provisions applicable to district security personnel, including district peace officers, see CKE.

Powers and Duties

Code of Criminal
Procedure

Any peace officer commissioned by the board must meet all minimum standards for peace officers established by the Texas Commission on Law Enforcement (TCOLE). Education Code 37.081(h)

~~Officers commissioned by athe board are ~~subject to the general duties of officers set out in Chapter 2 of the Code of Criminal Procedure.~~ peace officers. Code of Criminal Procedure 2.12(8)~~

It is the duty of every A peace officer ~~has the duty~~ to preserve the peace within the officer's jurisdiction. To effect this purpose, the officer shall use ~~by using~~ all lawful means. Code of Criminal Procedure 2.13(a)

The peace officer shall perform the duties listed in Code of Criminal Procedure 2.13.:

~~1. In every case authorized by the Code of Criminal Procedure, interfere without warrant to prevent or suppress crime;~~

~~2. Execute all lawful process issued to the officer by any magistrate or court;~~

~~3.—— Give notice to some magistrate of all offenses committed within the officer's jurisdiction, where the officer has good reason to believe there has been a violation of the penal law; and~~

~~4.—— Arrest offenders without warrant in every case where the officer is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.~~

~~It is the duty of every officer to take possession of a missing child under Code of Criminal Procedure 63.009(g).~~

~~On a request made by the Texas Civil Commitment Office, a peace officer shall execute an emergency detention order issued by that office under Health and Safety Code 841.0837.~~

~~In the course of investigating an alleged criminal offense, a peace officer may inquire as to the nationality or immigration status of a victim or witness to the offense only if the officer determines that the inquiry is necessary to:~~

~~1.—— Investigate the offense; or~~

~~2.—— Provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.~~

~~This does not prevent a peace officer from conducting a separate investigation of any other alleged criminal offense, or inquiring as to the nationality or immigration status of a victim or witness to a criminal offense if the officer has probable cause to believe that the victim or witness has engaged in specific conduct constituting a separate criminal offense.~~

~~Code of Criminal Procedure 2.13~~

kgc 7/24/19: Per CVC, this pointer is sufficient.

kgc 7/3/19: Are all these duties of peace officers appropriate in the board's policy manual? Peace officers won't look here for this. Can we shorten it to a pointer to the Code of Crim Pro?

Determined by the Board

A district peace officer shall ~~also~~ perform law enforcement duties for the district as determined by the board, ~~which~~. Those duties must ~~shall~~ include protecting the safety and welfare of any person in the officer's jurisdiction and protecting the property of the district. *Education Code 37.081(d)*

The board may authorize any officer commissioned by the board to enforce rules adopted by the board. Education Code Chapter 37, Subchapter D (regarding protection of buildings and grounds) is

not intended to restrict the authority of each district to adopt and enforce appropriate rules for the orderly conduct of the district in carrying out its purposes and objectives or the right of separate jurisdiction relating to the conduct of its students and personnel.
Education Code 37.103

kgc 7/8/19: This is not new; added at JOY/LRS request.

~~Within the~~ In a peace officer's jurisdiction, a peace officer commissioned by the board:

1. Has the powers, privileges, and immunities of peace officers;
2. May enforce all laws, including municipal ordinances, county ordinances, and state laws;
3. May take a child into custody in accordance with ~~Chapter 52 of the~~ Family Code Chapter 52 [see GRA] or ~~Article 45.058 of the~~ Code of Criminal Procedure 45.058; and
4. May dispose of cases in accordance with Family Code 52.03 or 52.031.

Education Code 37.081(b); Family Code 52.01(a)(3)

~~A~~ The board shall determine the scope of the on-duty and off-duty law enforcement activities of ~~its district~~ peace officers, ~~and a~~ A district must authorize in writing any off-duty law enforcement activities performed by a district peace officer. ~~Education Code 37.081(e)~~

A district peace officer may provide assistance to another law enforcement agency. ~~A~~, ~~and a~~ district may contract with a political subdivision for the jurisdiction of a district peace officers to include all territory in the jurisdiction of the political subdivision.

~~Education Code 37.081(c).~~ (e)

~~Refusal or
Removal by
Peace Officer~~

~~A district peace officer may refuse to allow a person to enter on or may eject a person from property under the district's control in accordance with Education Code 37.105. Education Code 37.105(a); 19 TAC 103.1207 [See GKA]~~

kgc 7/3/19: left in CKE

Chief of Police

~~A district police department's~~ The chief of police of a district police department shall be is accountable to the superintendent and shall report to the superintendent. District police officers shall ~~be li-~~ censed by TCOLE ~~and~~ be supervised by the district chief of police

or the chief's designee and shall be licensed by TCOLE. *Education Code 37.081(f)*

Oath and Bond

A peace officer assigned to duty and commissioned by a board shall take and file the oath required of peace officers and shall execute and file a bond in the sum of \$1,000, payable to the board, with two or more sureties, conditioned that the peace officer will fairly, impartially, and faithfully perform all the duties that may be required of the peace officer by law. Education Code 37.081(h)

Memorandum of Understanding

A district police department and the law enforcement agencies with which it has overlapping jurisdiction shall enter into a memorandum of understanding that outlines reasonable communication and coordination efforts ~~among~~ between the department and the agencies. *Education Code 37.081(g)*

~~Training~~

~~A district with an enrollment of 30,000 or more students that commissions a school district peace officer shall adopt a policy requiring the officer to complete the education and training program developed by TCOLE as required by Occupations Code 1701.263 before or within 120 days of the officer's commission by or placement in the district or a campus of the district. Education Code 37.0812; Occupations Code 1701.262, .263~~

kgc 7/3/19: Left in CKE.

Body-Worn Cameras

A law enforcement agency that operates a body-worn camera program shall adopt a policy for the use of body-worn cameras that must ensure that a body-worn camera is activated only for a law enforcement purpose and must include guidelines and provisions required by Occupations Code 1701.655(b).

A policy may not require a peace officer to keep a body-worn camera activated for the entire period of the officer's shift.

~~A policy must be consistent with the Federal Rules of Evidence and Texas Rules of Evidence.~~

Before a law enforcement agency may operate a body-worn camera program, the agency must provide training to peace officers who will wear the body-worn cameras and any other personnel who will come into contact with video and audio data obtained from the use of body-worn cameras.

~~Peace officers equipped with a body-worn camera must act consistent with policy and Occupations Code Chapter 1701, Subchapter N.~~

~~Occupations Code 1701.655, .656, .657~~

kgc 7/3/19: I've tried to trim this a little to eliminate details that are not really appropriate in the PRM. I still think this is more than the board needs in its manual, but I've left it until we have an alternative resource.

I didn't add anything from HB 4236 re: who can view recording bc we don't have 1701.660 in here now, and I don't really think we need to add it for all the reasons stated elsewhere – not the best source for the information, limited application to districts, etc. Also, in the school context, I think there are issues of student privacy, and I'd have some concern that district PDs could release video under 1701.660(a-1) without considering all issues, so if we don't include it, they have to call us or ask attorneys before releasing.

Motor Vehicle Stops
~~Reports Required~~

A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including the information required by Code of Criminal Procedure 2.133.

kgc 7/3/19: See all my comments elsewhere. I don't think this is the place for this level of detail. We don't include this kind of reporting for other employees, and peace officers aren't going to look here for this information. The board doesn't need it.

⋮

- ~~1.—A physical description of any person operating the motor vehicle who is detained as a result of the stop, including:
 - ~~a.—The person's gender; and~~
 - ~~b.—The person's race or ethnicity, as stated by the person or, if the person does not state his or her race or ethnicity, as determined by the officer to the best of the officer's ability;~~~~
- ~~2.—The initial reason for the stop;~~
- ~~3.—Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;~~
- ~~4.—Whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;~~
- ~~5.—The reason for the search, including whether:
 - ~~a.—Any contraband or other evidence was in plain view;~~~~

- ~~b. Any probable cause or reasonable suspicion existed to perform the search; or~~
- ~~c. The search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;~~
- ~~6. Whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;~~
- ~~7. The street address or approximate location of the stop;~~
- ~~8. Whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and~~
- ~~9. Whether the officer used physical force that resulted in bodily injury, as defined under Penal Code 1.07, during the stop.~~

The ~~district chief of police~~chief administrator of a law enforcement agency is responsible for auditing these reports to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

Code of Criminal Procedure 2.133

A ~~district police department~~law enforcement agency shall compile and analyze the ~~information~~incident-based data contained in each report received by the ~~department~~agency. Not later than March 1 of each year, each ~~district police department shall~~law enforcement agency shall submit a report containing the ~~incident-based data information~~incident-based data compiled during the previous calendar year, ~~in accordance with Code of Criminal Procedure 2.134, to TCOLE and to the governing body of each county or municipality served by the department.~~ *Code of Criminal Procedure 2.134*

kgc 7/24/19: CVC says stick with statute.

kgc 7/3/19: Sometimes we've left law enforcement agency and agency as written in the statutes; sometimes we've changed it to police department and department. Are we comfortable with the change? If so, we need to be consistent. I'm more comfortable with sticking to the statutory terminology: law enforcement agency and agency.

I deleted the last part – do any school district PDs serve counties or cities? I really don't think that language is meant for us. For us, it might be the board who should get the report, but that's not in the statute.

Civil Penalty

If ~~the chief administrator of a local law enforcement agency~~ ~~a district's chief of police~~ intentionally fails to submit the incident-based data as required by Code of Criminal Procedure 2.134, the department is liable to the state for a civil penalty in an amount not to exceed \$5,000 for each violation. *Code of Criminal Procedure 2.1385(a)*

Racial Profiling

~~Prohibition~~

A peace officer may not engage in racial profiling. *Code of Criminal Procedure 2.131*

~~Departmental Policy Required~~

Each ~~district police department~~ law enforcement agency that employs peace officers who make traffic stops in the routine performance of the officer's official duties shall adopt a detailed written policy on racial profiling. ~~The policy must:~~ that complies with Code of Criminal Procedure 2.132(b). *Code of Criminal Procedure 2.132*

kgc 7/3/19: I propose shortening this to a pointer bc

1. are there a lot of district PDs with officers who make traffic stops routinely?

2. is this the best resource for this info? I don't think so, and I think it is contrary to choices we've made in other places where we have not included this level of detail (ex. purchasing procedures).

3. This isn't a board level requirement. And if district PDs are adopting these, they are likely working with attorneys.

- ~~1.— Clearly define acts constituting racial profiling;~~
- ~~2.— Strictly prohibit peace officers employed by the department from engaging in racial profiling;~~
- ~~3.— Implement a process by which an individual may file a complaint with the department if the individual believes that a peace officer employed by the department has engaged in racial profiling with respect to the individual;~~
- ~~4.— Provide public education relating to the department's complaint and complaint process, including providing the telephone number, mailing address, and email address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;~~
- ~~5.— Require appropriate corrective action to be taken against a peace officer employed by the department who, after an investigation, is shown to have engaged in racial profiling in violation of the department's policy adopted under this article;~~

- ~~6. Require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information relating to:
 - ~~a. The race or ethnicity of the individual detained;~~
 - ~~b. Whether a search was conducted and, if so, whether the individual detained consented to the search;~~
 - ~~c. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;~~
 - ~~d. Whether the peace officer used physical force that resulted in body injury, as defined in Penal Code 1.07, during the stop;~~
 - ~~e. The location of the stop; and~~
 - ~~f. The reason for the stop; and~~~~
- ~~7. Require the district's chief of police to submit an annual report of the information collected under item 6 to:
 - ~~a. TCOLE; and~~
 - ~~b. The governing body of each county or municipality served by the agency.~~~~

~~On adoption of a racial profiling policy, the department shall examine the feasibility of installing video camera and transmitter-activated equipment in each department law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each department law enforcement motorcycle regularly used to make motor vehicle stops. The department also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body-worn camera. [See Body Worn Cameras, above] If the department installs video or audio equipment or equips peace officers with body-worn cameras as provided by this provision, the policy adopted by the department must include standards for reviewing video and audio documentation.~~

~~A department shall review the data collected under item 6 above to identify any improvements the department could make in its practices and policies regarding motor vehicle stops.~~

~~A report required under item 7 above may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer.~~

Code of Criminal Procedure 2.132

**Mental Health Crisis
or Substance Abuse
Issue**

A law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

1. There is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;
2. It is reasonable to divert the person;
3. The offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and
4. The mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense; ~~and~~
5. This requirement does not apply to a ~~The~~ person who is ~~not~~ accused of specified offenses involving intoxication.

Code of Criminal Procedure 16.23

**Administration of
Epinephrine**

A law enforcement agency may acquire and possess epinephrine auto-injectors and a peace officer may possess and administer an epinephrine auto-injector in accordance with Occupations Code Chapter 1701, Subchapter O. Occupations Code 1701.702(a). [See FFAC regarding district maintenance and administration of epinephrine auto-injectors.]

kgc 7/5/19: SB 1827, effective 9.1.19; do we want this in here at all?

See above re: leaving it law enforcement agency or changing to district police department.

**Officer-Involved
Injury or Death**

"Officer-involved injury or death" means an incident during which a peace officer discharges a firearm causing injury or death to another.

Not later than the 30th day after the date of an officer-involved injury or death, the law enforcement agency employing an officer involved in the incident must complete and submit a written or electronic report to the office of the attorney general. The report must include all information required by Code of Criminal Procedure 2.139(b).

Code of Criminal Procedure 2.139

Not later than the 30th day after the date of the occurrence of an incident in which, while a peace officer is performing an official duty, a person who is not a peace officer discharges a firearm and causes injury or death to the officer, the law enforcement agency employing the injured or deceased officer at the time of the incident must complete and submit a written or electronic report to the office of the attorney general. The report must include all information required by Code of Criminal Procedure 2.1395(a). *Code of Criminal Procedure 2.1395(b)*

Failure to Report

A law enforcement agency that fails to submit the required report on or before the seventh day after the date ~~of receiving~~ the agency received notice of failure to report from the office of the attorney general, is liable for a civil penalty in the amount of \$1,000 for each day after the seventh day that the agency fails to submit the report. Beginning on the day after the date of receiving notice of failure to report, a law enforcement agency that, in the ~~preceding~~ five-year period preceding the date the agency received the notice, has been liable for a civil penalty is liable for a civil penalty for each day the agency fails to submit the required report in the amount of \$10,000 for the first day and \$1,000 for each additional day that the agency fails to submit the report. *Code of Criminal Procedure 2.13951(b), (c)*

Bonding

~~A commissioned and assigned peace officer shall take and file the oath required of peace officers and execute and file the required \$1,000 bond, payable to the board, conditioned on the officer's performance of his or her duties. Education Code 37.081(h)~~

Continuing Education

~~If a district employs peace officers, it shall provide each officer with a continuing education program as required by Occupations Code Title 10, Chapter 1701, Subchapter H. Occupations Code 1701, Subch.-H~~

kgc 7/3/19: I'm deleting this because

1. I can't really find it in this statute. The closest thing I find is in 1701.352, and it applies to the state, a county, special district, or municipal agency. Because ch. 1701 uses the term school district numerous times, I'm pretty sure we don't fall under the term special district in 1701.352.

2. There are specific Training reqts at that margin note in CKE.

Complaints Against Peace Officers

To be considered by the head of the district's police department, a complaint against a district peace officer must be in writing and signed by the person making the complaint. A copy of the complaint shall be given to the officer within a reasonable time after it is

filed. Disciplinary action may not be taken against the officer unless a copy of the signed complaint is given to the officer. The officer may not be indefinitely suspended or terminated based on the subject matter of the complaint unless the complaint is investigated and there is evidence to prove the allegation of misconduct. *Gov't Code 614.021--.023*~~Ch. 614, Subch. B~~; *Colorado County v. Staff*, 510 S.W.3d 435 (Tex. 2017); *Atty. Gen. Op. GA-251 (2004)*

On the commencement of an investigation by a ~~district police department~~ law enforcement agency of a complaint that alleges that a peace officer employed by the department has engaged in racial profiling with respect to an individual and in which a video or audio recording of the occurrence on which the complaint is based was made, the ~~department~~ agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer. *Code of Criminal Procedure 2.132(f)*

[See DGBA, FNG, and GF for appeals]

Legal Representation

A district shall provide a district employee who is a peace officer with legal counsel without cost to the employee to defend the employee against a suit for damages by a party other than a governmental entity if legal counsel is requested by the employee, and the suit involves an official act of the employee within the scope of the employee's authority.

To defend the employee against the suit, the district may provide counsel already employed by it or may employ private counsel.

An employee may recover from a district that fails to provide counsel as required the reasonable attorney's fees incurred in defending the suit if the trier of fact finds that the fees were incurred in defending a suit covered by these provisions and the employee is without fault or that the employee acted with a reasonable good faith belief that the employee's actions were proper.

Local Gov't Code 180.002(b)-(d)

Retirement of Law Enforcement Animal

~~In accordance with the provisions of Government Code Chapter 614, Subchapter L (sections 614.211-.217), the board may enter into a contract with a person for the transfer of a law enforcement dog, horse, or other animal that has been determined by the district's chief of police or designee to be:~~

~~—suitable for transfer, after consulting with the animal's veterinarian, handlers, and other caretakers; and~~

- ~~— surplus to the needs of the district because the animal is at the end of the animal's working life or subject to circumstances that justify making the animal available for transfer before the end of the animal's working life, including:~~
 - ~~— the death of the animal's handler in the line of duty or as a result of injuries sustained in the line of duty; or~~
 - ~~a. — the medical retirement of the animal's handler as a result of injuries sustained in the line of duty.~~
- ~~(1) — Gov't Code 614.212(a)~~

kgc 7/24/19: Based on further email exchange, we decided to pull this altogether. I accepted the NEW material so I could delete it.

kgc 7/24/19: From email today to CVC, Jov, LRS & MT (as GR Liaison):

I realized for the first time yesterday that there is a proposition (SJR 32) to amend the constitution to permit the transfer of a law enforcement animal to a caregiver. SB 2100 allows such a transfer and has been included in CKEA(H). SB 2100 is not contingent on the passage of the constitutional amendment (as a couple of my tax bills are). In fact, its effective date is 5.14.19. Does anyone think I should wait to include SB 2100 until after the November election?

SJR 32 SECTION 1. Article III, Texas Constitution, is amended by adding Section 52l to read as follows:

Sec. 52l. The legislature may authorize a state agency or a county, a municipality, or other political subdivision to transfer a law enforcement dog, horse, or other animal to the animal's handler or another qualified caretaker for no consideration on the animal's retirement or at another time if the transfer is in the animal's best interest.

kgc 7/5/19: Added by SB 2100, 5.14.19; there's a lot of detail in this bill, so I hope I've provided enough of a starting point to direct a district that wants to do this without unnecessarily making the policy longer.

**Notice of Exposure
to Communicable
Disease**

~~A district that employs emergency medical service employees, paramedics, firefighters, law enforcement officers or correctional officers must post the required notice in the form specified by administrative rule, in its workplace to inform employees about Health and Safety Code requirements which may affect qualifying for workers' compensation benefits following a work-related exposure to a reportable communicable disease. 28 TAC 110.108~~

School Marshals

~~A school marshal is a person who is appointed to serve as a school marshal by the board under Education Code 37.0811, is licensed under Occupations Code 1701.260, and has powers and duties described by Code of Criminal Procedure Article 2.127. Occupations Code 1701.001(8)~~

Eligibility

~~The board may appoint a person as a school marshal if the person is an employee of the district and certified by TCOLE as eligible for appointment. TCOLE shall license an eligible person who:~~

- ~~1. Completes required training; and~~
- ~~2. Is psychologically fit to carry out the duties of a school marshal as indicated by the results of a required psychological examination.~~

~~The TCOLE training program is open to any employee of a school district who holds a license to carry a handgun issued under Government Code Chapter 411, Subchapter H.~~

~~A person may not serve as a school marshal unless the person is licensed by TCOLE and appointed by the board. A school district shall not appoint or employ an ineligible person as a school marshal.~~

Reimbursement for Training

~~The board may, but shall not be required to, reimburse the amount paid by the applicant to participate in the training program under Occupations Code 1701.260.~~

~~Education Code 37.0811(b); Occupations Code 1701.260, .301; Code of Criminal Procedure 2.127(d); 37 TAG 227.1(b), .3(a), .5(a)~~

District Responsibilities

~~A district shall:~~

- ~~1. Submit and receive approval for an application to appoint a person as a school marshal;~~
- ~~2. Upon authorization, notify TCOLE using approved format prior to appointment;~~
- ~~3. Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the district;~~
- ~~4. Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the district, TCOLE standards, another state agency, or under other law; and~~
- ~~5. Immediately report to the commission a school marshal's violation of any commission standard, including the discharge of~~

~~a firearm carried under the authorization of these provisions outside of a training environment.~~

~~For five years, the district must retain documentation that the district has met all requirements under law in a format readily accessible to TCOLE. This requirement does not relieve a district from retaining all other relevant records not otherwise listed.~~

~~37 TAC 227.1~~

Limitation on
Number

~~The board may appoint not more than the greater of one school marshal per 200 students in average daily attendance per campus; or for each campus, one school marshal per building of the campus at which students regularly receive classroom instruction.
Education Code 37.0811(a)~~

Powers and Duties

~~A school marshal may make arrests and exercise all authority given to peace officers under the Code of Criminal Procedure, subject to written regulations adopted by the board.~~

~~A school marshal may only act as necessary to prevent or abate the commission of an offense that threatens serious bodily injury or death of students, faculty, or visitors on school premises.~~

~~A school marshal may not issue a traffic citation for a violation of the Transportation Code.~~

~~Code of Criminal Procedure 2.127~~

Reporting
Requirements

~~Once appointed, a school marshal shall:~~

- ~~1. Immediately report to TCOLE and the district any circumstance which would render them unauthorized to act as a school marshal by virtue of their employment with the district, failure to meet the standards of TCOLE, another state agency, or under law;~~
- ~~2. Immediately report to TCOLE any violation of applicable TCOLE standards, including any discharge of a firearm carried under the authorization of these provisions outside of training environment; and~~
- ~~3. Comply with all requirements under law, including Education Code 37.0811.~~

~~37 TAC 227.3(b)~~

Handgun
Possession

~~A school marshal may carry or possess a handgun on the physical premises of a school, but only:~~

- ~~1. In the manner provided by written regulations adopted by the board; and~~

	2.— At a specific school as specified by the board.
Accessing Handgun	A school marshal may access a handgun only under circumstances that would justify the use of deadly force under Penal Code 9.32 or 9.33.
Board Regulations	A board's written regulations must provide that if the primary duty of the school marshal involves regular, direct contact with students, the marshal may not carry a concealed handgun but may possess a handgun on the physical premises of a school in a locked and secured safe within the marshal's immediate reach when conducting the marshal's primary duty.
 Locked Gun Safe	
 Frangible Ammunition	The written regulations must also require that a handgun carried by or within access of a school marshal may be loaded only with frangible duty ammunition approved for that purpose by TCOLE.
Inactive Status	A school district employee's status as a school marshal becomes inactive on: 1.— Expiration of the employee's school marshal license under Occupations Code 1701.260; 2.— Suspension or revocation of the employee's handgun license; 3.— Termination of the employee's employment with the district; or 4.— Notice from the board that the employee's services as school marshal are no longer required. Education Code 37.0811(c)–(f)
Identity Confidential	The identity of a school marshal is confidential and is not subject to a request under the Public Information Act, except that the person's name, date of birth, and handgun license number, and the address of the person's place of employment must be provided by TCOLE to: 1.— The director of the Department of Public Safety; 2.— The district; 3.— The chief law enforcement officer of the local municipal law enforcement agency if the person is employed at a campus of a district located within a municipality; 4.— The sheriff of the county if the person is employed at a campus of a district that is not located within a municipality; and 5.— The chief administrator of any school district commissioned peace officer, if the person is employed at a district that has commissioned peace officers.

	<p>If a parent or guardian of a student enrolled at a school inquires in writing, the district shall provide the parent or guardian written notice indicating whether any employee of the school is currently appointed as a school marshal. The notice may not disclose information that is confidential.</p> <p>Education Code 37.0811(g), (h); Occupations Code 1701.260(j)</p>
No State Benefits	A school marshal is not entitled to state benefits normally provided by the state to a peace officer. Code of Criminal Procedure 2.127(c)
Handgun Licensees	By written regulations or written authorization, a district may permit a person to possess a firearm on the physical premises of a school, any grounds or building on which a school-sponsored activity is being conducted, or a passenger transportation vehicle of a school. Penal Code 46.03(a)(1); Education Code 11.151(b)
Written Permission	The holder of a handgun license does not commit a criminal offense under Penal Code 46.035 by carrying a handgun in a building where a high school sporting event or interscholastic event is taking place or at any meeting of the board when the person is lawfully carrying a handgun pursuant to a board's written regulations and authorization.
	A board may appoint a school marshal and authorize another person to serve under the district's regulations and authorization under Penal Code 46.03(a)(1).
	Att'y Gen. Op. GA-1051 (2014)
School Resource Officers	A school resource officer is a peace officer who is assigned by the officer's employing political subdivision to provide:
Definition	1. A police presence at a public school;
	2. Safety or drug education to students of a public school; or
	3. Other similar services.
	Occupations Code 1701.601
Refusal or Removal by School Resource Officer	A school resource officer may refuse to allow a person to enter on or may eject a person from property under the district's control in accordance with Education Code 37.105. Education Code 37.105(a); 19 TAC 103.1207 [See GKA]
License Required	A peace officer who is a visiting school resource officer in a public school must be licensed as provided by Occupations Code Chapter 1701. Occupations Code 1701.602

~~Firearms Accident
Prevention Program~~

~~A peace officer who is a visiting school resource officer in a public elementary school shall at least once each school year offer to provide instruction to students in a firearms accident prevention program, as determined by the district.~~

~~A firearms accident prevention program must include the safety message, "Stop! Don't Touch. Leave the Area. Tell an Adult.", and may include instructional materials from the National Rifle Association Eddie Eagle Gun Safe Program, including animated videos and activity books.~~

~~Occupations Code 1701.603~~

Training

A district with an enrollment of 30,000 or more students at which a school resource officer provides law enforcement shall require the officer to complete the education and training program developed by TCOLE. [See Training, above] ~~Education Code 37.0812; Occupations Code 1701.262, .263~~

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**School District
Peace Officers and
Security Personnel**

~~A board may employ security personnel and commission peace officers to carry out the provisions of Education Code Chapter 37, Subchapter C, relating to law and order.~~

Jurisdiction

~~A board shall determine the jurisdiction of a peace officer or security personnel, which may include all territory in the boundaries of the district and all property outside the boundaries of the district that is owned, leased, or rented by or otherwise under the control of the district.~~

Commissioned
Peace Officers

~~If a board authorizes security personnel to carry weapons, they must be commissioned peace officers. Any peace officer commissioned by the board must meet all minimum standards for peace officers established by the Texas Commission on Law Enforcement (TCOLE).~~

Education Code 37.081(a), (h)

*Powers and
Duties*

*Code of Criminal
Procedure*

~~Officers commissioned by the board are subject to the general duties of officers set out in Chapter 2 of the Code of Criminal Procedure. *Code of Criminal Procedure 2.12(8)*~~

~~A peace officer has the duty to preserve the peace within the officer's jurisdiction by using all lawful means.~~

~~The peace officer shall:~~

- ~~1. In every case authorized by the Code of Criminal Procedure, interfere without warrant to prevent or suppress crime;~~
- ~~2. Execute all lawful process issued to the officer by any magistrate or court;~~
- ~~3. Give notice to some magistrate of all offenses committed within the officer's jurisdiction, where the officer has good reason to believe there has been a violation of the penal law; and~~
- ~~4. Arrest offenders without warrant in every case where the officer is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.~~

~~It is the duty of every officer to take possession of a missing child under Code of Criminal Procedure 63.009(g).~~

~~On a request made by the Texas Civil Commitment Office, a peace officer shall execute an emergency detention order issued by that office under Health and Safety Code 841.0837.~~

~~In the course of investigating an alleged criminal offense, a peace officer may inquire as to the nationality or immigration status of a~~

~~victim or witness to the offense only if the officer determines that the inquiry is necessary to:~~

- ~~1.— Investigate the offense; or~~
- ~~2.— Provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.~~

~~This does not prevent a peace officer from conducting a separate investigation of any other alleged criminal offense, or inquiring as to the nationality or immigration status of a victim of or witness to a criminal offense if the officer has probable cause to believe that the victim or witness has engaged in specific conduct constituting a separate criminal offense.~~

~~*Code of Criminal Procedure 2.13*~~

Determined by
the Board

~~A district peace officer shall also perform law enforcement duties as determined by the board, which shall include protecting the safety and welfare of any person in the officer's jurisdiction and protecting property of the district. *Education Code 37.081(d)*~~

~~Within the officer's jurisdiction, a peace officer commissioned by the board:~~

- ~~1.— Has the powers, privileges, and immunities of peace officers;~~
- ~~2.— May enforce all laws, including municipal ordinances, county ordinances, and state laws;~~
- ~~3.— May take a child into custody in accordance with Chapter 52 of the Family Code [see GRA] or Article 45.058 of the Code of Criminal Procedure; and~~
- ~~4.— May dispose of cases in accordance with Family Code 52.03 or 52.031.~~

~~*Education Code 37.081(b); Family Code 52.01(a)*~~

~~A board shall determine the scope of the on-duty and off-duty law enforcement activities of its peace officers, and a district must authorize in writing any off-duty law enforcement activities performed by a district peace officer. *Education Code 37.081(e)*~~

~~A district peace officer may provide assistance to another law enforcement agency, and a district may contract with a political subdivision for the jurisdiction of district peace officers to include all territory in the jurisdiction of the political subdivision. *Education Code 37.081(e)*~~

Refusal or Removal by Peace Officer	A district peace officer may refuse to allow a person to enter on or may eject a person from property under the district's control in accordance with Education Code 37.105. Education Code 37.105(a); 19 TAC 103.1207 [See GKA]
Chief of Police	A district police department's chief of police is accountable to the superintendent and shall report to the superintendent. District police officers shall be licensed by TCOLE and be supervised by the district chief of police or the chief's designee. Education Code 37.081(f)
Memorandum of Understanding	A district police department and the law enforcement agencies with which it has overlapping jurisdiction shall enter into a memorandum of understanding that outlines reasonable communication and coordination efforts among the department and the agencies. Education Code 37.081(g)
Training	A district with an enrollment of 30,000 or more students that commissions a school district peace officer shall adopt a policy requiring the officer to complete the education and training program developed by TCOLE as required by Occupations Code 1701.263 before or within 120 days of the officer's commission by or placement in the district or a campus of the district. Education Code 37.0812; Occupations Code 1701.262, .263
Body-Worn Cameras	A law enforcement agency that operates a body-worn camera program shall adopt a policy for the use of body-worn cameras that must ensure that a body-worn camera is activated only for a law enforcement purpose and must include guidelines and provisions required by Occupations Code 1701.655(b). A policy may not require a peace officer to keep a body-worn camera activated for the entire period of the officer's shift. A policy must be consistent with the Federal Rules of Evidence and Texas Rules of Evidence. Before a law enforcement agency may operate a body-worn camera program, the agency must provide training to peace officers who will wear the body-worn cameras and any other personnel who will come into contact with video and audio data obtained from the use of body-worn cameras. Peace officers equipped with a body-worn camera must act consistent with policy and Occupations Code Chapter 1701, Subchapter N. Occupations Code 1701.655, .656, .657

~~Motor Vehicle Stops~~
~~Reports Required~~

~~A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:~~

- ~~1. A physical description of any person operating the motor vehicle who is detained as a result of the stop, including:
 - ~~a. The person's gender; and~~
 - ~~b. The person's race or ethnicity, as stated by the person or, if the person does not state his or her race or ethnicity, as determined by the officer to the best of the officer's ability;~~~~
- ~~2. The initial reason for the stop;~~
- ~~3. Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;~~
- ~~4. Whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;~~
- ~~5. The reason for the search, including whether:
 - ~~a. Any contraband or other evidence was in plain view;~~
 - ~~b. Any probable cause or reasonable suspicion existed to perform the search; or~~
 - ~~c. The search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;~~~~
- ~~6. Whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;~~
- ~~7. The street address or approximate location of the stop;~~
- ~~8. Whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and~~
- ~~9. Whether the officer used physical force that resulted in bodily injury, as defined under Penal Code 1.07, during the stop.~~

~~The district chief of police is responsible for auditing these reports to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.~~

~~Code of Criminal Procedure 2.133~~

~~A district police department shall compile and analyze the incident-based data contained in each report received by the department. Not later than March 1 of each year, each district police department shall submit a report containing the information compiled during the previous calendar year, in accordance with Code of Criminal Procedure 2.134, to TCOLE and to the governing body of each county or municipality served by the department. Code of Criminal Procedure 2.134~~

~~Civil Penalty~~

~~If a district's chief of police intentionally fails to submit the incident-based data as required by Code of Criminal Procedure 2.134, the department is liable to the state for a civil penalty in an amount not to exceed \$5,000 for each violation. Code of Criminal Procedure 2.1385(a)~~

~~Racial Profiling~~

~~Prohibition~~

~~A peace officer may not engage in racial profiling. Code of Criminal Procedure 2.131~~

~~Departmental
Policy Required~~

~~Each district police department that employs peace officers who make traffic stops in the routine performance of the officer's official duties shall adopt a detailed written policy on racial profiling. The policy must:~~

- ~~1. Clearly define acts constituting racial profiling;~~
- ~~2. Strictly prohibit peace officers employed by the department from engaging in racial profiling;~~
- ~~3. Implement a process by which an individual may file a complaint with the department if the individual believes that a peace officer employed by the department has engaged in racial profiling with respect to the individual;~~
- ~~4. Provide public education relating to the department's complaint and complaint process, including providing the telephone number, mailing address, and email address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;~~
- ~~5. Require appropriate corrective action to be taken against a peace officer employed by the department who, after an investigation, is shown to have engaged in racial profiling in violation of the department's policy adopted under this article;~~
- ~~6. Require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information relating to:~~

- a. ~~The race or ethnicity of the individual detained;~~
 - b. ~~Whether a search was conducted and, if so, whether the individual detained consented to the search;~~
 - c. ~~Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;~~
 - d. ~~Whether the peace officer used physical force that resulted in body injury, as defined in Penal Code 1.07, during the stop;~~
 - e. ~~The location of the stop; and~~
 - f. ~~The reason for the stop; and~~
7. ~~Require the district's chief of police to submit an annual report of the information collected under item 6 to:~~
- a. ~~TCOLE; and~~
 - b. ~~The governing body of each county or municipality served by the agency.~~

~~On adoption of a racial profiling policy, the department shall examine the feasibility of installing video camera and transmitter-activated equipment in each department law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each department law enforcement motorcycle regularly used to make motor vehicle stops. The department also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body-worn camera. [See Body Worn Cameras, above] If the department installs video or audio equipment or equips peace officers with body-worn cameras as provided by this provision, the policy adopted by the department must include standards for reviewing video and audio documentation.~~

~~A department shall review the data collected under item 6 above to identify any improvements the department could make in its practices and policies regarding motor vehicle stops.~~

~~A report required under item 7 above may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer.~~

~~*Code of Criminal Procedure 2.132*~~

~~Mental Health Crisis
or Substance Abuse
Issue~~

~~A law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:~~

- ~~1. There is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;~~
- ~~2. It is reasonable to divert the person;~~
- ~~3. The offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence;~~
- ~~4. The mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense; and~~
- ~~5. The person is not accused of specified offenses involving intoxication.~~

~~*Code of Criminal Procedure 16.23*~~

~~Officer Involved
Injury or Death~~

~~"Officer-involved injury or death" means an incident during which a peace officer discharges a firearm causing injury or death to another.~~

~~Not later than the 30th day after the date of an officer-involved injury or death, the law enforcement agency employing an officer involved in the incident must complete and submit a written or electronic report to the office of the attorney general. The report must include all information required by Code of Criminal Procedure 2.139(b).~~

~~*Code of Criminal Procedure 2.139*~~

~~Not later than the 30th day after the date of the occurrence of an incident in which, while a peace officer is performing an official duty, a person who is not a peace officer discharges a firearm and causes injury or death to the officer, the law enforcement agency employing the injured or deceased officer at the time of the incident must complete and submit a written or electronic report to the office of the attorney general. The report must include all information required by Code of Criminal Procedure 2.1395(a). *Code of Criminal Procedure 2.1395(b)*~~

~~*Failure to Report*~~

~~A law enforcement agency that fails to submit the required report on or before the seventh day after the date of receiving notice of failure to report from the office of the attorney general, is liable for a civil penalty in the amount of \$1,000 for each day after the seventh day that the agency fails to submit the report. Beginning on the day after the date of receiving notice of failure to report, a law enforcement agency that, in the preceding five-year period, has been liable for a civil penalty is liable for a civil penalty for each day the agency fails to submit the required report in the amount of \$10,000~~

	for the first day and \$1,000 for each additional day that the agency fails to submit the report. <i>Code of Criminal Procedure 2.13951(b), (c)</i>
Bonding	A commissioned and assigned peace officer shall take and file the oath required of peace officers and execute and file the required \$1,000 bond, payable to the board, conditioned on the officer's performance of his or her duties. <i>Education Code 37.081(h)</i>
Continuing Education	If a district employs peace officers, it shall provide each officer with a continuing education program as required by Occupations Code Title 10, Chapter 1701, Subchapter H. <i>Occupations Code 1701, Subch. H</i>
Complaints Against Peace Officers	To be considered by the head of the district's police department, a complaint against a district peace officer must be in writing and signed by the person making the complaint. A copy of the complaint shall be given to the officer within a reasonable time after it is filed. Disciplinary action may not be taken against the officer unless a copy of the signed complaint is given to the officer. The officer may not be indefinitely suspended or terminated based on the subject matter of the complaint unless the complaint is investigated and there is evidence to prove the allegation of misconduct. <i>Gov't Code Ch. 614, Subch. B; Colorado County v. Staff, 510 S.W.3d 435 (Tex. 2017); Atty. Gen. Op. GA-251 (2004)</i> On the commencement of an investigation by a district police department of a complaint that alleges that a peace officer employed by the department has engaged in racial profiling with respect to an individual and in which a video or audio recording of the occurrence on which the complaint is based was made, the department shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer. <i>Code of Criminal Procedure 2.132(f)</i> [See DGBA, FNG, and GF for appeals]
Legal Representation	A district shall provide a district employee who is a peace officer with legal counsel without cost to the employee to defend the employee against a suit for damages by a party other than a governmental entity if legal counsel is requested by the employee, and the suit involves an official act of the employee within the scope of the employee's authority. To defend the employee against the suit, the district may provide counsel already employed by it or may employ private counsel. An employee may recover from a district that fails to provide counsel as required the reasonable attorney's fees incurred in defend-

~~ing the suit if the trier of fact finds that the fees were incurred in de-
fending a suit and the employee is without fault or that the em-
ployee acted with a reasonable good faith belief that the em-
ployee's actions were proper.~~

~~Local Gov't Code 180.002(b)-(d)~~

Notice of Exposure
to Communicable
Disease

~~A district that employs emergency medical service employees, par-
amedics, firefighters, law enforcement officers or correctional offi-
cers must post the required notice in the form specified by adminis-
trative rule, in its workplace to inform employees about Health and
Safety Code requirements which may affect qualifying for workers'
compensation benefits following a work-related exposure to a re-
portable communicable disease. 28 TAC 110.108~~

Note: For general provisions applicable to district security per-
sonnel, including school marshals, see CKE.

Board
Authority **School**
Marshals

The board may appoint one or more school marshals for each
campus. Education Code 37.0811(a)

kgc 6/30/19: HB 1387, effective 9.1.19, applies beginning with the
2019-20 school year.

Definition

A school marshal is a person who is appointed to serve as a school
marshal by the board under Education Code 37.0811, is licensed
under Occupations Code 1701.260, and has powers and duties de-
scribed by Code of Criminal Procedure Article 2.127. *Occupations
Code 1701.001(8)*

Eligibility

The board may select for appointment as a school marshal an ap-
plicant who is ~~a person as a school marshal if the person is~~ an em-
ployee of the district and certified ~~by TCOLE~~ as eligible for appoint-
ment under Occupations Code 1701.260. Education Code
37.0811(b)

To be eligible for appointment as a school marshal, an applicant
shall:

1. sSuccessfully complete all prerequisite ~~commission~~ Texas
Commission on Law Enforcement (TCOLE) training;
2. pPass the state licensing exam;
3. bBe employed and appointed by an authorized school district;
and
4. mMeet all statutory requirements, including psychological fit-
ness.

[37 TAC 227.3\(a\); Code of Criminal Procedure 2.127\(d\)](#)

[A school marshal training program is open to any employee of a district who holds a license to carry a handgun issued under Government Code Chapter 411, Subchapter H. 37 TAC 227.5\(a\)](#)

~~Texas Commission on Law Enforcement (TCOLE)~~ shall license an eligible person who:

1. Completes required training [to the satisfaction of TCOLE staff](#); and
2. Is psychologically fit to carry out the duties of a school marshal as indicated by the results of ~~a required~~ [the psychological examination administered under Occupations Code 1701.260\(d\)](#).

~~2.~~ [Occupations Code 1701.260\(f\)](#)

~~The TCOLE training program is open to any employee of a school district who holds a license to carry a handgun issued under Government Code Chapter 411, Subchapter H.~~

~~A person may not serve as a school marshal unless the person is licensed by TCOLE and appointed by the board. A school district shall not appoint or employ an ineligible person as a school marshal.~~

[kcg 6/30/19: statutory tightening; removing provisions that are redundant or state the obvious; and associating cite with each provision rather than the string cite below.](#)

Reimbursement for Training

The board may, but shall not be required to, reimburse the amount paid by the applicant to participate in the training program under Occupations Code 1701.260. [Education Code 37.0811\(b\)](#)

~~Education Code 37.0811(b); Occupations Code 1701.260, .301; Code of Criminal Procedure 2.127(d); 37 TAC 227.1(b), .3(a), .5(a)~~

District Responsibilities

A district shall:

1. Submit and receive approval for an application to appoint a person as a school marshal;
2. Upon authorization, notify TCOLE using approved format prior to appointment;
3. Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the district;

4. Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the district, TCOLE standards, another state agency, or under other law; and
5. Immediately report to the commission a school marshal's violation of any commission standard, including the discharge of a firearm carried under the authorization of these provisions outside of a training environment.

For five years, the district must retain documentation that the district has met all requirements under law in a format readily accessible to TCOLE. This requirement does not relieve a district from retaining all other relevant records not otherwise listed.

37 TAC 227.1

Limitation on
Number

~~The board may appoint not more than the greater of one school marshal per 200 students in average daily attendance per campus; or for each campus, one school marshal per building of the campus at which students regularly receive classroom instruction. Education Code 37.0811(a)~~

kgc 6/30/19: changed by HB 1387, effective 9.1.19.

Powers and Duties

A school marshal may make arrests and exercise all authority given to peace officers under the Code of Criminal Procedure, subject to written regulations adopted by the board.

A school marshal may only act as necessary to prevent or abate the commission of an offense that threatens serious bodily injury or death of students, faculty, or visitors on school premises.

A school marshal may not issue a traffic citation for a violation of the Transportation Code.

Code of Criminal Procedure 2.127

Reporting
Requirements

Once appointed, a school marshal shall:

1. Immediately report to TCOLE and the district any circumstance which would render them unauthorized to act as a school marshal by virtue of their employment with the district, failure to meet the standards of TCOLE, another state agency, or under law;
2. Immediately report to TCOLE any violation of applicable TCOLE standards, including any discharge of a firearm carried under the authorization of these provisions outside of training environment; and

3. Comply with all requirements under law, including Education Code 37.0811.

37 TAC 227.3(b)

Handgun Possession

A school marshal may carry or possess a handgun on the physical premises of a school, but only:

1. In the manner provided by written regulations adopted by the board; and
2. At a specific school as specified by the board.

Accessing Handgun

A school marshal may access a handgun only under circumstances that would justify the use of deadly force under Penal Code 9.32 or 9.33.

Board Regulations
Locked Gun Safe

A board's written regulations must provide that [a school marshal may carry a concealed handgun, except that](#) if the primary duty of the school marshal involves regular, direct contact with students, the marshal may not carry a concealed handgun but may possess a handgun on the physical premises of a school in a locked and secured safe within the marshal's immediate reach when conducting the marshal's primary duty.

Frangible Ammunition

The written regulations must also require that a handgun carried by or within access of a school marshal may be loaded only with frangible duty ammunition approved for that purpose by TCOLE.

Inactive Status

A ~~school~~ district employee's status as a school marshal becomes inactive on:

1. Expiration of the employee's school marshal license under Occupations Code 1701.260;
2. Suspension or revocation of the employee's ~~handgun~~-license [to carry a handgun](#);
3. Termination of the employee's employment with the district; or
4. Notice from the board that the employee's services as school marshal are no longer required.

Education Code 37.0811(c)-(f)

kgc 6/30/19: statutory tightening

Identity Confidential

The identity of a school marshal is confidential and is not subject to a request under the Public Information Act, except that the person's name, date of birth, and handgun license number, and the address of the person's place of employment must be provided by TCOLE to:

1. The director of the Department of Public Safety;
2. The district;
3. The chief law enforcement officer of the local municipal law enforcement agency if the person is employed at a campus of a district located within a municipality;
4. The sheriff of the county if the person is employed at a campus of a district that is not located within a municipality; and
5. The chief administrator of any school district-commissioned peace officer, if the person is employed at a district that has commissioned peace officers.

If a parent or guardian of a student enrolled at a school inquires in writing, the district shall provide the parent or guardian written notice indicating whether any employee of the school is currently appointed as a school marshal. The notice may not disclose information that is confidential.

Education Code 37.0811(g), (h); Occupations Code 1701.260(j)

No State Benefits

A school marshal is not entitled to state benefits normally provided by the state to a peace officer. *Code of Criminal Procedure 2.127(c)*

Handgun Licensees

Written Permission

~~By written regulations or written authorization, a district may permit a person to possess a firearm on the physical premises of a school, any grounds or building on which a school-sponsored activity is being conducted, or a passenger transportation vehicle of a school. *Penal Code 46.03(a)(1); Education Code 11.151(b)*~~

~~The holder of a handgun license does not commit a criminal offense under Penal Code 46.035 by carrying a handgun in a building where a high school sporting event or interscholastic event is taking place or at any meeting of the board when the person is lawfully carrying a handgun pursuant to a board's written regulations and authorization.~~

~~A board may appoint a school marshal and authorize another person to serve under the district's regulations and authorization under Penal Code 46.03(a)(1).~~

~~*Att'y Gen. Op. GA-1051 (2014)*~~

School Resource Officers

Definition

~~A school resource officer is a peace officer who is assigned by the officer's employing political subdivision to provide:~~

- ~~1.— A police presence at a public school;~~
- ~~2.— Safety or drug education to students of a public school; or~~

~~3.—Other similar services.~~

~~Occupations Code 1701.601~~

~~Refusal or Removal by School Resource Officer~~ A school resource officer may refuse to allow a person to enter on or may eject a person from property under the district's control in accordance with Education Code 37.105. ~~Education Code 37.105(a); 19 TAC 103.1207 [See GKA]~~

~~License Required~~ A peace officer who is a visiting school resource officer in a public school must be licensed as provided by Occupations Code Chapter 1701. ~~Occupations Code 1701.602~~

~~Firearms Accident Prevention Program~~ A peace officer who is a visiting school resource officer in a public elementary school shall at least once each school year offer to provide instruction to students in a firearms accident prevention program, as determined by the district.

~~A firearms accident prevention program must include the safety message, "Stop! Don't Touch. Leave the Area. Tell an Adult.", and may include instructional materials from the National Rifle Association Eddie Eagle Gun Safe Program, including animated videos and activity books.~~

~~Occupations Code 1701.603~~

~~Training~~ A district with an enrollment of 30,000 or more students at which a school resource officer provides law enforcement shall require the officer to complete the education and training program developed by TCOLE. ~~[See Training, above] Education Code 37.0812; Occupations Code 1701.262, .263~~

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School District Peace Officers and Security Personnel	A board may employ security personnel and commission peace officers to carry out the provisions of Education Code Chapter 37, Subchapter C, relating to law and order.
Jurisdiction	A board shall determine the jurisdiction of a peace officer or security personnel, which may include all territory in the boundaries of the district and all property outside the boundaries of the district that is owned, leased, or rented by or otherwise under the control of the district.
Commissioned Peace Officers	If a board authorizes security personnel to carry weapons, they must be commissioned peace officers. Any peace officer commissioned by the board must meet all minimum standards for peace officers established by the Texas Commission on Law Enforcement (TCOLE). <i>Education Code 37.081(a), (h)</i>
Powers and Duties Code of Criminal Procedure	Officers commissioned by the board are subject to the general duties of officers set out in Chapter 2 of the Code of Criminal Procedure. <i>Code of Criminal Procedure 2.12(8)</i> A peace officer has the duty to preserve the peace within the officer's jurisdiction by using all lawful means. The peace officer shall: 1. In every case authorized by the Code of Criminal Procedure, interfere without warrant to prevent or suppress crime; 2. Execute all lawful process issued to the officer by any magistrate or court; 3. Give notice to some magistrate of all offenses committed within the officer's jurisdiction, where the officer has good reason to believe there has been a violation of the penal law; and 4. Arrest offenders without warrant in every case where the officer is authorized by law, in order that they may be taken before the proper magistrate or court and be tried. It is the duty of every officer to take possession of a missing child under Code of Criminal Procedure 63.009(g). On a request made by the Texas Civil Commitment Office, a peace officer shall execute an emergency detention order issued by that office under Health and Safety Code 841.0837. In the course of investigating an alleged criminal offense, a peace officer may inquire as to the nationality or immigration status of a victim or witness to the offense only if the officer determines that the inquiry is necessary to:

- ~~1.— Investigate the offense; or~~
- ~~2.— Provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.~~

~~This does not prevent a peace officer from conducting a separate investigation of any other alleged criminal offense, or inquiring as to the nationality or immigration status of a victim of or witness to a criminal offense if the officer has probable cause to believe that the victim or witness has engaged in specific conduct constituting a separate criminal offense.~~

~~*Code of Criminal Procedure 2.13*~~

Determined by
the Board

~~A district peace officer shall also perform law enforcement duties as determined by the board, which shall include protecting the safety and welfare of any person in the officer's jurisdiction and protecting property of the district. *Education Code 37.081(d)*~~

~~Within the officer's jurisdiction, a peace officer commissioned by the board:~~

- ~~1.— Has the powers, privileges, and immunities of peace officers;~~
- ~~2.— May enforce all laws, including municipal ordinances, county ordinances, and state laws;~~
- ~~3.— May take a child into custody in accordance with Chapter 52 of the Family Code [see GRA] or Article 45.058 of the Code of Criminal Procedure; and~~
- ~~4.— May dispose of cases in accordance with Family Code 52.03 or 52.031.~~

~~*Education Code 37.081(b); Family Code 52.01(a)*~~

~~A board shall determine the scope of the on-duty and off-duty law enforcement activities of its peace officers, and a district must authorize in writing any off-duty law enforcement activities performed by a district peace officer. *Education Code 37.081(e)*~~

~~A district peace officer may provide assistance to another law enforcement agency, and a district may contract with a political subdivision for the jurisdiction of district peace officers to include all territory in the jurisdiction of the political subdivision. *Education Code 37.081(e)*~~

Refusal or
Removal by
Peace Officer

~~A district peace officer may refuse to allow a person to enter on or may eject a person from property under the district's control in accordance with Education Code 37.105. *Education Code 37.105(a); 19 TAC 103.1207 [See GKA]*~~

Chief of Police	A district police department's chief of police is accountable to the superintendent and shall report to the superintendent. District police officers shall be licensed by TCOLE and be supervised by the district chief of police or the chief's designee. Education Code 37.081(f)
Memorandum of Understanding	A district police department and the law enforcement agencies with which it has overlapping jurisdiction shall enter into a memorandum of understanding that outlines reasonable communication and coordination efforts among the department and the agencies. Education Code 37.081(g)
Training	A district with an enrollment of 30,000 or more students that commissions a school district peace officer shall adopt a policy requiring the officer to complete the education and training program developed by TCOLE as required by Occupations Code 1701.263 before or within 120 days of the officer's commission by or placement in the district or a campus of the district. Education Code 37.0812; Occupations Code 1701.262, .263
Body-Worn Cameras	A law enforcement agency that operates a body-worn camera program shall adopt a policy for the use of body-worn cameras that must ensure that a body-worn camera is activated only for a law enforcement purpose and must include guidelines and provisions required by Occupations Code 1701.655(b). A policy may not require a peace officer to keep a body-worn camera activated for the entire period of the officer's shift. A policy must be consistent with the Federal Rules of Evidence and Texas Rules of Evidence. Before a law enforcement agency may operate a body-worn camera program, the agency must provide training to peace officers who will wear the body-worn cameras and any other personnel who will come into contact with video and audio data obtained from the use of body-worn cameras. Peace officers equipped with a body-worn camera must act consistent with policy and Occupations Code Chapter 1701, Subchapter N. Occupations Code 1701.655, .656, .657
Motor Vehicle Stops Reports Required	A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including: 1. A physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

- a. ~~The person's gender; and~~
- b. ~~The person's race or ethnicity, as stated by the person or, if the person does not state his or her race or ethnicity, as determined by the officer to the best of the officer's ability;~~
2. ~~The initial reason for the stop;~~
3. ~~Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;~~
4. ~~Whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;~~
5. ~~The reason for the search, including whether:~~
 - a. ~~Any contraband or other evidence was in plain view;~~
 - b. ~~Any probable cause or reasonable suspicion existed to perform the search; or~~
 - c. ~~The search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;~~
6. ~~Whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;~~
7. ~~The street address or approximate location of the stop;~~
8. ~~Whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and~~
9. ~~Whether the officer used physical force that resulted in bodily injury, as defined under Penal Code 1.07, during the stop.~~

~~The district chief of police is responsible for auditing these reports to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.~~

~~*Code of Criminal Procedure 2.133*~~

~~A district police department shall compile and analyze the incident-based data contained in each report received by the department. Not later than March 1 of each year, each district police department shall submit a report containing the information compiled during the~~

	previous calendar year, in accordance with Code of Criminal Procedure 2.134, to TCOLE and to the governing body of each county or municipality served by the department. Code of Criminal Procedure 2.134
Civil Penalty	If a district's chief of police intentionally fails to submit the incident-based data as required by Code of Criminal Procedure 2.134, the department is liable to the state for a civil penalty in an amount not to exceed \$5,000 for each violation. Code of Criminal Procedure 2.1385(a)
Racial Profiling Prohibition	A peace officer may not engage in racial profiling. Code of Criminal Procedure 2.131
Departmental Policy Required	Each district police department that employs peace officers who make traffic stops in the routine performance of the officer's official duties shall adopt a detailed written policy on racial profiling. The policy must: <ol style="list-style-type: none">1. Clearly define acts constituting racial profiling;2. Strictly prohibit peace officers employed by the department from engaging in racial profiling;3. Implement a process by which an individual may file a complaint with the department if the individual believes that a peace officer employed by the department has engaged in racial profiling with respect to the individual;4. Provide public education relating to the department's complaint and complaint process, including providing the telephone number, mailing address, and email address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;5. Require appropriate corrective action to be taken against a peace officer employed by the department who, after an investigation, is shown to have engaged in racial profiling in violation of the department's policy adopted under this article;6. Require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information relating to:<ol style="list-style-type: none">a. The race or ethnicity of the individual detained;b. Whether a search was conducted and, if so, whether the individual detained consented to the search;

- ~~c. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;~~
- ~~d. Whether the peace officer used physical force that resulted in body injury, as defined in Penal Code 1.07, during the stop;~~
- ~~e. The location of the stop; and~~
- ~~f. The reason for the stop; and~~

~~7. Require the district's chief of police to submit an annual report of the information collected under item 6 to:~~

- ~~a. TCOLE; and~~
- ~~b. The governing body of each county or municipality served by the agency.~~

~~On adoption of a racial profiling policy, the department shall examine the feasibility of installing video camera and transmitter-activated equipment in each department law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each department law enforcement motorcycle regularly used to make motor vehicle stops. The department also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body-worn camera. [See Body Worn Cameras, above] If the department installs video or audio equipment or equips peace officers with body-worn cameras as provided by this provision, the policy adopted by the department must include standards for reviewing video and audio documentation.~~

~~A department shall review the data collected under item 6 above to identify any improvements the department could make in its practices and policies regarding motor vehicle stops.~~

~~A report required under item 7 above may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer.~~

~~*Code of Criminal Procedure 2.132*~~

~~Mental Health Crisis
or Substance Abuse
Issue~~

~~A law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:~~

- ~~1. There is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;~~

- ~~2.— It is reasonable to divert the person;~~
- ~~3.— The offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence;~~
- ~~4.— The mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense; and~~
- ~~5.— The person is not accused of specified offenses involving intoxication.~~

~~*Code of Criminal Procedure 16.23*~~

~~Officer-Involved
Injury or Death~~

~~“Officer-involved injury or death” means an incident during which a peace officer discharges a firearm causing injury or death to another.~~

~~Not later than the 30th day after the date of an officer-involved injury or death, the law enforcement agency employing an officer involved in the incident must complete and submit a written or electronic report to the office of the attorney general. The report must include all information required by Code of Criminal Procedure 2.139(b).~~

~~*Code of Criminal Procedure 2.139*~~

~~Not later than the 30th day after the date of the occurrence of an incident in which, while a peace officer is performing an official duty, a person who is not a peace officer discharges a firearm and causes injury or death to the officer, the law enforcement agency employing the injured or deceased officer at the time of the incident must complete and submit a written or electronic report to the office of the attorney general. The report must include all information required by Code of Criminal Procedure 2.1395(a). *Code of Criminal Procedure 2.1395(b)*~~

~~Failure to Report~~

~~A law enforcement agency that fails to submit the required report on or before the seventh day after the date of receiving notice of failure to report from the office of the attorney general, is liable for a civil penalty in the amount of \$1,000 for each day after the seventh day that the agency fails to submit the report. Beginning on the day after the date of receiving notice of failure to report, a law enforcement agency that, in the preceding five-year period, has been liable for a civil penalty is liable for a civil penalty for each day the agency fails to submit the required report in the amount of \$10,000 for the first day and \$1,000 for each additional day that the agency fails to submit the report. *Code of Criminal Procedure 2.13951(b), (c)*~~

Bonding	A commissioned and assigned peace officer shall take and file the oath required of peace officers and execute and file the required \$1,000 bond, payable to the board, conditioned on the officer's performance of his or her duties. Education Code 37.081(h)
Continuing Education	If a district employs peace officers, it shall provide each officer with a continuing education program as required by Occupations Code Title 10, Chapter 1701, Subchapter H. Occupations Code 1701, Subch. H
Complaints Against Peace Officers	To be considered by the head of the district's police department, a complaint against a district peace officer must be in writing and signed by the person making the complaint. A copy of the complaint shall be given to the officer within a reasonable time after it is filed. Disciplinary action may not be taken against the officer unless a copy of the signed complaint is given to the officer. The officer may not be indefinitely suspended or terminated based on the subject matter of the complaint unless the complaint is investigated and there is evidence to prove the allegation of misconduct. Gov't Code Ch. 614, Subch. B; Colorado County v. Staff, 510 S.W.3d 435 (Tex. 2017); Atty. Gen. Op. GA-251 (2004) <p>On the commencement of an investigation by a district police department of a complaint that alleges that a peace officer employed by the department has engaged in racial profiling with respect to an individual and in which a video or audio recording of the occurrence on which the complaint is based was made, the department shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer. Code of Criminal Procedure 2.132(f)</p> <p>[See DGBA, FNG, and GF for appeals]</p>
Legal Representation	A district shall provide a district employee who is a peace officer with legal counsel without cost to the employee to defend the employee against a suit for damages by a party other than a governmental entity if legal counsel is requested by the employee, and the suit involves an official act of the employee within the scope of the employee's authority. <p>To defend the employee against the suit, the district may provide counsel already employed by it or may employ private counsel.</p> <p>An employee may recover from a district that fails to provide counsel as required the reasonable attorney's fees incurred in defending the suit if the trier of fact finds that the fees were incurred in defending a suit and the employee is without fault or that the employee acted with a reasonable good faith belief that the employee's actions were proper.</p>

	Local Gov't Code 180.002(b)-(d)
Notice of Exposure to Communicable Disease	A district that employs emergency medical service employees, paramedics, firefighters, law enforcement officers or correctional officers must post the required notice in the form specified by administrative rule, in its workplace to inform employees about Health and Safety Code requirements which may affect qualifying for workers' compensation benefits following a work-related exposure to a reportable communicable disease. 28 TAC 110.108
School Marshals	A school marshal is a person who is appointed to serve as a school marshal by the board under Education Code 37.0811, is licensed under Occupations Code 1701.260, and has powers and duties described by Code of Criminal Procedure Article 2.127. Occupations Code 1701.001(8)
Eligibility	The board may appoint a person as a school marshal if the person is an employee of the district and certified by TCOLE as eligible for appointment. TCOLE shall license an eligible person who: <ol style="list-style-type: none">1. Completes required training; and2. Is psychologically fit to carry out the duties of a school marshal as indicated by the results of a required psychological examination. <p>The TCOLE training program is open to any employee of a school district who holds a license to carry a handgun issued under Government Code Chapter 411, Subchapter H.</p> <p>A person may not serve as a school marshal unless the person is licensed by TCOLE and appointed by the board. A school district shall not appoint or employ an ineligible person as a school marshal.</p>
Reimbursement for Training	The board may, but shall not be required to, reimburse the amount paid by the applicant to participate in the training program under Occupations Code 1701.260. Education Code 37.0811(b); Occupations Code 1701.260, .301; Code of Criminal Procedure 2.127(d); 37 TAC 227.1(b), .3(a), .5(a)
District Responsibilities	A district shall: <ol style="list-style-type: none">1. Submit and receive approval for an application to appoint a person as a school marshal;2. Upon authorization, notify TCOLE using approved format prior to appointment;

- ~~3.— Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the district;~~
- ~~4.— Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the district, TCOLE standards, another state agency, or under other law; and~~
- ~~5.— Immediately report to the commission a school marshal's violation of any commission standard, including the discharge of a firearm carried under the authorization of these provisions outside of a training environment.~~

~~For five years, the district must retain documentation that the district has met all requirements under law in a format readily accessible to TCOLE. This requirement does not relieve a district from retaining all other relevant records not otherwise listed.~~

~~37 TAG 227.1~~

Limitation on
Number

~~The board may appoint not more than the greater of one school marshal per 200 students in average daily attendance per campus; or for each campus, one school marshal per building of the campus at which students regularly receive classroom instruction.
Education Code 37.0811(a)~~

Powers and Duties

~~A school marshal may make arrests and exercise all authority given to peace officers under the Code of Criminal Procedure, subject to written regulations adopted by the board.~~

~~A school marshal may only act as necessary to prevent or abate the commission of an offense that threatens serious bodily injury or death of students, faculty, or visitors on school premises.~~

~~A school marshal may not issue a traffic citation for a violation of the Transportation Code.~~

~~*Code of Criminal Procedure 2.127*~~

Reporting
Requirements

~~Once appointed, a school marshal shall:~~

- ~~1.— Immediately report to TCOLE and the district any circumstance which would render them unauthorized to act as a school marshal by virtue of their employment with the district, failure to meet the standards of TCOLE, another state agency, or under law;~~

	<p>2. Immediately report to TCOLE any violation of applicable TCOLE standards, including any discharge of a firearm carried under the authorization of these provisions outside of training environment; and</p> <p>3. Comply with all requirements under law, including Education Code 37.0811.</p> <p>37 TAC 227.3(b)</p>
Handgun Possession	<p>A school marshal may carry or possess a handgun on the physical premises of a school, but only:</p> <p>1. In the manner provided by written regulations adopted by the board; and</p> <p>2. At a specific school as specified by the board.</p>
Accessing Handgun	<p>A school marshal may access a handgun only under circumstances that would justify the use of deadly force under Penal Code 9.32 or 9.33.</p>
Board Regulations Locked Gun Safe	<p>A board's written regulations must provide that if the primary duty of the school marshal involves regular, direct contact with students, the marshal may not carry a concealed handgun but may possess a handgun on the physical premises of a school in a locked and secured safe within the marshal's immediate reach when conducting the marshal's primary duty.</p>
Frangible Ammunition	<p>The written regulations must also require that a handgun carried by or within access of a school marshal may be loaded only with frangible duty ammunition approved for that purpose by TCOLE.</p>
Inactive Status	<p>A school district employee's status as a school marshal becomes inactive on:</p> <p>1. Expiration of the employee's school marshal license under Occupations Code 1701.260;</p> <p>2. Suspension or revocation of the employee's handgun license;</p> <p>3. Termination of the employee's employment with the district; or</p> <p>4. Notice from the board that the employee's services as school marshal are no longer required.</p> <p>Education Code 37.0811(c)-(f)</p>
Identity Confidential	<p>The identity of a school marshal is confidential and is not subject to a request under the Public Information Act, except that the person's name, date of birth, and handgun license number, and the</p>

~~address of the person's place of employment must be provided by TCOLE to:~~

- ~~1. The director of the Department of Public Safety;~~
- ~~2. The district;~~
- ~~3. The chief law enforcement officer of the local municipal law enforcement agency if the person is employed at a campus of a district located within a municipality;~~
- ~~4. The sheriff of the county if the person is employed at a campus of a district that is not located within a municipality; and~~
- ~~5. The chief administrator of any school district commissioned peace officer, if the person is employed at a district that has commissioned peace officers.~~

~~If a parent or guardian of a student enrolled at a school inquires in writing, the district shall provide the parent or guardian written notice indicating whether any employee of the school is currently appointed as a school marshal. The notice may not disclose information that is confidential.~~

~~Education Code 37.0811(g), (h); Occupations Code 1701.260(j)~~

~~No State Benefits~~

~~A school marshal is not entitled to state benefits normally provided by the state to a peace officer. Code of Criminal Procedure 2.127(c)~~

~~Handgun Licensees~~

~~Written Permission~~

~~By written regulations or written authorization, a district may permit a person to possess a firearm on the physical premises of a school, any grounds or building on which a school-sponsored activity is being conducted, or a passenger transportation vehicle of a school. Penal Code 46.03(a)(1); Education Code 11.151(b)~~

~~The holder of a handgun license does not commit a criminal offense under Penal Code 46.035 by carrying a handgun in a building where a high school sporting event or interscholastic event is taking place or at any meeting of the board when the person is lawfully carrying a handgun pursuant to a board's written regulations and authorization.~~

~~A board may appoint a school marshal and authorize another person to serve under the district's regulations and authorization under Penal Code 46.03(a)(1).~~

~~Att'y Gen. Op. GA-1051 (2014)~~

Note: For general provisions applicable to district security personnel, including school resource officers, see CKE.

kgc 7/8/19: This formatting looks weird, but I think it looks ok with tracked changes off.

ARD 7/9/19: KGC, I fixed formatting above. The stricken text had just been pulled into the Note style, which is why the margin notes were all in line with the text and everything had hanging indent.

Definition
School Resource Officers

Definition

A school resource officer is a peace officer who is assigned by the officer's employing political subdivision to provide:

1. A police presence at a public school;
2. Safety or drug education to students of a public school; or
3. Other similar services.

Occupations Code 1701.601

**Refusal or Removal
by School Resource
Officer**

~~A school resource officer may refuse to allow a person to enter on or may eject a person from property under the district's control in accordance with Education Code 37.105. Education Code 37.105(a); 19 TAC 103.1207 [See GKA]~~

License Required

A peace officer who is a visiting school resource officer in a public school must be licensed as provided by Occupations Code Chapter 1701. *Occupations Code 1701.602*

**Firearms Accident
Prevention Program**

A peace officer who is a visiting school resource officer in a public elementary school shall at least once each school year offer to provide instruction to students in a firearms accident prevention program, as determined by the district.

A firearms accident prevention program must include the safety message, "Stop! Don't Touch. Leave the Area. Tell an Adult.", and may include instructional materials from the National Rifle Association Eddie Eagle Gun Safe Program, including animated videos and activity books.

Occupations Code 1701.603

Training

~~A district with an enrollment of 30,000 or more students at which a school resource officer provides law enforcement shall require the officer to complete the education and training program developed by TCOLE. [See Training, above] Education Code 37.0812; Occupations Code 1701.262, .263~~

kgc 7/3/19: left at CKE bc it applies to other officers.

Reduction of Energy Consumption

A board shall establish a long-range energy plan to reduce a district's annual electric consumption by five percent beginning with the 2008 state fiscal year and consume electricity in subsequent fiscal years in accordance with the district's energy plan. The plan must include:

1. Strategies for achieving energy efficiency, including facility design and construction, that:
 - a. Result in net savings for the district; or
 - b. Can be achieved without financial cost to the district; and
2. For each strategy identified above, the initial, short-term capital costs and lifetime costs and savings that may result from implementation of the strategy.

In determining whether a strategy may result in financial cost to the district, the board shall consider the total net costs and savings that may occur over the seven-year period following implementation of the strategy.

The board may submit the plan to the State Energy Conservation Office for the purposes of determining whether funds available through loan programs administered by the office or tax incentives administered by the state or federal government are available to the district. The board may not disallow any proper allocation of incentives.

Education Code 44.902

Energy or Water Conservation Measures

"Energy savings performance contract" has the meaning assigned by Local Government Code 302.001.

Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. An energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

The board may enter into energy savings performance contracts only with persons who are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

The contracting and delivery procedures for construction projects described at Government Code Chapter 2269 do not apply to energy savings performance contracts.

Performance Bond Before entering an energy savings performance contract, a board shall require the provider of the energy or water conservation measures to file a payment and performance bond relating to the installation of the measures in accordance with Government Code Chapter 2253. A board may also require a separate bond to cover the value of the guaranteed savings on the contract.

Financing An energy savings performance contract may be financed:

1. Under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing.
2. With the proceeds of bonds.
3. Under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

Notwithstanding other law, the board may use any available money to pay the provider of the energy or water conservation measures, and the board is not required to pay for such costs solely out of the savings realized by the district under an energy savings performance contract.

An energy savings performance contract for energy or water conservation measures shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by a district under the contract. If the term of an energy savings performance contract exceeds one year, the district's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures as determined by the district, divided by the number of years in the contract term.

Contract Procurement An energy savings performance contract shall be let according to the procedures established for professional services by Government Code 2254.004 (the Professional Services Procurement Act). [See CH] Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

The board may contract with the provider of the energy or water conservation measures to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

Cost Savings Review

Before entering into an energy savings performance contract, the board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract.

Education Code 44.901

Energy Usage Report

~~A district shall record in an electronic repository the district's metered amount of electricity, water, or natural gas consumed for which it is responsible to pay and the aggregate costs for those utility services. A district shall report the recorded information on a publicly accessible Internet website with an interface designed for ease of navigation if available, or at another publicly accessible location. Gov't Code 2265.001~~

kgc 7/5/19: SB 668, effective 6.10.19, defined "gov'tal entity" to specifically exclude school districts.

Light Bulbs

~~A district shall purchase for use in each type of light fixture in an instructional facility the commercially available model of light bulb that:~~

- ~~1. Uses the fewest watts for the necessary luminous flux or light output;~~
- ~~2. Is compatible with the light fixture; and~~
- ~~3. Is the most cost-effective, considering the factors described above.~~

~~*Education Code 44.903*~~

~~[See CS for energy conservation measures related to outdoor lighting fixtures]~~

kgc 7/5/19: Repealed by SB 1376, effective 6.4.19, & SB 668, effective 6.10.19

Recycling Program

In cooperation with the comptroller or the Texas Commission on Environmental Quality (TCEQ), a district shall establish a program for the separation and collection of all recyclable materials generated by the district's operations, including at a minimum, aluminum, steel containers, aseptic packaging, polycoated paperboard cartons, high-grade office paper, and corrugated cardboard. "Recyclable materials" includes materials in a district's possession that have been abandoned or disposed of by the district's officers or employees or by any other person.

A district shall also:

1. Provide procedures for collecting and storing recyclable materials, ~~provide~~ containers for recyclable materials, and ~~provide~~ procedures for making contractual or other arrangements with buyers of recyclable materials.
2. Evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled.
3. Establish educational and incentive programs to encourage maximum employee participation.

~~A district may seek an exemption~~ TCEQ by order shall exempt from compliance with these provisions:

1. ~~a~~ A district with a student enrollment of fewer than 10,000 students; and
2. A district if the district petitions TCEQ for an exemption and TCEQ finds that compliance would work a hardship on the district ~~if it has a population of less than 5,000 within its geographic boundaries and demonstrates to the TCEQ that compliance would work a hardship on the district.~~

Health and Safety Code 361.425

kgc 7/5/19: SB 1376, effective 6.4.19.

Certificate of Mold Remediation

When a district sells property, the district shall provide to the buyer a copy of any certificate of mold remediation that has been issued for the property during the five years preceding the date the district sells the property. *Occupations Code 1958.154(b); 16 TAC 78.150(e)*

Pools

Generally

An owner, manager, operator, or other attendant in charge of a public swimming pool, wading pool, baby pool, hot tub, in-ground spa, spray fountain, or other artificial body of water typically used for recreational swimming, bathing, or play shall comply with relevant pool safety standards necessary to prevent drowning adopted by the executive commissioner of the Health and Human Services Commission. *Health and Safety Code 341.0645; 25 TAC 265.181-.208*

Drains

Each public pool and spa shall comply with the drain cover standards found at 15 U.S.C. Section 8003. "Public pool and spa" means a swimming pool or spa that is open to the public generally, whether for a fee or free of charge. *15 U.S.C. 8003*

Note: For provisions regarding selection and adoption of instructional materials, see EFA.

kgc 7/5/19: Changes throughout from HB 4170, effective 9.1.19, reenacting the 2-3 versions of these statutes from last session. I hope I caught them all.

Technology and Instructional Materials and Technology

Instructional materials selected for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by Education Code 31.104(d), a district may not charge a student for instructional material or technological equipment purchased by the district with the district's technology and instructional materials allotment. *Education Code 31.001*

Each instructional material, including electronic instructional material only to the extent of any applicable licensing agreement, purchased as provided by Education Code Chapter 31 for a district is the property of the district. *Education Code 31.102(a)–(b)*

Allotment

A district is entitled to an allotment each biennium from the state ~~technology and~~ instructional materials and technology fund for each student enrolled in the district on a date during the last year of the preceding biennium specified by the commissioner of education. The commissioner shall determine the amount of the allotment per student each biennium on the basis of the amount of money available in the state ~~technology and~~ instructional materials and technology fund to fund the allotment. The allotment shall be transferred from the state ~~technology and~~ instructional materials and technology fund to the credit of the district's ~~technology and~~ instructional materials and technology account as provided by Education Code 31.0212. *Education Code 31.0211(a)*

The commissioner shall, as early as practicable during each biennium, notify each district of the estimated amount to which the district will be entitled during the next fiscal biennium. *Education Code 31.0215(a)*

No Appeal

The amount of the allotment determined by the commissioner is final and may not be appealed. *19 TAC 66.1307(d)*

Delayed Publisher Payment Option

A district may requisition and receive state-adopted instructional materials before allotment funds for those materials are available. The total cost of delayed-payment-option materials requisitioned may not exceed 80 percent of the district's expected allotment for the subsequent biennium.

When a district submits a requisition for instructional materials under this provision, the Texas Education Agency (TEA) will expend a

district's existing allotment balance before applying the delayed payment option. TEA will make payment for any remaining balance for a district's order as the allotment funds become available and will prioritize payment for requisitions over reimbursement of purchases made directly by a district.

The commissioner shall ensure that publishers of instructional materials are informed of any potential delay in payment and that payment is subject to the availability of appropriated funds. Publishers may decline orders for which payments could be delayed. A publisher's decision to decline an order shall affect all of that publisher's orders for which payments could be delayed. Publishers may not selectively decline individual orders or orders from individual districts. Government Code Chapter 2251 does not apply to requisitions under this provision.

Education Code 31.0215; 19 TAC 66.1312

Allotment
Adjustment
*Change in
Enrollment*

Not later than May 31 of each school year, a district may request that the commissioner adjust the number of students for which the district is entitled to receive an allotment on the grounds that the number of students attending school in the district will increase or decrease during the school year for which the allotment is provided. The commissioner may also adjust the number of students for which a district is entitled to receive an allotment, without a request by the district, if the commissioner determines a different number of students is a more accurate reflection of students who will be attending school in the district. The commissioner's determination is final. *Education Code 31.0211(e)*

*High Enrollment
Growth*

Each year the commissioner shall adjust the ~~technology and~~ instructional materials [and technology](#) allotment of districts experiencing high enrollment growth. *Education Code 31.0214(a)*

High-enrollment growth adjustments will be based on the difference between the district's percentage of enrollment growth and that of the state. Enrollment growth calculations will be determined each fiscal year based on fall Texas Student Data Systems Public Education Information Management System (TSDS PEIMS) enrollment data. The amount of the adjustment determined by the commissioner is final and may not be appealed.

If sufficient funds are available, high-enrollment growth adjustments will be granted once each fiscal year. Notwithstanding this, a district that experiences an unexpected growth:

1. Of at least two percent due to a natural or man-made disaster or catastrophic event may apply for additional funding at any time during a fiscal year.

2. In its bilingual population of at least ten percent in any school year may apply for additional bilingual funding at any time during a fiscal year.

Any additional funding will be dependent on the availability of funds.

The per-student high-enrollment growth adjustment granted in the second year of a biennium shall not exceed one-half of the per-student amount established as the biennial allotment.

19 TAC 66.1309

Permitted
Expenditures

The allotment may be used to ~~pay for~~purchase:

1. ~~Instructional m~~Materials on the list adopted by the commissioner under Education Code 31.0231;
2. Instructional materials, regardless of whether the instructional materials are on the list adopted ~~by the State Board of Education (SBOE)~~ under Education Code 31.024;
- ~~3. Non-adopted instructional materials;~~
- ~~4.3.~~ Consumable instructional materials, including workbooks;
- ~~5.4.~~ Instructional materials for use in bilingual education classes, as provided by Education Code 31.029;
- ~~6. Versions of non-adopted instructional materials that are fully accessible to students with disabilities;~~
- ~~7.5.~~ Instructional materials for use in college preparatory courses under Education Code 28.014, as provided by Education Code 31.031;
- ~~8.6.~~ Supplemental instructional materials, as provided by Education Code 31.035;
- ~~9.7.~~ State-developed open education resource instructional materials, as provided by Education Code Chapter 31, Subchapter B-1;
- ~~10.8.~~ Instructional materials and technological equipment under any continuing contracts of the district in effect on September 1, 2011;
- ~~11. Activities related to the local review and adoption of instructional materials;~~
9. Technological equipment ~~that contributes to student learning, including equipment that~~ necessary to supports the use of in-

structional materials included on the list adopted by the commissioner under Education Code 31.0231 or any instructional materials purchased with an allotment under these provisions; and

10. Inventory software or systems for storing, managing, and accessing instructional materials and analyzing the usage and effectiveness of the instructional materials.

12. The allotment may be used to pay:

13. For training educational personnel directly involved in student learning in the appropriate use of instructional materials and for ;

1. Providing for access to technological equipment for instructional use; and

14.2. The salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning.

Education Code 31.0211(c); 19 TAC 66.1307(f)

kgc 7/5/19: From Permitted Expenditures to here is from HB 396, effective 9.1.19

Apparently this list included parts of the rule and the statute. Because the statute was reenacted in HB 396, effective 9.1.19, I've gone back to the language of the statute only. I'm leaving the rule cite, and I'll watch for rulemaking.

Also, this looks really weird in tracked changes, but the formatting looked right when I looked at the document with No Markup.

Prohibited
Expenditures

The allotment may not be used to pay for:

1. Services for installation;
2. The physical conduit that transmits data such as cabling and wiring or electricity;
3. Office and school supplies; or
4. Items that are not directly related to student instruction such as furniture, athletic equipment, extension cords, temporary contractors, or video surveillance equipment;
5. Travel expenses; or
6. Equipment or software used for moving, storing, tracking, or taking inventory of instructional materials.

19 TAC 66.1307(g)

Certification of Allotment A district shall annually certify to the commissioner that the district's allotment has been used only for permitted expenses.
Education Code 31.0213

Priority of Purchase Each biennium a district shall use the district's allotment to purchase, in the following order:

1. Instructional materials necessary to permit the district to certify that the district has instructional materials that cover all elements of the essential knowledge and skills of the required curriculum, other than physical education, for each grade level.
2. Any other instructional materials or technological equipment as determined by the district.

Education Code 31.0211(d); 19 TAC 66.1307(e)

Technology and Instructional Materials and Technology Account

The commissioner shall maintain an technology and instructional materials and technology account for each district. In the first year of each biennium, the commissioner shall deposit the district's allotment in the account. The commissioner shall pay the cost of instructional materials requisitioned by a district under Education Code 31.103 using funds from the district's ~~technology and~~ instructional materials and technology account.

A district may also use funds in the district's account to purchase electronic instructional materials or technological equipment. The district shall submit to the commissioner a request for funds for this purpose from the district's account in accordance with the commissioner's rules.

Money deposited in a district's ~~technology and~~ instructional materials and technology account during each state fiscal biennium remains in the account and available for use by the district for the entire biennium. At the end of each biennium, a district with unused money in the district's account may carry forward any remaining balance to the next biennium.

Education Code 31.0212

Access to Allotment

The allotment for each biennium will be made available for district use through the state's online instructional material ordering system (EMAT) as early as possible in the fiscal year preceding the beginning of the biennium for which the funds have been appropriated. A district may access its allotment for any upcoming school year upon completion of:

1. Submission to the commissioner certification that:

- a. The district has instructional materials that cover all the required Texas essential knowledge and skills (TEKS), except those for physical education, as required by Education Code 31.004 [see Certification of Instructional Materials, below]; and
 - b. The district has used its allotment for only the allowable expenditures [see Permitted Expenditures and Certification of Allotment Use, above]; and
2. Preparation by TEA of EMAT for the new school year with the new allotment amounts.

Upon completion of these requirements, a district may access its funds by correctly providing all information required in EMAT.

19 TAC 66.1307(h)–(j)

Online Requisition System (EMAT)

The commissioner shall maintain an online requisition system (EMAT) for districts to requisition instructional materials to be purchased with the district's allotment. *Education Code 31.101(f)*

Delegation of Authority

The board may delegate to an employee the authority to requisition, distribute, and manage the inventory of instructional materials, consistent with Education Code Chapter 31 and rules adopted under that chapter. *Education Code 31.104(a)*

Local Funds

A district may use local funds to purchase any instructional materials in addition to those selected under Education Code Chapter 31. *Education Code 31.106*

Requisitions, Use, and Distribution

A district shall make a requisition for instructional materials using the online requisition program (EMAT) maintained by the commissioner ~~not later than June 1 of each year~~. A district may requisition instructional materials on the [State Board of Education \(SBOE\)](#) instructional materials list for grades above the grade level in which a student is enrolled. *Education Code 31.103(b)–(c)*

kgc 7/5/19: changed by SB 668, effective 6.10.19

Distribution

The board shall distribute printed instructional materials to students in the manner that the board determines is most effective and economical. *Education Code 31.102(c)*

Supplemental Instructional Materials

A district may requisition supplemental instructional material adopted by the SBOE but not on the instructional material list adopted under Education Code 31.023 only if the district requisitions the supplemental instructional material along with other supplemental instructional materials or instructional materials on the list adopted under Education Code 31.023 that in combination

cover each element of the essential knowledge and skills for the course for which the district is requisitioning the supplemental instructional materials. *Education Code 31.035(d)*

Availability of Open
Education Resource
Instructional
Materials

A district that selects open education resource instructional material shall requisition a sufficient number of printed copies for use by students unable to access the instructional material electronically unless the district provides to each student:

1. Electronic access to the instructional material at no cost to the student; or
2. Printed copies of the portion of the instructional material that will be used in the course.

Education Code 31.103(d)

Employee Training

The board shall require the employee responsible for ordering instructional materials to complete TEA-developed training in the use of the allotment and the use of the instructional materials ordering system (EMAT). Training shall be completed prior to ordering instructional materials for the first time and again each time the district is notified by TEA that the training has been updated. The district shall maintain documentation of the completion of the required training. *19 TAC 66.107(d)*

**Special Instructional
Materials**

All laws and rules applying to instructional materials provided to students with no disabilities that are not in conflict with Education Code 31.028 or 19 Administrative Code 66.1311 shall apply to the distribution and control of special instructional materials. Special instructional materials include braille, large-print, and audio books and any other formats designed specifically to provide equal access to students with disabilities.

Requisitions for special instructional materials shall be based on actual student enrollment but may include up to two copies per student if necessary to meet individual need.

Special instructional materials are the property of the state. A district is responsible for replacing or reimbursing the state for lost, stolen, or damaged special instructional materials.

For Teachers

Adopted instructional materials needed by a teacher with a print disability to carry out his or her instructional duties shall be furnished in the required format without cost. The materials are to be loaned to the district as long as needed and are to be returned to the state when they are no longer needed.

For Parents

Adopted instructional materials in a specialized format that are requested by a parent with a print disability shall be furnished without

cost by the state. Requests for electronic files shall be filled by TEA after the parent signs and TEA receives a statement, through the district, promising that the parent will safeguard the security of the files and observe all current copyright laws, including those that forbid reproduction of the files and their transfer to other parties. All specialized instructional material formats and electronic files that have been provided must be returned to the local school district at the end of the school year.

19 TAC 66.1311

**Bilingual
Instructional
Materials**

A district shall purchase with its allotment or otherwise acquire instructional materials for use in bilingual education classes. The commissioner shall determine the amount of the allotment for bilingual education based on TSDS PEIMS bilingual enrollment data from the fall collection of the school year preceding the first year of each biennium. *Education Code 31.029; 19 TAC 66.1307(c)*

**Certification of
Instructional
Materials**

Prior to the beginning of each school year, a district shall submit to the SBOE and commissioner certification that for each subject in the required curriculum under Education Code 28.002, other than physical education, and each grade level, the district provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE for that subject and grade level. The certification shall be submitted in a format approved by the commissioner and can be based on both state-adopted and non-state-adopted materials.

To determine whether each student has instructional materials that cover all elements of the essential knowledge and skills, a district may consider:

1. Instructional materials adopted by the SBOE;
2. Materials adopted or purchased by the commissioner under Education Code 31.0231 or Education Code Chapter 31, Subchapter B-1;
3. Open education resource instructional materials submitted by eligible institutions and adopted by the SBOE;
4. Open education resource instructional materials made available by other public schools;
5. Instructional materials developed or purchased by the district; and
6. Open education resource instructional materials and other electronic instructional materials included in the repository under Education Code 31.083.

The certifications shall be ratified by the board in a public, noticed meeting.

Education Code 31.004; 19 TAC 66.105

Ownership

Except as otherwise provided, a student must return all instructional materials to the teacher at the end of the school year or when the student withdraws from school. At the end of the school year for which open education resource instructional material that a district does not intend to use for another student is distributed, the printed copy of the open education resource instructional material becomes the property of the student to whom it is distributed.

This provision does not apply to an electronic copy of open education resource instructional material.

Education Code 31.104(c), (g)–(h); 19 TAC 66.107(b)

**Responsibility for
Instructional
Materials and
Equipment**

Each student or the student's parent or guardian is responsible for all instructional material and technological equipment not returned in an acceptable condition by the student. A student who fails to return in an acceptable condition all instructional materials and technological equipment forfeits the right to free instructional materials and technological equipment until all instructional materials and technological equipment previously issued but not returned in an acceptable condition are paid for by the student, parent, or guardian.

As provided by board policy, a district may waive or reduce the payment required if the student is from a low-income family. [See FP] -The district shall allow the student to use instructional materials and technological equipment at school during each school day.

If instructional materials or technological equipment is not returned in an acceptable condition or paid for, a district may withhold the student's records. A district may not prevent the student from graduating, participating in a graduation ceremony, or receiving a diploma. [See FL and GBA regarding student and parental right to access records; and FD, FFAB, and FL regarding a district's duties to provide records to another district]

The board may not require an employee of the district who acts in good faith to pay for instructional materials or technological equipment that is stolen, misplaced, or not returned by a student. [See DG]

These provisions do not apply to an electronic copy of open education resource instructional material.

Education Code 31.104(d), (e), (h); 19 TAC 66.107(c) [See also EF]

Acceptable
Condition

Printed instructional materials are considered to be in acceptable condition if:

1. The cover, binding, pages, spine, and all integral components of the instructional materials are wholly intact and the instructional materials are fully usable by students; and
2. No component of the instructional materials is soiled, torn, or damaged (whether intentionally or by lack of appropriate care) to the extent that any portion of the content is too disfigured or obscured to be fully accessible to other students.

Electronic instructional materials are considered to be in acceptable condition if:

1. All components or applications that are a part of the electronic instructional materials are returned;
2. The electronic materials perform as they did when they were new;
3. The electronic instructional materials do not contain computer code (e.g., bug, virus, worm, or similar malicious software) that has been designed to self-replicate, damage, change, or otherwise hinder the performance of any computer's memory, file system, or software; and
4. The electronic instructional materials have not been installed with plug-ins, snap-ins, or add-ins without the prior approval of the district.

Technological equipment is considered to be in acceptable condition if:

1. The equipment is returned with the software and hardware in their original condition unless the district authorized changes; and
2. The physical condition of the equipment is fully usable as it was originally intended to be used.

19 TAC 66.1310

Lost or Damaged
Instructional
Materials

A district may order replacements for instructional materials that have been lost or damaged directly from the publisher of the instructional materials or any source for a printed copy of open education resource instructional material. *Education Code 31.104*

Sale or Disposal

The board shall determine how the district will dispose of discontinued printed instructional materials, electronic instructional materials, and technological equipment.

Sale

The board may sell printed instructional materials on the date the instructional material is discontinued for use in the public schools by the SBOE or the commissioner. The board may also sell electronic instructional materials and technological equipment owned by the district.

Use of Proceeds

Any funds received by a district from a sale must be used to purchase instructional materials and technological equipment allowed under Education Code 31.0211.

Disposal

The board may dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by the SBOE if the board determines that the instructional material is not needed by the district and the board does not reasonably expect that the instructional material will be needed. A district must notify the commissioner of any instructional material the district disposes of under this provision.

Education Code 31.105

Annual Inventory

A district shall conduct an annual physical inventory of all currently adopted instructional materials that have been requisitioned by and delivered to the district. The results of the inventory shall be recorded in the district's files. *19 TAC 66.107(a)*

Local Handling Expenses

School districts shall not be reimbursed from state funds for expenses incurred in local handling of instructional materials. *19 TAC 66.104(d)*

Definitions

For purposes of this policy:

1. "Bus" means a motor vehicle used to transport persons and designed to accommodate more than ten passengers, including the operator.
2. "Passenger car" means a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate ten or fewer passengers, including the operator.
3. "Passenger van" means a motor vehicle, other than a motorcycle or passenger car, used to transport persons and designed to transport 15 or fewer passengers, including the driver.
4. "School activity bus" means a bus designed to accommodate more than 15 passengers, including the operator, that is owned, operated, rented, or leased by a district and is used to transport public school students on a school-related activity trip, other than on routes to and from school. The term does not include a chartered bus, a bus operated by a mass transit authority, a school bus, or a multi-function school activity bus.
5. "School bus" means a motor vehicle that was manufactured in compliance with the federal motor vehicle safety standards for school buses in effect on the date of manufacture and that is used to transport preprimary, primary, or secondary students on a route to and from school or on a school-related activity trip other than on routes to and from school. The term does not include a school-chartered bus or a bus operated by a mass transit authority.
6. "Motor bus" means a vehicle designed to transport more than 15 passengers, including the driver.

Education Code 34.003(d), (e); Transp. Code 541.201(3)(A), (12), (15), (16)

Authority

A district may establish and operate an economical public school transportation system in the district or outside the district, if the district enters into an interlocal contract as provided by Government Code Chapter 791. In establishing and operating the transportation system, a board shall employ bus drivers certified in accordance with standards and qualifications adopted by the Department of Public Safety. *Education Code 34.007*

Transportation Allotment for Eligible Students

Each district operating a regular transportation system is entitled to an allotment based on [a rate per mile per regular eligible student set by the legislature in the General Appropriations Act](#). ~~the daily cost per regular eligible student of operating and maintaining the~~

~~regular transportation system and the linear density of that system.
Education Code 42.15548.151(c)~~

kgc 7/4/19: HB 3, generally effective 9.1.19

“Regular eligible student” means a student who resides two or more miles from the student’s campus of regular attendance, measured along the shortest route that may be traveled on public roads, and who is not classified as a student eligible for special education services; or is a homeless child or youth, as defined by 42 U.S.C. 11434a. ~~Education Code 42.15548.151(b)(1)~~

The commissioner of education may not reduce the allotment because a district provides transportation for an eligible student to and from a child-care facility or a grandparent’s residence instead of the student’s residence, as authorized by Education Code 34.007~~if the transportation is provided within the approved routes of the district for the school the student attends.~~ ~~Education Code 42.15548.151(k)~~

kgc 7/5/19: HB 3, generally effective 9.1.19

Fees for
Transportation

For information regarding fees a district may charge for transportation, see FP(LEGAL).

~~A board may require payment of a reasonable fee for transportation to and from school of a student who lives within two miles of the school the student attends, except that a board may not charge a fee for transportation for which a district receives funds under Education Code 42.155(d). Education Code 11.158(a)(14)~~

~~If the district does not receive any funds under Education Code 42.155 and does not participate in a county transportation system for which an allotment is provided under Education Code 42.155(i), the board may require payment of a reasonable fee for the transportation of a student to and from the school the student attends. Education Code 11.158(a)(16)~~

kgc 7/24/19: Added pointer per CVC.

kgc 7/4/19: These two fees are also set out in FP. Do we want them in both places in full?

**Hazardous
Conditions or High
Risk of Violence**

A district may apply for and on approval of the commissioner receive an additional amount of up to ten percent of its regular transportation allotment to be used for the transportation of children living within two miles of the school they attend who would be subject to hazardous traffic conditions or a high risk of violence if they

walked to school. *Education Code* ~~42.155~~[48.151](#)(d); 19 TAC 61.1016

Definitions

“Hazardous traffic condition” means an area within two miles of a campus where no walkway is provided and children must walk along or cross a freeway or expressway, an underpass, an overpass or a bridge, an uncontrolled major traffic artery, an industrial or commercial area, or another comparable condition.

“Area presenting a high risk of violence” means an area within two miles of a campus that law enforcement records indicate presents a high incidence of violent crimes.

19 TAC 61.1016(b)

Community Walking
Transportation
Programs

A district may use all or part of any additional funds received to support community walking transportation programs, including walking school bus programs, provided that the district requires each supported program to submit a financial report each semester that covers services provided by the program for the benefit of the district. *Education Code* ~~42.155~~[48.151](#)(d-2)

Eligibility

A district or county is eligible to report hazardous area service annual mileage in the Foundation School Program (FSP) transportation application if the district submits to [the Texas Education Agency \(TEA\)](#) a policy adopted by the board that:

1. Explains the specific hazardous traffic conditions or areas presenting high risk for violence that apply to the district and exist within two miles of its campuses; and
2. If a district elects to implement community walking transportation programs or innovative school safety projects, requires such district-supported community walking transportation programs or innovative school safety projects to:
 - a. Utilize trained adults with current background checks to either walk students to their home or school or to stand guard along safe routes; and
 - b. Provide financial reports to the district each semester.

19 TAC 61.1016(c)

Reporting

A district is required to submit a hazardous area policy prior to the start of the school year and to report annual hazardous area service mileage by August 1 of each school year on the home-to-school/school-to-home section of the FSP transportation route services report. Districts requesting funds for an area presenting a high risk of violence must provide to TEA, contemporaneously with

the explanation required at Eligibility above, consolidated law enforcement records that document violent crimes identified by reporting agencies within the relevant jurisdiction. *19 TAC 61.1016(d)*

**Career and
Technology Program**

The cost of transporting career and technology education students from one campus to another inside a district, ~~or~~ from a sending district to another secondary public school for a career and technology program or an area career and technology school; or to an approved postsecondary institution under a contract for instruction approved by TEA, or from a district campus to a location at which students are provided work-based learning under the district's career and technology program shall be reimbursed based on the number of actual miles traveled times the district's official extracurricular travel per mile rate as set by the board and approved by TEA. *Education Code ~~42.155~~48.151(f)*

Dual Credit Students

A district shall be reimbursed on a per-mile basis for the cost of transporting a dual credit student to another campus in the district, a campus in another district, or a postsecondary educational institution for purposes of attending the course, if the course is not available at the student's campus. *Education Code 48.151(m)*

kgc 7/4/19: HB 3, generally effective 9.1.19; cite changes throughout to 48.151.

Bus Operation

A person may not operate a school bus if:

1. The door of the school bus is open; or
2. The number of passengers on the bus is greater than the manufacturer's design capacity for the bus.

An operator of a school bus, while operating the bus, shall prohibit a passenger from:

1. Standing in the bus; or
2. Sitting on the floor of the bus or in any location that is not designed as a seat.

Transp. Code 545.426

**Transporting
Students to School**

School buses or mass transit authority buses shall be used for the transportation of students to and from schools on routes having ten or more students. Passenger cars may be used on routes having fewer than ten students. *Education Code 34.003(a)*

**Bus Passes or
Cards**

A school district may use the state transportation allotment to provide a bus pass or card for another transportation system to each student who is eligible to use the regular transportation system of the district but for whom the regular transportation system of the

district is not a feasible method of providing transportation. *Education Code* ~~42.155~~48.151(l)

Designation of
Child-Care Facility
or Grandparent's
Residence

A board, after determining eligibility for transportation services, shall allow a parent to designate a child-care facility or the residence of a grandparent of the child instead of the child's residence as the regular location for purposes of obtaining transportation under the system to and from the child's school, if the location is an approved stop on an approved route. *Education Code* 34.007(b)(2)

"Child-care facility" means a facility licensed, certified, or registered by the Department of Family and Protective Services to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers. *Human Resources Code* 42.002(3)

Transportation of
Homeless Students

As a condition of receiving funds under the McKinney-Vento Homeless Assistance Act, a district shall adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, at the request of the homeless liaison [see FFC]) to and from the school of origin, as follows:

1. If the child continues to live in the area served by the district in which the school of origin is located, the district of origin will provide the child's transportation to and from the school of origin.
2. If the child's living arrangements in the area served by the district of origin terminate and the child, though continuing his or her education in the school of origin, begins living in an area served by another district, the district of origin and the district in which the child is living shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the districts are unable to agree, the responsibility and costs shall be shared equally.

42 U.S.C. 11432(g)(1)(J)(iii)(I), (II) [See FDC]

Transportation of
Students in Foster
Care

A district receiving Title 1, Part A funds must collaborate with the state or local child welfare agency to develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the time in foster care. These procedures shall:

1. Ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with 42 U.S.C. 675(4)(A); and
2. Ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the district will provide transportation to the school of origin if:
 - a. The local child welfare agency agrees to reimburse the district for the cost of such transportation;
 - b. The district agrees to pay the cost of transportation; or
 - c. The district and the local welfare agency agree to share the cost of such transportation.

20 U.S.C. 6312(c)(5) [See FD]

School Activities

When transporting students in connection with school activities other than on routes to and from school:

1. Only school buses or motor buses may be used to transport 15 or more students; and
2. Passenger cars or passenger vans may be used to transport fewer than 15 students.

Education Code 34.003(b)

In all circumstances in which passenger cars or passenger vans are used to transport students, the operator of the vehicle shall ensure that the number of passengers does not exceed the designed capacity of the vehicle and that each passenger is secured by a safety belt. *Education Code 34.003(c)*

**Accelerated
Instruction Programs**

A district shall provide students required to attend the accelerated programs described in policy code EIE with transportation to those programs if the programs occur outside of regular school hours. *Education Code 28.0211(j)*

**Transportation
Company or System**

A board may contract with a mass transit authority, commercial transportation company, or juvenile board for all or any part of a district's public school transportation if the authority, company, or board:

1. Requires its school bus drivers to have the qualifications required by and to be certified in accordance with standards established by the Department of Public Safety; and

2. Uses only those school buses or mass transit authority buses in transporting 15 or more students that meet or exceed safety standards for school buses established under Education Code 34.002.

A mass transit authority contracting under this provision for daily transportation of pre-primary, primary, secondary students to or from school shall conduct, in a manner and on a schedule approved by the board, the following education programs:

1. A program to inform the public that public school students will be riding on the authority's or company's buses;
2. A program to educate drivers of the buses to be used under the contract of the special needs and problems of public school students riding on the buses; and
3. A program to educate public school students on bus riding safety and any special considerations arising from the use of the authority's or company's buses.

A board may supplement the state transportation cost allotment with local funds necessary to provide complete transportation services.

Education Code 34.008

[For provisions pertaining to criminal history record information on contractors providing transportation services, see CJA(LEGAL).]

Safety Standards

A district shall meet or exceed the safety standards for school buses established by the Department of Public Safety (DPS), with the advice of the Texas Education Agency (TEA). A district that fails or refuses to meet these safety standards for school buses is ineligible to share in the transportation allotment until the first anniversary of the date the district begins complying with the safety standards. *Education Code 34.002; Transp. Code 547.102; 37 TAC 14.51–.52*

Student Safety

Prohibitions

A district may not require or allow a child to stand on a moving bus or passenger van. *Education Code 34.004*

An operator of a school bus, while operating the bus, shall prohibit a passenger from:

1. Standing in the bus; or
2. Sitting:
 - a. On the floor of the bus, or
 - b. In any location on the bus that is not designed as a seat.

Transp. Code 545.426

Seat Belts

*Required on
Buses*

A bus, including a school bus, a school activity bus, multifunction school activity bus, or school-chartered bus, operated by or contracted for use by a district for the transportation of schoolchildren shall be equipped with a three-point seat belt for each passenger, including the operator. This requirement does not apply to:

1. A bus purchased by a school district that is a model year 2017 or earlier; or
2. A bus purchased by a school district that is a model year 2018 or later if the board:
 - a. Determines that the district's budget does not permit the district to purchase a bus that is equipped with the required seat belts; and
 - b. Votes to approve that determination in a public meeting.

Transp. Code 547.701(e)

*Student
Requirement*

A district shall require a student riding a bus operated by or contracted for operation by the district to wear a seat belt if the bus is equipped with seat belts for all passengers on the bus. A school district may implement a disciplinary policy to enforce the use of seat belts by students. *Education Code 34.013*

Donations

A board shall consider any offer made by a person to donate three-point seat belts or money for the purchase of three-point seat belts for a district's school buses. A board may accept or decline the offer after adequate consideration.

A board may acknowledge a person who donates three-point seat belts or money for the purchase of three-point seat belts for a school bus by displaying a small, discreet sign on the side or back of the bus recognizing the person who made the donation. The sign may not serve as an advertisement for the person who made the donation.

Education Code 34.014

**School Bus
Emergency
Evacuation Training**

Pursuant to the safety standards established by DPS under Education Code 34.002, each school district may conduct a training session for students and teachers concerning procedures for evacuating a school bus during an emergency. A district that chooses to conduct a training session is encouraged to conduct the school bus emergency evacuation training session in the fall of the school year. "Fall" is defined as July 1 to December 31. The district is also encouraged to structure the training session so that the session applies to school bus passengers, a portion of the session occurs on a school bus, and the session lasts for at least one hour.

The training must be based on the recommendations of the most recent edition of the National School Transportation Specifications and Procedures, as adopted by the National Congress on School Transportation, or a similar school transportation safety manual.

Immediately before each field trip involving transportation by school bus, a district is encouraged to review school bus emergency evacuation procedures with the school bus passengers, including a demonstration of the school bus emergency exits and the safe manner to exit.

Not later than the 30th day after the date that a school district completes a training session, the district shall provide DPS with a record certifying the district's completion of the training.

Note: The [Reporting of School Bus Evacuation Training form](#)¹ is available on the DPS website.

Education Code 34.0021; 37 TAC 14.54

**Wireless
Communication
Devices**

General Rule

An operator commits an offense if the operator uses a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped. *Transp. Code 545.4251(b)*

School Property

An operator may not use a wireless communication device while operating a motor vehicle within a school crossing zone or on the property of a public elementary, middle, junior high, or high school served by a school crossing zone, during the time a reduced speed limit is in effect for the school crossing zone, unless:

1. The vehicle is stopped; or
2. The wireless communication device is used with a hands-free device.

~~2.~~ [Transp. Code 545.4252](#)

An operator may not use a wireless communication device while operating a school bus or passenger bus with a minor passenger on the bus unless the ~~passenger~~-bus is stopped. This provision does not apply to an operator of a school bus or passenger bus using a wireless communication device in the performance of the operator's duties as a bus driver and in a manner similar to using a two-way radio. *Transp. Code 545.425(c), (e-1)*

kgc 7/6/19: HB 771, effective 9.1.19

~~*Transp. Code 545.425(c), .4252*~~

Definitions

“Hands-free device” means speakerphone capability, a telephone attachment, or another function or other piece of equipment, regardless of whether permanently installed in or on a wireless communication device or in a motor vehicle, that allows use of the wireless communication device without use of either of the operator’s hands, except to activate or deactivate a function of the wireless communication device or hands-free device. The term includes voice-operated technology and a push-to-talk function. *Transp. Code 545.425(a)(1)*

“Electronic message” means data that is read from or entered into a wireless communication device for the purpose of communicating with another person. *Transp. Code 545.4251(a)(1)*

**Disruption of
Transportation**

Any person other than a primary or secondary grade student who intentionally disrupts, prevents, or interferes with the lawful transportation of students to and from school on a vehicle owned or operated by a district or to or from activities sponsored by a school on a vehicle owned and/or operated by a district shall be guilty of a misdemeanor. It is an exception to the application of the offense

that, at the time the person engaged in the prohibited conduct, the person was younger than 12 years of age. *Education Code 37.126*

Exhibition of Firearm For information regarding offenses pertaining to firearms on buses, see GKA(LEGAL).

Accident Reports
Notice to DPS A district shall provide DPS written notification of any accident directly or indirectly involving a school bus operated by or for the district that bears advertising or another paid announcement. *37 TAC 14.65(a)(2)*

Notice must be received not more than five days from the date of the accident and shall include the following:

1. The name and address of the owner of the school bus;
2. The name and driver's license number of the school bus operator;
3. The date of the accident;
4. The city or county where the accident occurred; and
5. The investigating police agency.

37 TAC 14.65(c)

Notices to DPS may be delivered by facsimile, electronic mail, or mailed to School Bus Transportation, Texas Department of Public Safety, P.O. Box 4087, Austin, TX 78773-0525. *37 TAC 14.65(d)*

Notice to TEA A district shall report annually to TEA the number of accidents in which its buses were involved in the past year in a manner prescribed by the commissioner of education. A district shall file the annual report to TEA only in the period beginning July 1 and ending July 31 and shall include the following information in the report:

1. The total number of bus accidents;
2. The date each accident occurred;
3. The type of bus, as specified in 19 Administrative Code 61.1028(a), involved in each accident;
4. Whether the bus involved in each accident was equipped with seat belts and, if so, the type of seat belts;
5. The number of students and adults involved in each accident;
6. The number and types of injuries that were sustained by the bus passengers in each accident; and

7. Whether the injured passengers in each accident were wearing seat belts at the time of the accident and, if so, the type of seat belts.

A school district shall report a bus accident involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

1. The bus is owned, leased, contracted, or chartered by a school district and was transporting school district personnel, students, or a combination of personnel and students; or
2. The bus was driven by a school district employee or by an employee of the school district's bus contractor with no passengers on board and the accident involved a collision with a pedestrian.

Exceptions

A school district shall not report a bus accident involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

1. The bus was driven by a school district employee or by an employee of the school district's bus contractor, the accident occurred when no passenger other than the school district's driver or bus contractor's driver was on board the bus, and the accident did not involve a collision with a pedestrian; or
2. The accident involved a bus chartered by a school district for a school activity trip and no school district personnel or students were on board the bus at the time of the accident.

A school district shall not report an accident that occurred in a vehicle that is owned, contracted, or chartered by a school district and is not a school bus, a multifunction school activity bus, a school activity bus, or a motor bus.

Education Code 34.015(b); 19 TAC 61.1028(b)

¹ Reporting of School Bus Evacuation Training: <http://www.dps.texas.gov/Internetforms/FormDetail.aspx?Id=821&FormNumber=SBT-7.doc>

**Texas Department of
Agriculture Authority**

The Texas Department of Agriculture (TDA) administers federal and state nutrition programs, including the National School Lunch Program (NSLP) under 42 U.S.C. Section 1751 et seq., and the School Breakfast Program (SBP) under 42 U.S.C. Section 1773. *Agriculture Code 12.0025*

Note: Regulations applicable to federal nutrition programs are found at the following:

7 C.F.R. 210: National School Lunch Program

7 C.F.R. 215: Special Milk Program for Children

7 C.F.R. 220: School Breakfast Program

7 C.F.R. 225: Summer Food Service Program

7 C.F.R. 245: Free and Reduced Price Eligibility

Program Compliance

TDA shall require that school food authorities (SFAs) comply with the applicable provisions 7 C.F.R. Part 210. TDA shall ensure compliance through audits, administrative reviews, technical assistance, training guidance materials or by other means. *7 C.F.R. 210.19(a)(3)*

[For the definition of “school food authority,” see COA(LEGAL).]

Administrative
Review

TDA must conduct administrative reviews of all SFAs participating in the NSLP (including the Afterschool Snacks and the Seamless Summer Option) and SBP at least once during a 3-year review cycle, provided that each SFA is reviewed at least once every 4 years.

“Administrative reviews” means the comprehensive off-site and/or on-site evaluation of all SFAs participating in the specified programs. The term administrative review is used to reflect a review of both critical and general areas in accordance with 7 C.F.R. 210.18(g) and (h), as applicable for each reviewed program, and includes other areas of program operations determined by TDA to be important to program performance.

7 C.F.R. 210.18

**School Nutrition
Program
Professional
Standards**

Minimum Standards
for **School Nutrition**
Program Directors

An SFA that operates the NSLP or the SBP must establish and implement professional standards for school nutrition program directors, managers, and staff. [7 C.F.R. 210.30\(a\)](#)

Each SFA must ensure that all newly hired school nutrition program directors meet minimum hiring standards and ensure that all new

and existing directors have completed the minimum annual training/education requirements for school nutrition program directors, as set forth in 7 C.F.R. 210.30.

7 C.F.R. 210.30(b)

Note: All school nutrition program directors hired on or after July 1, 2015, must meet the required minimum educational requirements based on student enrollment. See [Summary of School Nutrition Program Director Professional Standards by Local Educational Agency Size chart, 7 C.F.R. 210.30\(b\)\(2\)](#).

kgc 7/8/19: Rule changes effective 4.30.19. TDA initially published this helpful document (<https://files.constantcontact.com/884733b0501/add63b79-e581-4b58-acbc-b508dc4895d2.pdf>), but I can't find it now to link to it from their website. I've asked Chris Ferguson at TDA for a link to the most current guidance.

The rule is really long, and I don't think we should set it out here in any detail.

Chris didn't send me anything very helpful. She sent me that same document in a word format (I didn't compare them), and she sent the USDA website, which isn't super helpful, so I say we just go with the note.

Exempt Fundraisers

Schools that participate in the NSLP or SBP may sell food and beverages that do not meet nutritional standards outlined in 7 C.F.R. Parts 210 and 220 as part of a fundraiser, during the school day, for up to six days per school year on each school campus, provided that no specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service. *4 TAC 26.2*

Definitions

“School day” means the midnight before, to 30 minutes after the end of the official school day.

“School campus” means all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

4 TAC 26.1

Unpaid Meal Charges

State Law

The board of a district that allows students to use a prepaid meal card or account to purchase meals served at schools in the district shall adopt a grace period policy regarding the use of the cards or accounts. The policy:

1. Must allow a student whose meal card or account balance is exhausted or insufficient to continue, for a period determined by the board, to purchase meals by:
 - a. Accumulating a negative balance on the student's card or account; or
 - b. Otherwise receiving an extension of credit from the district;
2. Must require the district to notify the parent of or person standing in parental relation to the student that the student's meal card or account balance is exhausted;
3. May not permit the district to charge a fee or interest in connection with meals purchased under item 1, above; and
4. May permit the district to set a schedule for repayment on the account balance as part of the notice to the parent or person standing in parental relation to the student.

Education Code 33.908

Federal Law

An SFA operating a NSLP and/or SBP must:

1. Have a written and clearly communicated meal charge policy in order to ensure a consistent and transparent approach to the issue of how students who pay the full or reduced price cost of a reimbursable meal are impacted by having insufficient funds on hand or in their account to purchase a meal.
2. Include policies regarding the collection of delinquent meal charge debt in the written meal charge policy.
3. Ensure that the policy is provided in writing to all households at the start of each school year and to households that transfer to the school during the school year.
4. Provide the meal charge policy to all school or SFA-level staff responsible for policy enforcement, including school food service professionals responsible for collecting payment for meals at the point of service, staff involved in notifying families of low or negative balances, and staff involved in enforcing any other aspects of the meal charge policy.

Excerpts from *USDA Memo SP 46-2016, [Unpaid Meal Charges: Local Meal Charge Policies](#)*¹ (July 8, 2016)

Lauren's Law

A district may not adopt any rule, policy, or program under Education Code 28.002 that would prohibit a parent or grandparent of a student from providing any food product of the parent's or grandparent's choice to:

1. Children in the classroom of the child on the occasion of the child's birthday; or
2. Children at a school-designated function.

Education Code 28.002(l-3)(2)

Donation of Food

A district may allow a campus to donate food to a nonprofit organization through an official of the nonprofit organization who is affiliated with the campus, including a teacher, counselor, or parent of a student enrolled at the campus. The donated food may be received, stored, and distributed on the campus. Food donated by the campus may include:

1. Surplus food prepared for breakfast, lunch, or dinner meals or a snack to be served at the campus cafeteria, subject to any applicable local, state, and federal requirements; or
2. Food donated to the campus as the result of a food drive or similar event.

The type of food donated may include packaged and unpackaged unserved food, packaged served food if the packaging is in good condition, whole uncut produce, wrapped raw produce, and unpeeled fruit required to be peeled before consumption.

Food donated to a nonprofit may be distributed at the campus at any time. Campus employees may assist in preparing and distributing as volunteers of the nonprofit organization.

A district may adopt a policy under which the district provides food at no cost to a student for breakfast, lunch, or dinner meals or a snack if the student is unable to purchase such meals or snack.

Education Code 33.907

¹ USDA Memo *Unpaid Meal Charges: Local Meal Charge Policies*:
<https://fns-prod.azureedge.net/sites/default/files/cn/SP46-2016os.pdf>

Note: [For information regarding security breaches, see CQB\(LEGAL\).](#)

KGC 6/30/19: We (kge, CVC, E.JN, AK) decided to add this xref at our meeting on 6.28.19. I'm not sure this is what we had in mind.

Definitions

Custodian

“Custodian” means the appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

Essential Record

“Essential record” means any district record necessary to the resumption or continuation of district operations in an emergency or disaster, to the re-creation of the legal and financial status of the district, or to the protection and fulfillment of obligations to the people of the state.

Local Government Record

“Local government record” means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information-recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a district or any of its officers or employees, pursuant to law or in the transaction of public business. The term does not include:

1. Extra identical copies of documents created only for convenience of reference or research by district officers or employees;
2. Notes, journals, diaries, and similar documents created by a district officer or employee for his or her own personal convenience;
3. Blank forms, stocks of publications, and library and museum materials acquired solely for the purposes of reference or display; or
4. Copies of documents in any media furnished to the public under the ~~Open Records~~[Public Information](#) Act or other state law.

4. KGC 6/30/19: Don't we call it PIA in the PRM?

Permanent Record

“Permanent record” or “record of permanent value” means any local government record for which the retention period on a records retention schedule issued by the Texas State Library and Archives Commission (TSLAC) is given as permanent.

Records Control Schedule	“Records control schedule” means a document prepared by or under the authority of a records management officer listing the records maintained by a district, their retention periods, and other records disposition information that the records management program in each district may require.
Records Management	“Records management” means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.
Records Management Officer	“Records management officer” means the person identified under Local Government Code 203.025 as the records management officer. [See Designation, below]
Records Retention Schedule	“Records retention schedule” means a document issued by TSLAC under authority of Subchapter J, Chapter 441, Government Code, establishing mandatory retention periods for local government records.
Retention Period	“Retention period” means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

Local Gov't Code 201.003

District's Duties

Each district shall:

1. ~~s~~Submit to the director and librarian of TSLAC the name of the district's records management officer and the name of the new officer in the event of a change;
2. ~~f~~File a plan or an ordinance or order establishing a records management program and any amendments to the plan or ordinance or order with the director and librarian;
3. ~~n~~Notify TSLAC at least ~~40~~ten days before destroying a district record that does not appear on a records retention schedule issued by TSLAC; and
4. ~~f~~File with the director and librarian a written certification as provided by Local Government Code 203.041 that the district has prepared a records control schedule that:

- a. ~~e~~ Establishes a retention period for each district record as required by ~~Subchapter C, Chapter 203, Local Government Code Chapter 203, Subchapter C;~~ and
- b. ~~e~~ Complies with a local government records retention schedule distributed by the director and librarian under ~~Section~~ Government Code 441.158 and any other state and federal requirements.

Gov't Code 441.169

kgc 7/5/19: Added by HB 1962, effective 9.1.19; I'm leaving "local government" unchanged in the last provision bc changing it to "district" would be incorrect. I'm iffv about the change in a., but I think it's ok.

Board's Responsibilities

~~In implementing the Local Government Records Act (Local Government Code Title 6, Subtitle C), a~~The board shall:

1. Establish, promote, and support an active and continuing program for the efficient and economical management of all district records;
2. Cause policies and procedures to be developed for the administration of the program under the direction of the records management officer;
3. Facilitate the creation and maintenance of district records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the district and designed to furnish the information necessary to protect the legal and financial rights of the district, the state, and persons affected by the district's activities;
4. Facilitate the identification and preservation of district records that are of permanent value;
5. Facilitate the identification and protection of essential district records; and
6. Cooperate with TSLAC in its conduct of statewide records management surveys.

Local Gov't Code 203.021

Custodians of Records

~~In implementing the Local Government Records Act, d~~District custodians of records shall:

1. Cooperate with the records management officer in carrying out the policies and procedures established by a district for the efficient and economical management of records and in

carrying out the requirements of ~~the~~ [Local Government Code Title 6, Subtitle C](#) ~~Local Government Records Act~~;

~~4.~~ [kgc 7/5/19: The "Act" is all of Title 6, so I've corrected the references.](#)

2. Adequately document the transaction of district business and the services, programs, and duties for which they and their staff are responsible; and
3. Maintain the records in their care and carry out the preservation, microfilming, destruction, or other disposition of the records only in accordance with the policies and procedures of the district's records management program and the requirements of ~~the~~ [Local Government Code Title 6, Subtitle C](#) ~~Local Government Records Act~~ and rules adopted under it.

Local Gov't Code 203.022

**Records
Management Officer**

A board shall designate an individual or an office or position as the records management officer for the district.

Designation

The name, office, or position of the records management officer shall be entered into the minutes of the board and filed by the records management officer with the director and librarian of TSLAC within 30 days after the date of the designation.

Any subsequent designations of a new individual or a new office or position shall be entered into the minutes and reported to TSLAC in the same manner as the original designation.

If the order designating a records management officer designates an office or position rather than an individual, a new holder of that office or position must file the holder's name with TSLAC within 30 days after the date of assuming the office or position.

Local Gov't Code 203.025

Duties

~~In implementing the Local Government Records Act, t~~[The district's](#) records management officer shall:

1. Assist in establishing and developing policies and procedures for a district's records management program;
2. Administer the records management program and provide assistance to ~~the~~ custodians ~~in order to~~[for the purposes of](#) reducing costs and improving record-keeping efficiency;
3. [In cooperation with the custodians of the records:](#)

~~3.a.~~ prepare ~~the and file~~ records control schedules ~~and~~, amended schedules required by Local Government Code 203.041, and ~~the lists of obsolete records~~, as provided by Local Government Code 203.044; ~~required by the Local Government Records Act~~;

~~4.~~ ~~In cooperation with the custodians of records, prepare or direct the preparation of requests for authorization to destroy records, when such requests are required under the Local Government Records Act~~;

~~5.b.~~ ~~In cooperation with the custodians of records, i~~ identify and take adequate steps to preserve district records of permanent value;

~~6.c.~~ ~~In cooperation with the custodians of records, i~~ identify and take adequate steps to protect essential district records;

~~d.~~ ~~In cooperation with the custodians of records, e~~ Ensure that the maintenance, preservation, microfilming, destruction, or other disposition of records is carried out in accordance with a district's records management program and the requirements of Local Government Code Title 6, Subtitle C ~~the Local Government Records Act~~ and rules adopted under it;

~~7.~~ kgc 7/5/19: changes at 3.a. and the deleted paragraph above from HB 1962, effective 9.1.19; however, the restructuring is mine (i.e., not in the bill) just to streamline and make more readable

4. Disseminate to the board and custodians of records information concerning state laws, administrative rules, and government policies relating to ~~a~~ district's records; and

~~8.~~ kgc 7/5/19: the statute says (not amended), "the policies of the government relating to local government records." I'm not sure "government" doesn't mean the district. I'm not sure tracking the statute helps given the existing change to "district records." Thoughts?

5. In cooperation with the custodians of records, establish procedures to ensure that the handling of records in any context of the records management program is carried out with due regard for the duties and responsibilities of custodians that may be imposed by law and the confidentiality of information in records to which access is restricted by law.

~~9.~~ kgc 7/5/19: statutory tightening

Local Gov't Code 203.023

**Records
Management
Program**

A board by ordinance or order shall establish a records management program to be administered by the records management officer. The ordinance or order must provide methods and procedures to enable the board, custodians, and the records management officer to fulfill the statutory duties and responsibilities concerning management and preservation of records. The ordinance or order may prescribe any policies or procedures for the operation of the records management program that are consistent with the requirements of [Local Government Code Title 6, Subtitle C](#) ~~the Local Government Records Act and~~ rules adopted under it. A copy of the ordinance or order must be filed by the records management officer with TSLAC within 30 days after the date of its adoption. *Local Gov't Code 203.026(a)-(c)*

**Records Control
Schedules**

The records management officer shall:

1. ~~p~~ Prepare ~~and file with TSLAC~~ a records control schedule listing the following records and establishing a retention period for [each](#):
 - ~~1.a.~~ All records created or received by the district;
 - ~~2.b.~~ Any record no longer created or received by the district that is still in its possession and for which the retention period on a records retention schedule issued by TSLAC has not expired; and
 - ~~c.~~ Any record no longer created or received by the district that is still in its possession and for which the retention period on a records retention schedule issued by TSLAC has expired but which will not be destroyed; ~~and~~.
- ~~3.~~ ~~f~~ [File with the director and librarian a written certification of compliance that the district has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by TSLAC.](#)
- ~~2.~~ ~~In lieu of filing a records control schedule, the records management officer may file with TSLAC a written certification of compliance that the district has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by TSLAC.~~

[Amendment of
Schedules](#)

[The records management officer shall review the district's records control schedules and prepare amendments to the schedules as needed to reflect new records created or received by the district or revisions to retention periods established in a records retention schedule issued by TSLAC. -The records management officer shall](#)

file with the director and librarian a written certification of compliance that the district has amended the records control schedules to comply with the minimum requirements established on records retention schedules issued by TSLAC. Local Gov't Code 204.041(d)

kgc 7/5/19: HB 1962, effective 9.1.19; just the second sentence of this is new.

The board shall require in the ordinance or order establishing the records management program the review or approval of a records control schedule or amended schedule by the officers of the district as it considers necessary.

Local Gov't Code 203.041

Retention Periods

A retention period for each record on the records control schedule shall be determined by the board or under its direction. A retention period may not be less than a retention period prescribed by state or federal law, regulation, or rule of court; or a retention period for the record established on a records retention schedule issued by TSLAC. *Local Gov't Code 203.042*

TSLAC Retention Schedules

TSLAC has adopted the following retention schedules, among others: Local Schedule GR—Records Common to All Governments, Local Schedule EL—Records of Elections and Voter Registration, Local Schedule TX—Records of Property Taxation, and Local Schedule SD—Records for Public School Districts. These schedules establish mandatory minimum retention periods for the records listed. *13 TAC 7.125*

Note: [Local government records retention schedules](#)¹ are available on the TSLAC website.

~~TSLAC Review~~

~~If the director and librarian of TSLAC or designee accepts the records control schedule, amended schedule, written certification of compliance, or amended certification for filing, the acceptable records control schedule may be used as the basis for the destruction of records listed on it without additional notice from the director and librarian.~~

~~If the director and librarian or designee rejects the records control schedule, amended schedule, written certification of compliance, or amended certification for filing, the reasons for the rejection shall be stated in writing within a reasonable time to the records management officer and the schedule, amended schedule, written certification, or amended certification shall be corrected and resubmitted.~~

Local Gov't Code 203.043(a), (b)

kgc 7/5/19: Repealed by HB 1962, effective 9.1.19

Destruction of Records

A district record may be ~~intentionally~~ destroyed ~~if under any of the following conditions:~~

1. The record is listed on a valid records control schedule ~~filed with TSLAC~~ and either its retention period has expired or it has been microfilmed or electronically stored in accordance with legal requirements;
2. The record appears on a list of obsolete records as provided by Local Government Code 203.044 ~~approved by TSLAC~~;
3. ~~A destruction request is filed with and approved by TSLAC for a record not listed on an approved control schedule~~ The record is not listed on a records retention schedule issued by TSLAC and the district provides notice to TSLAC at least 20 days before destroying the record as required by Government Code 441.169;
4. A court issues an expunction order for the destruction or obliteration of the records, pursuant to state law; and
5. The records are defined as exempt from scheduling or filing requirements or listed as exempt in a records retention schedule issued by TSLAC.

Local Gov't Code 202.001

kgc 7/5/19: HB 1962, effective 9.1.19

Exceptions

A district record the subject matter of which is known by the custodian to be the subject of litigation may not be destroyed until the litigation is settled. A district record that is subject to a request under the Texas Public Information Act, Chapter 552, Government Code, may not be destroyed until the request is resolved. *Local Gov't Code 202.002*

A district shall not destroy a student's education record, as defined by the Family Educational Rights and Privacy Act, if there is an outstanding request to inspect and review the record. *34 C.F.R. 99.10(e)* [See FL]

Recordkeeping

As a board may require, the records management officer shall keep accurate lists of records destroyed, their volume, and other information of records management activities. *Local Gov't Code 203.046*

Preservation of Records	Permanent records shall be stored under conditions that meet the requirements of 13 Administrative Code 7.164.
Permanent Records	
Microfilming	District records may be maintained on microfilm in addition to or instead of paper or other media, subject to the requirements of Chapter 204, Local Government Code and rules adopted by TSLAC. <i>Local Gov't Code 204.002</i>
Electronic Storage	District record data may be stored electronically in addition to or instead of source documents in paper or other media, subject to the requirements of Chapter 205, Local Government Code and rules adopted by TSLAC. <i>Local Gov't Code 205.002</i>
Records Offenses	A board member or district employee commits an offense if the board member or employee knowingly or intentionally violates Local Government Code Title 6, Subtitle C (regarding local government records) or rules adopted under it by destroying or alienating a local government record in contravention of Local Government Code Subtitle C or by intentionally failing to deliver records to a successor in office as provided by Local Government Code 201.006(a). <i>Local Gov't Code 202.008</i>
Destruction or Alienation of Record	
Tampering with Governmental Record	A person commits an offense if the person: <ol style="list-style-type: none">1. Knowingly makes a false entry in, or false alteration of, a governmental record;2. Makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;3. Intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;4. Possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;5. Makes, presents, or uses a governmental record with knowledge of its falsity; or6. Possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully. <p>It is an exception to the application of item 3, above, that the governmental record is destroyed pursuant to legal authorization or transferred under Government Code 441.204. With regard to the</p>

destruction of a local government record, legal authorization includes compliance with the provisions of Local Government Code Title 6, Subtitle C.

Penal Code 37.10

Federal
Investigations

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any bankruptcy case, or in relation to or contemplation of any such matter or case, shall be fined, imprisoned not more than 20 years, or both. *18 U.S.C. 1519*

¹ Local Government Retention Schedules: <https://www.tsl.texas.gov/slr/recordspubs/localretention.html>

KGC 6/30/19: This policy series is scheduled for overhaul at U115, but since there are post-legislative impacts here and at other codes, I've gone ahead and made some changes for U114.

PEIMS

~~A district shall participate in the Public Education Information Management System (PEIMS) and through that system shall provide information required for the administration of the Foundation School Program and of other appropriate provisions of the Education Code. The PEIMS data standards, established by the commissioner of education, shall be used by a district to submit information. *Education Code 42.006; 19 TAC 61.1025*~~

kgc 6/30/19: moved to CBA for U114.

kgc 4/20/18: I recommend this be moved to CBA or somewhere else; it doesn't really fit here.

Next Generation Technology

A district, in the administration of the district, shall consider using next generation technologies, including cryptocurrency, blockchain technology, and artificial intelligence. *Gov't Code 2054.601*

kgc 6/30/19: I really don't know if we want to keep this in the PRM, but I've added it so we can decide. SB 64 (sec. 18), effective 9.1.19.

There is a liability exemption for someone who reports a potential security issue to a local gov't, but this doesn't seem like it belongs in the PRM:

Sec. 2054.602. LIABILITY EXEMPTION. A person who in good faith discloses to a state agency or other governmental entity information regarding a potential security issue with respect to the agency's or entity's information resources technologies is not liable for any civil damages resulting from disclosing the information unless the person stole, retained, or sold any data obtained as a result of the security issue.

Children's Internet Protection Act

Under the Children's Internet Protection Act (CIPA), a district must, as a prerequisite to receiving universal service discount rates, implement certain internet safety measures and submit certification to the Federal Communications Commission (FCC). *47 U.S.C. 254* [See ~~UNIVERSAL SERVICE DISCOUNTS~~[Universal Service Discounts](#), below, for details]

Districts that do not receive universal service discounts but do receive certain federal funds under the Elementary and Secondary Education Act (ESEA) must, as a prerequisite to receiving these

	<p>funds, implement certain internet safety measures and submit certification to the Department of Education (DOE). <i>20 U.S.C. 7131</i> [See ESEA FUNDINGFunding, below, for details]</p>
<p>Definitions</p> <p><i>“Harmful to Minors”</i></p>	<p>“Harmful to minors” means any picture, image, graphic image file, or other visual depiction that:</p> <ol style="list-style-type: none"> 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. <p><i>47 U.S.C. 254(h)(7)(G); 20 U.S.C. 7131(e)(6)</i></p>
<p><i>“Technology Protection Measure”</i></p>	<p>“Technology protection measure” means a specific technology that blocks or filters internet access. <i>47 U.S.C. 254(h)(7)(I)</i></p>
<p>Universal Service Discounts</p>	<p>An elementary or secondary school having computers with internet access may not receive universal service discount rates unless a district submits to the FCC the certifications described below at CERTIFICATIONS TO THECertifications to the FCC and a certification that an internet safety policy has been adopted and implemented as described at INTERNET SAFETY POLICYInternet Safety Policy, below, and ensures the use of computers with internet access in accordance with the certifications. <i>47 U.S.C. 254(h)(5)(A); 47 C.F.R. 54.520</i></p>
<p>Certifications to the FCC</p>	<p>A district that receives discounts for internet access and internal connections services under the federal universal support mechanism for schools must make certifications in accordance with <i>47 C.F.R. 54.520(c)</i> each funding year. A district that only receives discounts for telecommunications services is not subject to the certification requirements, but must indicate that it only receives discounts for telecommunications services. <i>47 C.F.R. 54.520(b)</i></p>
<p><i>With Respect to Minors</i></p>	<p>A district must submit certification that the district:</p> <ol style="list-style-type: none"> 1. Is enforcing a policy of internet safety for minors that includes monitoring their online activities and the operation of a technology protection measure with respect to any of its computers with internet access that protects against access through such computers to visual depictions that are obscene, child pornography, or harmful to minors;

2. Is enforcing the operation of such technology protection measure during any use of such computers by minors; and
3. Is educating minors, as part of its internet safety policy, about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

*47 U.S.C. 254(h)(5)(B)**With Respect to Adults*

A district must submit certification that the district:

1. Is enforcing a policy of internet safety that includes the operation of a technology protection measure with respect to any of its computers with internet access that protects against access through such computers to visual depictions that are obscene or child pornography; and
2. Is enforcing the operation of such technology protection measure during any use of such computers.

47 U.S.C. 254(h)(5)(C)

Disabling for Adults

An administrator, supervisor, or other person authorized by a district may disable the technology protection measure during use by an adult to enable access for bona fide research or other lawful purpose. *47 U.S.C. 254(h)(5)(D)*

Internet Safety Policy

A district shall adopt and implement an internet safety policy that addresses:

1. Access by minors to inappropriate matter on the internet and the World Wide Web;
2. The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;
3. Unauthorized access, including "hacking," and other unlawful activities by minors online;
4. Unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and
5. Measures designed to restrict minors' access to materials harmful to minors.

*47 U.S.C. 254(l)**Public Hearing*

A district shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed internet safety policy. *47 U.S.C. 254(h)(5)(A)(iii), (l)(1)(B)*

“Inappropriate for Minors”

A determination regarding what matter is inappropriate for minors shall be made by a board or designee. *47 U.S.C. 254(l)(2)*

ESEA Funding

Federal funds made available under Title IV, Part A of the ESEA for an elementary or secondary school that does not receive universal service discount rates may not be used to purchase computers used to access the internet, or to pay for direct costs associated with accessing the internet unless a district:

1. Has in place a policy of internet safety for minors that includes the operation of a technology protection measure that protects against access to visual depictions that are obscene, child pornography, or harmful to minors; and enforces the operation of the technology protection measure during any use by minors of its computers with internet access; and
2. Has in place a policy of internet safety that includes the operation of a technology protection measure that protects against access to visual depictions that are obscene or child pornography; and enforces the operation of the technology protection measure during any use of its computers with internet access.

A district may disable the technology protection measure to enable access for bona fide research or other lawful purposes.

Certification to DOE

A district shall certify its compliance with these requirements during each annual program application cycle under the ESEA.

20 U.S.C. 7131

Transfer of Equipment to Students

~~kgc 9/5/18: As a start, I've moved this to CQ? None of the tracked changes show up there; it just all appears as new.~~

~~kgc 4/20/18: The material below should be located elsewhere. I have a few ideas:~~

~~1. **CMD -- EQUIPMENT AND SUPPLIES MANAGEMENT- INSTRUCTIONAL MATERIALS CARE AND ACCOUNTING**~~

~~2. **Add a new code that includes this material and, possibly, other material related to tech equipment, such as procurement (p. 9 of CH).**~~

~~A. **at CQ, such as CQB -- TECHNOLOGY RESOURCES- EQUIPMENT -- if we did this, we might be able to move E-Rate here, too.**~~

~~B. **at CM, such as CME -- EQUIPMENT AND SUPPLIES MANAGEMENT -- TECHNOLOGY EQUIPMENT**~~ kgc 6/30/19: I've

moved this to a new CQC, Technology Resources, Equipment and Funding. At U115, I'll move eRate to that code.

~~A district may transfer to a student enrolled in the district:~~

- ~~1. Any data processing equipment donated to the district, including equipment donated by a private donor, or a state eleemosynary institution, or a state agency under Government Code 2175.905 [see Fees below];~~
- ~~2. Any equipment purchased by the district, to the extent consistent with the provisions at Use of Public Funds below; and~~
- ~~3. Any surplus or salvage equipment owned by the district.~~

~~Education Code 32.102(a)~~

~~Before transferring data processing equipment to a student, a district must:~~

- ~~1. Adopt rules governing transfers, including provisions for technical assistance to the student by the district;~~
- ~~2. Determine that the transfer serves a public purpose and benefits the district; and~~
- ~~3. Remove from the equipment any offensive, confidential, or proprietary information, as determined by the district.~~

~~Education Code 32.104~~

Donations

~~A district may accept:~~

- ~~1. Donations of data processing equipment for transfer to students under these provisions; and~~
- ~~2. Gifts, grants, or donations of money or services to purchase, refurbish, or repair data processing equipment.~~

~~Education Code 32.102(b)~~

Fees

~~A district shall not pay a fee or other reimbursement to a state eleemosynary institution or institution or agency of higher education or other state agency may not collect a fee or other reimbursement from a district for surplus or salvage data processing equipment it transfer transferred to the district. Government Code 2175.905(c)~~

kge 4/20/18: statutory tightening.

Use of Public Funds

~~A district may spend public funds to:~~

- ~~1. Purchase, refurbish, or repair any data processing equipment transferred to a student; and~~

~~2. Store, transport, or transfer data processing equipment under this policy these provisions:~~

~~Education Code 32.105~~

Eligibility

~~A student is eligible to receive data processing equipment under this policy these provisions only if the student does not otherwise have home access to data processing equipment, as determined by thea district. A district shall give preference to educationally disadvantaged students. Education Code 32.103~~

Return of Equipment

~~Except as provided below, a student who receives data processing equipment from a district under this policy these provisions shall return the equipment to the district not later than the earliest of:~~

- ~~1. Five years after the date the student receives the equipment;~~
- ~~2. The date the student graduates;~~
- ~~3. The date the student transfers to another district; or~~
- ~~4. The date the student withdraws from school.~~

~~The requirements above do not apply iff, at the time the student is required to return the equipment, the district determines that the equipment has no marketable value, the student is not required to return the equipment.~~

~~Education Code 32.106~~

~~kge 4/20/18: statutory tightening~~

Data Processing

~~"Data processing" means information technology equipment and related services designed for the automated storage, manipulation, and retrieval of data by electronic or mechanical means. Govern-ment Code 2054.003(3); Education Code 32.101.~~

~~kge 9/5/18: All of above moved to CQ? Equipment.~~

~~kge 4/20/18: Added for completeness.~~

Uniform Electronic Transactions Act

A district may agree with other parties to conduct transactions by electronic means. Any such agreement or transaction must be done in accordance with the Uniform Electronic Transactions Act. *Business and Commerce Code Chapter 322; 1 TAC 203*

Digital Signature

A digital signature may be used to authenticate a written electronic communication sent to a district if it complies with rules adopted by the board. Before adopting the rules, the board shall consider the rules adopted by the Department of Information Resources (DIR)

and, to the extent possible and practicable, make the board’s rules consistent with DIR rules. *Gov’t Code 2054.060; 1 TAC 203*

kgc 6/30/19: Everything below was moved to new COB—Cybersecurity.

Security Breach Notification

To Individuals

~~A district that owns, or licenses, or maintains computerized data that includes sensitive personal information shall disclose, in accordance with the notice provisions at Notice below at Business and Commerce Code 521.053(e), 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 as quickly as possible, except as provided at Criminal Investigation Exception below, or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.~~

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 Subsection (b) may be provided under that state's law or under Subsection (b)~~

To the Owner or License Holder

~~A district that maintains computerized data that includes sensitive personal information not owned by the district shall notify the owner or license holder of the information, in accordance with the provisions at Notice below Business and Commerce Code 521.053(e), 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.~~

Notice

~~A district may give the required notice to individuals or the owner or license holder by providing:~~

- ~~— written notice at the last known address of the individual;~~
- ~~— electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001; or~~
- ~~— if the district demonstrates that the cost of providing notice would exceed \$250,000, the number of affected persons exceeds 500,000, or the district does not have sufficient contact information, by:~~

- ~~— electronic mail, if the person has electronic mail addresses for the affected persons;~~
- ~~— conspicuous posting of the notice on the person's website; or~~
- ~~— notice published in or broadcast on major statewide media.~~

~~Information Security Policy~~

~~A district 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 notice described above complies with the notice requirements if the district notifies affected persons in accordance with that policy.~~

~~To a Consumer Reporting Agency~~

~~If a district is required to notify at one time more than 10,000 persons of a breach of system security, the district 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 district shall provide the notice without unreasonable delay.~~

~~Criminal Investigation Exception~~

~~A district may delay providing the required notice to state residents 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.~~

~~Information Security Policy~~

~~A district 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 notice described above complies with Business and Commerce Code 521.053 if the district notifies affected persons in accordance with that policy.~~

~~*Business and Commerce Code 521.053; Local Gov't Code 205.010*~~

~~Definitions~~

~~*"Breach of System Security"*~~

~~"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 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. *Business and Commerce Code 521.053(a)*~~

~~“Sensitive Personal Information”~~

~~“Sensitive personal information” 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.~~

~~Business and Commerce Code 521.002(a)(2), (b)~~
kgc 7/24/19: Everything below moved to COB; will be reviewed thoroughly at U115.

~~Access to Electronic Communications~~

~~Electronic Communication Privacy Act~~

~~Except as otherwise provided in the Electronic Communication Privacy Act, 18 U.S.C. 2510–22, a person commits an offense if the person:~~

- ~~1.—Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;~~
- ~~2.—Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

 - ~~a.—Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or~~
 - ~~b.—Such device transmits communications by radio, or interferes with the transmission of such communication; or~~~~

- ~~c.— Such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or~~
 - ~~d.— Such use or endeavor to use takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or~~
 - ~~e.— Such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;~~
- ~~3.— Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the prohibited interception of a wire, oral, or electronic communication;~~
 - ~~4.— Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the prohibited interception of a wire, oral, or electronic communication; or~~
 - ~~5.— Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by 18 U.S.C. 2511(2)(a)(ii), 2511(2)(b)–(c), 2511(2)(e), 2516, and 2518; knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation; having obtained or received the information in connection with a criminal investigation; and with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation.~~

~~It shall not be unlawful for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.~~

~~18 U.S.C. 2511(1), (2)(d)~~

Stored Wire and Electronic Communications and Transactional Records Access Act	<p>A district must comply with the Stored Wire and Electronic Communications and Transactional Records Access Act, 18 U.S.C. 2701–12.</p> <p>Whoever intentionally accesses without authorization a facility through which an electronic communication service is provided or intentionally exceeds an authorization to access that facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system commits an offense. 18 U.S.C. 2701(a)</p>
Exceptions	<p>This section does not apply with respect to conduct authorized:</p> <ol style="list-style-type: none"> 1. By the person or entity providing a wire or electronic communications service; 2. By a user of that service with respect to a communication of or intended for that user; or 3. By sections 18 U.S.C. 2703, 2704, or 2518. <p>18 U.S.C. 2701(c)</p>
Definitions	
“Electronic Communication”	<p>“Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce. 18 U.S.C. 2510(12), 2711(1)</p>
“Electronic Storage”	<p>“Electronic storage” means:</p> <ol style="list-style-type: none"> 1. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and 2. Any storage of such communication by an electronic communication service for purposes of backup protection of such communication. <p>18 U.S.C. 2510(17), 2711(1)</p> <p>The term encompasses only the information that has been stored by an electronic communication service provider. Information that an individual stores to the individual’s hard drive or cell phone is not in electronic storage under the statute. <u>Garcia v. City of Laredo</u>, 702 F.3d 788 (5th Cir. 2012)</p>
“Electronic Communications System”	<p>“Electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications. 18 U.S.C. 2510(14), 2711(1)</p>

~~“Electronic Communication Service”~~

~~“Electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications. 18 U.S.C. 2510(15), 2711(1)~~

~~“Facility”~~

~~“Facility” includes servers operated by electronic communication service providers for the purpose of storing and maintaining electronic storage. The term does not include technology, such as cell phones and computers, that enables the use of an electronic communication service. Garcia v. City of Laredo, 702 F.3d 788 (5th Cir. 2012)~~

~~“Person”~~

~~“Person” means any employee, or agent of the United States or any state or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation. 18 U.S.C. 2510(6), 2711(1)~~

KGC 6/29/19: Everything below moved to new COB(H)-Cybersecurity and trimmed down.

Cybersecurity Information Sharing Act

~~A district may, for a cybersecurity purpose and consistent with the protection of classified information, share with, or receive from, any other non-federal entity or the federal government a cyber threat indicator or defensive measure. A district receiving a cyber threat indicator or defensive measure from another entity shall comply with otherwise lawful restrictions placed on the sharing or use of such cyber threat indicator or defensive measure by the sharing entity. 6 U.S.C. 1503(c)~~

~~Protection and Use of Information Security~~

~~A district monitoring an information system, operating a defensive measure, or providing or receiving a cyber threat indicator or defensive measure under 6 U.S.C. 1503 shall implement and utilize a security control to protect against unauthorized access to or acquisition of such indicator or measure. 6 U.S.C. 1503(d)(1)~~

~~Removal of Personal Information~~

~~A district sharing a cyber threat indicator pursuant to these provisions shall, prior to sharing:~~

- ~~1.— Review such indicator to assess whether it contains any information not directly related to a cybersecurity threat that the district knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual and remove such information; or~~
- ~~2.— Implement and utilize a technical capability configured to remove any information not directly related to a cybersecurity threat that the district knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual.~~

<i>Use of Information</i>	<p>6 U.S.C. 1503(d)(2)</p> <p>A cyber threat indicator or defensive measure shared or received may, for cybersecurity purposes:</p> <ol style="list-style-type: none"> 1.— Be used by a district to monitor or operate a defensive measure that is applied to an information system of the district, or an information system of another non-federal entity or a federal entity upon written consent of that other entity; and 2.— Be otherwise used, retained, and further shared by a district subject to an otherwise lawful restriction placed by the sharing entity on such indicator or measure, or an otherwise applicable provision of law.
<i>Exception</i>	<p>6 U.S.C. 1503(d)(3)</p> <p>A cyber threat indicator or defensive measure shared with a state, tribal, or local government under Title 6, United States Code, may not be used by any such government to regulate, including an enforcement action, the lawful activity of any non-federal entity or any activity taken by a non-federal entity pursuant to mandatory standards, including an activity relating to monitoring, operating a defensive measure, or sharing of a cyber threat indicator. A cyber threat indicator or defensive measure shared as described in this provision may, consistent with a state, tribal, or local government regulatory authority specifically relating to the prevention or mitigation of cybersecurity threats to information systems, inform the development or implementation of a regulation relating to such information systems. 6 U.S.C. 1503(d)(4)(C)</p>
<i>Law Enforcement Use</i>	<p>A district that receives a cyber threat indicator or defensive measure under Title 6, United States Code, may use such indicator or measure for the purposes described in 6 U.S.C. 1504(d)(5)(A). 6 U.S.C. 1503(d)(4)(B) [See CKE]</p>
<i>Exemption from Public Disclosure</i>	<p>A cyber threat indicator or defensive measure shared by or with a state, tribal, or local government under 6 U.S.C. 1503 shall be deemed voluntarily shared information and exempt from disclosure under any state or local freedom of information law, open government law, open meetings law, open records law, sunshine law, or similar law requiring disclosure of information or records. 6 U.S.C. 1503(d)(4)(B)</p> <p>A cyber threat indicator or defensive measure shared with the federal government under Title 6, United States Code, shall be:</p> <ol style="list-style-type: none"> 1.— Deemed voluntarily shared information and exempt from disclosure under federal public information law and any state or local provision of law requiring disclosure of information or records; and

	<p>2.—Withheld, without discretion, from the public under federal public information law and any state or local provision of law requiring disclosure of information or records.</p> <p>6 U.S.C. 1504(d)(3) [See GBA]</p>
No Duty	<p>Nothing in these provisions creates a duty to share a cyber threat indicator or defensive measure or to warn or act based on receipt of a cyber threat indicator or defensive measure; or undermines or limits the availability of otherwise applicable common law or statutory defenses. 6 U.S.C. 1505(e)</p>
Definitions	
“Non-Federal Entity”	<p>“Non-federal entity” means any private entity, non-federal government agency or department, or state, tribal, or local government (including a political subdivision, department, or component thereof). 6 U.S.C. 1501(14)</p>
“Cybersecurity Purpose”	<p>“Cybersecurity purpose” means the purpose of protecting an information system or information that is stored on, processed by, or transiting an information system from a cybersecurity threat or security vulnerability. The term does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement. 6 U.S.C. 1501(4)</p>
“Cybersecurity Threat”	<p>“Cybersecurity threat” means an action, not protected by the First Amendment to the United States Constitution, on or through an information system that may result in an unauthorized effort to adversely impact the security, availability, confidentiality, or integrity of an information system or information that it stored on, processed by, or transiting an information system. 6 U.S.C. 1501(5)</p>
“Cyber Threat Indicator”	<p>“Cyber threat indicator” means information that is necessary to describe or identify:</p> <ol style="list-style-type: none"> 1.—Malicious reconnaissance, as defined in 6 U.S.C. 1501(12), including anomalous patterns of communications that appear to be transmitted for the purpose of gathering technical information related to a cybersecurity threat or security vulnerability; 2.—A method of defeating a security control or exploitation of a security vulnerability; 3.—A security vulnerability, including anomalous activity that appears to indicate the existence of a security vulnerability; 4.—A method of causing a user with legitimate access to an information system or information that is stored on, processed by, or transiting an information system to unwittingly enable the defeat of a security control or exploitation of a security vulnerability;

- ~~5.— Malicious cyber command and control, as defined in 6 U.S.C. 1501(11);~~
- ~~6.— The actual or potential harm caused by an incident, including a description of the information exfiltrated as a result of a particular cybersecurity threat;~~
- ~~7.— Any other attribute of a cybersecurity threat, if disclosure of such attribute is not otherwise prohibited by law; or~~
- ~~8.— Any combination thereof.~~

~~6 U.S.C. 1501(6)~~

~~“Defensive Measure”~~

~~“Defensive measure” means an action, device, procedure, signature, technique, or other measure applied to an information system or information that is stored on, processed by, or transiting an information system that detects, prevents, or mitigates a known or suspected cybersecurity threat or security vulnerability. The term does not include a measure that destroys, renders unusable, provides unauthorized access to, or substantially harms an information system or information stored on, processed by, or transiting such information system not owned by the private entity operating the measure or another entity that is authorized to provide consent and has provided consent to that private entity for operation of such measure. 6 U.S.C. 1501(7)~~

~~“Information System”~~

~~“Information system” has the meaning given the term in 44 U.S.C. 3502 and includes industrial control systems, such as supervisory control and data acquisition systems, distributed control systems, and programmable logic controllers. 6 U.S.C. 1501(9)~~

~~“Security Control”~~

~~“Security control” means the management, operational, and technical controls used to protect against an unauthorized effort to adversely affect the confidentiality, integrity, and availability of an information system or its information. 6 U.S.C. 1501(16)~~

~~“Security Vulnerability”~~

~~“Security vulnerability” means any attribute of hardware, software, process, or procedure that could enable or facilitate the defeat of a security control. 6 U.S.C. 1501(17)~~

[kgc 6/30/19: Everything below moved to COB—Equipment & Funding](#)

Technology Lending Program Grant

~~The commissioner may establish a grant program under which grants are awarded to districts to implement a technology lending program to provide students access to equipment necessary to access and use electronic instructional materials.~~

~~A district may apply to the commissioner to participate in the grant program. In awarding grants for each school year, the commissioner shall consider:~~

- ~~— The availability of existing equipment to students in the district;~~
- ~~— Other funding available to the district; and~~
- ~~— The district's technology plan.~~

~~*Education Code 32.301*~~

~~A district may use a grant awarded under this program or other local funds to purchase, maintain, and insure equipment for a technology lending program. Equipment purchased by a district with a grant is the property of the district. *Education Code 32.303*~~

~~KGC 7/22/17: per CVC this can wait until U110 or 111 so this whole policy can be considered.~~

~~KGC 7/6/17: All of this was added by HB 3526, effective 6/12/17. I wasn't sure about adding it at all since it's optional for the commissioner. There is other detail in the bill, but it is aimed more at the commissioner. Perhaps this should also go at CQ or an xref there.~~

Information Required
on Website

A district that at any time on or after January 1, 2019, maintained a publicly accessible Internet website shall post on a publicly accessible website the following information:

1. ~~t~~The district's contact information, including a mailing address, telephone number, and e-mail address;
2. ~~e~~Each member of the board;
3. ~~t~~The date and location of the next election for ~~officers of the political subdivision~~ board members [see BB series];
4. ~~t~~The requirements and deadline for filing for candidacy of board member, which shall be continuously posted for at least one year before the election day for the office [see BB series];
5. ~~e~~Each notice of a meeting of the political subdivision's governing body under the Open Meetings Act (Government Code Chapter 551, Subchapter C) [see BE]; and
6. ~~e~~Each record of a meeting of the political subdivision's governing body under Government Code 551.021 [see BE].

Paragraphs Items 5 and 6 above do not apply to a district with a population of less than 5,000 in the district's boundaries and located in a county with a population of less than 25,000.

Gov~~ernment~~ Code 2051.151

kgc 7/6/19: Required by HB 305, effective 9.1.19, BUT it applies to any entity with taxing authority that maintained a website at any time on or after 1.1.19

I'm really at a loss for where to put this and the best way to present it. As we (CVC, AK, EJN) discussed in our meeting a couple of weeks ago, we will consider getting rid of the catalog list below when we overhaul the tech policies at U115. If we do that, the above information (and any other independent website posting requirements like this – i.e., not associated with other information more appropriately presented elsewhere) will be appropriate here.

I don't just want to add the information above to the list below because it is an independent posting reqt, unlike everything below, which is associated with more expansive statutory requirements.

At item 2, the statute says "each ELECTED officer of the political subdivision." I'm ok with my change, but wanted to be sure everyone is.

[By the way, I super hate this bill!!]

Trustee Information

Each district that maintains an internet website shall post on the website the name, email address, and term of office, including the date the term began and the date the term expires, of each member of the district's board of trustees. If a district does not maintain an internet website, the district shall submit the information required above to the Texas Education Agency (TEA). On receipt of the district's information, TEA shall post the information on TEA's internet website.

Each time there is a change in the membership of a district's board, the district shall update the information required above and, as applicable post the updated information on the district's internet website or submit the updated information to TEA for posting on TEA's internet website.

Education Code 11.1518

kgc 7/6/19: Perhaps this could've gone at BBB, but I really didn't want to separate from the other requirement above. This is from HB 963, effective 6.14.19

Note: The following is an index of website posting requirements that are addressed in the legal reference material of the policy manual. The list is not all-inclusive. The list does not address postings that are required in response to a specific incident or postings required under special circumstances.

Other Required Internet Postings

The following posting requirements apply to a district that maintains an internet website:

1. A board may not vote on adoption of a proposed local innovation plan unless the final version of the proposed plan has been available on the district website for at least 30 days, under Education Code 12A.005(a)(1) and 19 Administrative Code 102.1307(a)(1). [See AF]
2. A district designated as a district of innovation shall ensure that a copy of its current local innovation plan is available to the public by posting and maintaining the plan in a prominent location on the district's website, under Education Code 12A.0071(a) and 19 Administrative Code 102.1305(e), .1307(f). [See AF]
3. Not later than 30 days after an accreditation status of accredited-warned, accredited-probation, or not accredited-revoked is assigned, a district must post notice on the home page of

its website with a link to the required notification under 19 Administrative Code 97.1055(f), and maintain this until the district is assigned the accredited status. [See AIA]

4. A board shall disseminate its Texas Academic Performance Report (TAPR) by posting it on the district website under 19 Administrative Code 61.1022(f). [See AIB]
5. Not later than the tenth day after the first day of instruction of each school year, a district shall make available each campus report card, the district's performance report, the district's accreditation status and performance rating, and a definition and explanation of each accreditation status, under Education Code 39.362. [See AIB]
6. A district shall post its annual federal report card under 20 U.S.C. 6311(h)(2). [See AIB]
7. A district shall post a targeted improvement plan for a campus assigned an unacceptable performance rating on its website before the board hearing on the plan under Education Code 39A.057(b). [See AIC]
8. A district shall notify stakeholders of their ability to review the completed campus turnaround plan on the district website at least 30 days before the final plan is submitted to the board of trustees, under 19 Administrative Code 97.1064(d)(1). [See AIC]
9. A district shall post an election notice required under Election Code 85.007. [See BBBA]
10. [Each day early voting is conducted, the district shall post the branch daily register under Election Code 85.072. \[See BBBA\]](#)
11. [A district shall post early voting rosters under Election Code 87.121. \[See BBBA\]](#)
- ~~9.~~ **kgc 7/7/19: HB 1850, effective 9.1.19**
- ~~10.~~12. A district shall post the minutes of the last regular board meeting held before an election of trustees if the minutes reflect that a trustee is deficient in meeting the trustee's training requirement, under Education Code 11.159(b) and 19 Administrative Code 61.1(j). [See BBD]
- ~~11.~~13. A district that is located wholly or partly in a municipality with a population of more than 500,000 and with a student enrollment of more than 15,000 shall post a report filed pursuant

to Election Code Chapter 254 by a board member, a candidate for membership on the board, or a specific-purpose committee for supporting, opposing, or assisting a candidate or member of a board under Election Code 254.04011. [See BBBC]

~~12.~~14. A district shall provide access to the conflicts disclosure statements and questionnaires under Local Government Code 176.009. [See BBFA, CHE]

~~13.~~15. A district shall post the statements regarding activities to support and promote student health under Education Code 28.004. [See BDF]

~~14.~~16. A board must post notice of a board meeting and, if the district contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more, the board must also post the agenda for a board meeting under Government Code 551.056. [See BE]

~~15.~~17. A district that has a student enrollment of 10,000 or more shall post the archived recording, or a link thereto, of its meetings under Government Code 551.128(b-1). [See BE]

18. A district conducting a bond election shall post the election order, the election notice, the contents of the proposition, and any sample ballot under Election Code 4.003(f). [See CCA]

kgc 7/7/19: HB 440, effective 9.1.19

19. A district conducting a bond election shall post the voter information document beginning not later than the 21st day before election day and ending on the day after the election, under Government Code 1251.052(d). [See CCA]

kgc 7/7/19: HB 477, effective 9.1.19

~~16.~~20. A district issuing capital appreciation bonds shall post the information required by Government Code 1201.0245. [See CCA]

21. Not later than 30 days before the date of an election to approve a tax rate, a district must post the results of an efficiency audit under Education Code 11.184. [See CCG]

kgc 7/4/19: From HB 3, effective 1.1.20.

~~17.~~22. A district shall include on the home page of its website the prescribed statement if the district increases the amount of

taxes to fund maintenance and operation expenditures under Tax Code 26.05(b). [See CCG]

23. A district shall post a summary of its proposed budget concurrently with publication of the proposed budget under Education Code 44.0041. [See CE]

24. In the format prescribed by the comptroller, a district shall post or cause to be posted tax rate and budget information under Tax Code 26.18. [See CE]

~~18.~~ kgc 7/4/19: SB 2, generally effective 1.1.20

~~19.~~25. A district shall maintain its adopted budget on the district's website until the third anniversary of the date the budget was adopted, under Education Code 44.0051. [See CE]

~~20.~~26. A district shall continuously post its annual financial report under Local Government Code 140.008 on its website until the district posts the next annual report, or, as an alternative, the district may post a link to the comptroller's website where the district's financial information may be viewed. [See CFA]

~~21.~~27. A district shall continuously post on its website the contact information for the district's main office, including the physical address, the mailing address, the main telephone number, and an email address, under Local Government Code 140.008(f)(2). [See CFA]

~~22.~~ ~~A district shall report its energy usage information on a publicly accessible internet website with an interface designed for ease of navigation, if available, under Government Code 2265.001. [See CL]~~

kgc 7/5/19: SB 668, effective 6.10.19, defined "gov'tal entity" to specifically exclude school districts.

~~23.~~28. A district that does not participate in the uniform group health insurance program (TRS ActiveCare) shall post its comparability report, together with the policy or contract for the group health coverage plan, under Education Code 22.004(d). [See CRD]

29. A district shall post the board's employment policies under Education Code 21.204(d). [See DCB]

30. The board shall adopt and post on the district's website early childhood literacy and mathematics plans that set specific annual goals under Education Code 11.185. [See EA]

31. [The board shall post on the district's website and on the website, if any, of each campus the annual report of progress toward the goals set under the early childhood literacy and mathematics plans under Education Code 11.185. \[See EA\]](#)

32. [The board shall post on the district's website and on the website, if any, of each campus the annual report of progress toward the goals set under the college, career, and military readiness plans under Education Code 11.186. \[See EA\]](#)

~~24.~~ [kgc 7/5/19: From HB 3, generally effective 9.1.19; please verify xrefs.](#)

~~25-33.~~ A district shall post the transition and employment guide for students enrolled in special education programs and their parents in order to provide information on statewide services and programs that assist in the transition to life outside the public school system, under Education Code 29.0112. [See EHBAD]

~~26-34.~~ Annually, a district shall post any agreement between the district and a public institution of higher education to provide a dual credit program, under Education Code 28.009(b-2). [See EHDD]

~~27-35.~~ A district shall publish information from TEA under Education Code 28.02121 explaining the advantages of the distinguished level of achievement and each endorsement. [See EIF]

~~28-36.~~ A district shall post the date the PSAT/NMSQT will be administered and the date any college advanced placement tests will be administered, under Education Code 29.916. [See EK]

~~29-37.~~ A district that receives funds under Title 1, Part A shall post on its website and the website of each campus for each grade served, information on each assessment required by the state to comply with 20 U.S.C. 6311, other assessments required by the state, and assessments required district-wide, under 20 U.S.C. 6312(e)(2)(B). [See EKB]

38. A district shall post information regarding local programs and services, including charitable programs and services, available to assist ~~homeless~~ students [who are homeless](#), under Education Code 33.906. [See FDC]

~~30.~~ [kgc 7/5/19: changed by SB 668, effective 6.10.19](#)

39. A district shall prominently post information about required and recommended immunizations and procedures for claiming an exemption from immunization requirements under Education Code 38.019. [See FFAB]

40. Each school year, the board shall post a summary of the “Guidelines for the Care of Students With Food Allergies At-Risk for Anaphylaxis” on the district’s website with instructions for obtaining access to the complete guidelines document, under Education Code 38.0151. [See FFAF]

~~31.~~ kgc 7/6/19: SB 869, effective 6.14.19.

41. To the extent practicable, a district must post the procedure for reporting bullying established by the district’s bullying policy, under Education Code 37.0832(e). [See FFI]

42. A district shall post on its website, for each district campus, the email address and dedicated phone number of the campus behavior coordinator under Education Code 26.015. [See FO]

kgc 7/5/19: SB 1306, effective 5.28.19; please verify xref.

43. If the board designates a method for making a written request for public information, other than mail, email, or hand-delivery, the board must include a statement that a request may be made by that method on its website under Government Code 552.234(b) unless the statement is on the sign required by Government Code 552.205. [See GBAA??]

~~32.~~ kgc 7/1/19: SB 944, effective 9.1.19. This is awkward because the actual requirement is awkward in the bill.

44. A board that allows requestors to use the public information request form created by the attorney general must post the form on the district website under Government Code 552.235. [See GBAA??]

kgc 7/1/19: SB 944, effective 9.1.19.

~~33-45.~~ A district shall post on its website and each campus shall post on any campus website a notice regarding the district’s ability to refuse entry or eject certain persons under Education Code 37.105 and 19 Administrative Code 103.1207(g), including the appeal process. [See GKA]

Optional Internet Postings

A district that maintains an internet website may post the following:

1. A campus intervention team may give the required notice of the public meeting for input prior to the development of a targeted improvement plan fifteen days prior to the meeting by way of the district and campus website, under 19 Administrative Code 97.1061(d)(3)(A)(ii). [See AIB]
2. A board may broadcast an open meeting over the internet, under Government Code 551.128. [See BE]
3. A district may publish the superintendent's employment contract on the district's website instead of publishing it in the annual financial management report under 19 Administrative Code 109.1001(q)(3)(B)(i). [See CFA]
4. Notice of a vacant position for which a certificate or license is required may be provided by posting the position on the district's internet website, rather than on a bulletin board, under Education Code 11.1513. [See DC]
5. A district may place on its internet website a current copy of the procedural safeguards notice regarding special education and related services, under 34 C.F.R. 300.504(b). [See EHBAE]
6. A district may provide the annual notice to the parent of each student enrolled in grade 9 or above of the availability of programs under which a student may earn college credit, under Education Code 28.010. [See EHDD]
7. [A board may post a mailing address and email address designated for receiving written requests for public information on its website under Government Code 552.234\(d\). \[See GBAA??\]](#)

~~6.~~ [kgc 7/1/19: SB 944, effective 9.1.19.](#)

“Geospatial Data Products”

“Geospatial data product” means a document, computer file, or internet website that contains geospatial data; a map; or information about a service involving geospatial data or a map. *Gov't Code 2051.101(1)*

Notice

A district shall include a notice on each geospatial data product that:

1. Is created or hosted by the district;
2. Appears to represent property boundaries; and

3. Was not produced using information from an on-the-ground survey conducted by or under the supervision of a registered professional land surveyor or land surveyor authorized to perform surveys under laws in effect when the survey was conducted.

The notice must be in substantially the following form: "This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries."

The notice may include language further defining the limits of liability of a geospatial data product producer; apply to a geospatial data product that contains more than one map; or for a notice that applies to a geospatial data product that is or is on an internet website, be included on a separate page that requires the person accessing the website to agree to the terms of the notice before accessing the geospatial data product.

Gov't Code 2051.102

Exemption

A district is not required to include the notice on a geospatial data product that:

1. Does not contain a legal description, a property boundary monument, or the distance and direction of a property line;
2. Is prepared only for use as evidence in a legal proceeding;
3. Is filed with the clerk of any court; or
4. Is filed with the county clerk.

Gov't Code 2051.103

ARD 8/14/19: from KGC's version info:

A new MS version will be created at this code, but no other versions will be created based on the following email dated 8.7.19 from KGC to CVC, EJM, JOY, LRS, AMY D, and KLL, to which everyone agreed:

HB 305 requires "a political subdivision with the authority to impose a tax" to post a bunch of stuff on its website. Military districts & Boys Ranch can't tax, so we need to create an MS version for them that doesn't include the material at Information Required on Website. Stafford Municipal adopts its tax rate in conjunction with the city, so I don't want to delete it for them. The Common School Districts are trickier. Technically, the county commissioners court levies their taxes, but former Ed. Code 22.11(c) says this:

(c) The commissioners court, at the time of levying taxes for county purposes, shall also levy upon all taxable property within any common or common consolidated school district any school tax voted by the district in compliance with Chapter 20 of this code, and if

(1) a specific rate has been voted, the commissioners court shall levy the tax at the rate provided in the election; and

(2) no specific rate has been voted, the commissioners court shall levy the tax at such a rate within the limit voted as determined by the board of trustees of the district and the county superintendent and certified to the commissioners court by the county superintendent.

This highlighted language is enough for me to think the CSDs should comply with HB 305's website posting requirements. I don't truly understand CSD tax rate adoption well enough to decide they don't have to comply. Also, I think (based on past anecdotal research and review of CSD websites) the actual practice of tax rate adoption may vary district to district and not be constrained by the formalities of the old statutory requirements.

[TDSHS Guidelines for the Care of Students with Food Allergies At-Risk for Anaphylaxis: https://www.dshs.texas.gov/uploadedFiles/Content/Prevention_and_Preparedness/schoolhealth/SHAC/Guidelines-Food%20Allergy-Final.pdf](https://www.dshs.texas.gov/uploadedFiles/Content/Prevention_and_Preparedness/schoolhealth/SHAC/Guidelines-Food%20Allergy-Final.pdf)

KGC 6/29/19: I created this policy code in September 2018 before we decided to delay CQ series until U115. At that time, I had revised it from the U105 version of this material in CO – statutory tightening, more complete presentation of statutes, some rearrangement – all with some input from Julie.

For post-lege material to show up in tracked changes, I've accepted those previous changes. I didn't move the electronic communication provisions – that doesn't really feel like cybersecurity. We can make a final decision at U115.

AMY D: PLEASE CHECK FORMATTING & STYLES BC THEY SEEMED TO KEEP CHANGING BACK TO NORMAL.

I've asked before, but what drives the defined term being in quotation marks in the margin note or not? Compare CPC where the quotation marks are in the legal text, not in the margin note. Can we get some guidance so that we can do it consistently? And AMY D, once we decide, you'll need to check that I've done it right throughout. Unless it's already in a policy, I don't tend to put the term in quotation marks as the margin note bc I don't prefer that aesthetically.

kgc 7/24/19: Joy agrees!!

**KGC 6/29/19: Note that we have the margin note Definitions several times; we also have the same term defined for different statutes—Breach of System Security. Should we add a line at definitions each time: “For purposes of the District Cybersecurity Policy/Security Breach Notifications/Cybersecurity Information Sharing Act, the following definitions apply”???

Cybersecurity Policy

Each district shall adopt a cybersecurity policy to:

1. ~~s~~Secure district cyberinfrastructure against cyber attacks and other cybersecurity incidents; and
2. ~~d~~Determine cybersecurity risk and implement mitigation planning.

A district's cybersecurity policy may not conflict with the information security standards for institutions of higher education adopted by the Department of Information Resources under Government Code Chapters 2054 and 2059.

Cybersecurity
Coordinator

The superintendent shall designate a cybersecurity coordinator to serve as a liaison between the district and the Texas Education Agency (TEA) in cybersecurity matters.

Report to TEA

The district's cybersecurity coordinator shall report to TEA any cyber attack or other cybersecurity incident against the district cyberinfrastructure that constitutes a breach of system security as soon as practicable after the discovery of the attack or incident.

Report to Parent

The district's cybersecurity coordinator shall provide notice to a parent of or person standing in parental relation to a student enrolled in the district of an attack or incident for which a report is required to TEA involving the student's information.

Definitions

For purposes of the district's cybersecurity policy, the following definitions apply:

Breach of System Security

"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.

Cyber Attack

"Cyber attack" means an attempt to damage, disrupt, or gain unauthorized access to a computer, computer network, or computer system.

Cybersecurity

"Cybersecurity" means the measures taken to protect a computer, computer network, or computer system against unauthorized use or access.

Education Code 11.175

KGC 6/29/19: SB 820, effective 9.1.19.

Cybersecurity Training

At least once each year, a district shall identify district employees who have access to a district computer system or database and require those employees and board members to complete a cybersecurity training program certified under Government Code 2054.519 (state certified cybersecurity training programs) or offered by the district as described at District Training Program, below. Gov't Code 2054.5191(a-1)

kgc 6/30/19: Does this need xrefs anywhere else – somewhere in B and D? I referenced from board training policy, and Mark & I discussed him referencing from DMA.

The board may select the most appropriate state certified cybersecurity training program or ~~D~~district ~~T~~training ~~P~~program for employees of the district to complete. The board shall:

1. Verify and report on the completion of a cybersecurity training program by district employees to the Department of Information Resources; and
2. Require periodic audits to ensure compliance with these provisions.

Gov't Code 2054.5191(b)

District Training Program

A district that employs a dedicated information resources cybersecurity officer may offer to its employees a cybersecurity training program that satisfies the requirements described by Government Code 2054.519(b). Gov't Code 2054.519(f)

kgc 6/30/19: The requirements of (b) aren't long, but I'd rather a district actually go to the trouble to look them up rather than read them and presume they can do their own training.

kgc 6/30/19: HB 3834, effective 6.14.19.

Security Breach Notification

To Individuals

A district that owns, licenses, or maintains computerized data that includes sensitive personal information shall disclose, ~~in accordance with the provisions at Notice below,~~ 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 ~~as quickly as possible without unreasonable delay and in each case not later than the 60th day after the date on which the district determines that the breach occurred,~~ except as provided at Criminal Investigation Exception, below, or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

KGC 6/29/19: HB 4390, effective 1.1.20.

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 ~~Subsection (b)~~ may be provided under that state's law or under ~~Subsection (b)~~ Notice, below.

To the Owner or License Holder

A district that maintains computerized data that includes sensitive personal information not owned by the district shall notify the owner or license holder of the information, ~~in accordance with the provisions at Notice below,~~ of any breach of system security imme-

diately after discovering the breach, if the sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

Notice

A district may give the required notice to individuals or the owner or license holder by providing:

1. Written notice at the last known address of the individual;
2. Electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001 (~~regarding electronic records and signatures~~); or
3. If the district demonstrates that the cost of providing notice would exceed \$250,000, the number of affected persons exceeds 500,000, or the district does not have sufficient contact information, by:
 - a. Electronic mail, if the ~~person-district~~ has electronic mail addresses for the affected persons;
 - b. Conspicuous posting of the notice on the ~~person's-district's~~ website; or
 - c. Notice published in or broadcast on major statewide media.

~~e.~~ **KGC 6/29/19: statutory tightening.**

*Information
Security Policy*

A district 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 notice described above complies with the notice requirements if the district notifies affected persons in accordance with that policy.

To the Attorney
General

A district 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 district determines that the breach occurred if the breach involves at least 250 residents of this state. The notification must include:

1. ~~a~~ 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. ~~t~~ The number of residents of this state affected by the breach at the time of notification;
3. ~~t~~ The measures taken by the district regarding the breach;

4. aAny measures the district intends to take regarding the breach after the notification described at Notice, above; and

5. iInformation regarding whether law enforcement is engaged in investigating the breach.

KGC 6/29/19: HB 4390, effective 1.1.20.

To a Consumer Reporting Agency

If a district is required to notify at one time more than 10,000 persons of a breach of system security, the district 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 district shall provide the notice without unreasonable delay.

Criminal Investigation Exception

A district 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.

Business and Commerce Code 521.053; Local Gov't Code 205.010

Definitions

For purposes of security breach notifications, the following definitions apply:

Breach of System Security

“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 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. *Business and Commerce Code 521.053(a)*

Sensitive Personal Information

“Sensitive personal information” 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.

Business and Commerce Code 521.002(a)(2), (b)

KGC 6/29/19: Material below moved from CQ. I've gotten rid of a lot of the detail we initially included because this is VOLUNTARY. I'd like to think that a district wanting to share cybersecurity threat info with the feds would probably be working with an attorney and not relying on this info here.

There are myriad resources online that provide guidance.

<https://www.cisecurity.org/newsletter/cybersecurity-information-sharing-act-of-2015/>

https://www.us-cert.gov/sites/default/files/ais_files/CISA_FAQs.pdf

https://www.us-cert.gov/sites/default/files/ais_files/Non-Federal-Entity_Sharing_Guidance_%28Sec%20105%28a%29%29.pdf

http://www.isaca.org/cyber/cyber-security-articles/Pages/what-you-need-to-know-about-the-cybersecurity-information-sharing-act-of-2015.aspx?utm_referrer=

I had a lot of issues with formatting and in that struggle, I lost the tracked changes of what I deleted. To see what I've deleted, compare this to a pre-update version of CQ.

**Cybersecurity
Information Sharing
Act**

A district may, for a cybersecurity purpose and consistent with the protection of classified information, share with, or receive from, any other non-federal entity or the federal government a cyber threat indicator or defensive measure in accordance with the Cybersecurity Information Sharing Act, 6 U.S.C. Subchapter I (1501–1510). **A**

~~district receiving a cyber threat indicator or defensive measure from another entity shall comply with otherwise lawful restrictions placed on the sharing or use of such cyber threat indicator or defensive measure by the sharing entity. 6 U.S.C. 1503(c)~~

Removal of
Personal
Information

A district sharing a cyber threat indicator pursuant to these provisions shall, prior to sharing:

1. Review such indicator to assess whether it contains any information not directly related to a cybersecurity threat that the district knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual and remove such information; or
2. Implement and utilize a technical capability configured to remove any information not directly related to a cybersecurity threat that the district knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual.

6 U.S.C. 1503(d)(2)

Definitions

For purposes of the Cybersecurity Information Sharing Act, the following definitions apply:

*Cybersecurity
Purpose*

“Cybersecurity purpose” means the purpose of protecting an information system or information that is stored on, processed by, or transiting an information system from a cybersecurity threat or security vulnerability. ~~The term does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement.~~ 6 U.S.C. 1501(4)

*Cybersecurity
Threat*

“Cybersecurity threat” means an action, not protected by the First Amendment to the United States Constitution, on or through an information system that may result in an unauthorized effort to adversely impact the security, availability, confidentiality, or integrity of an information system or information that ~~it is~~ stored on, processed by, or transiting an information system. The term does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement. 6 U.S.C. 1501(5)

*Cyber Threat
Indicator*

“Cyber threat indicator” means information that is necessary to describe or identify:

1. Malicious reconnaissance, as defined in 6 U.S.C. 1501(12), including anomalous patterns of communications that appear to be transmitted for the purpose of gathering technical information related to a cybersecurity threat or security vulnerability;

2. A method of defeating a security control or exploitation of a security vulnerability;
3. A security vulnerability, including anomalous activity that appears to indicate the existence of a security vulnerability;
4. A method of causing a user with legitimate access to an information system or information that is stored on, processed by, or transiting an information system to unwittingly enable the defeat of a security control or exploitation of a security vulnerability;
5. Malicious cyber command and control, as defined in 6 U.S.C. 1501(11);
6. The actual or potential harm caused by an incident, including a description of the information exfiltrated as a result of a particular cybersecurity threat;
7. Any other attribute of a cybersecurity threat, if disclosure of such attribute is not otherwise prohibited by law; or
8. Any combination thereof.

6 U.S.C. 1501(6)

Defensive Measure

“Defensive measure” means an action, device, procedure, signature, technique, or other measure applied to an information system or information that is stored on, processed by, or transiting an information system that detects, prevents, or mitigates a known or suspected cybersecurity threat or security vulnerability. The term does not include a measure that destroys, renders unusable, provides unauthorized access to, or substantially harms an information system or information stored on, processed by, or transiting such information system not owned by the private entity operating the measure or another entity that is authorized to provide consent and has provided consent to that private entity for operation of such measure. *6 U.S.C. 1501(7)*

Information System

“Information system” has the meaning given the term in 44 U.S.C. 3502 and includes industrial control systems, such as supervisory control and data acquisition systems, distributed control systems, and programmable logic controllers. *6 U.S.C. 1501(9)*

Security Control

“Security control” means the management, operational, and technical controls used to protect against an unauthorized effort to adversely affect the confidentiality, integrity, and availability of an information system or its information. *6 U.S.C. 1501(16)*

Security
Vulnerability

“Security vulnerability” means any attribute of hardware, software, process, or procedure that could enable or facilitate the defeat of a security control. 6 U.S.C. 1501(17)

kgc 7/24/19: Everything below moved from CQ; will be reviewed thoroughly at UIIS.

Access to Electronic
Communications

Electronic
Communication
Privacy Act

Except as otherwise provided in the Electronic Communication Privacy Act, 18 U.S.C. 2510–22, a person commits an offense if the person:

1. Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;
2. Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:
 - a. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
 - b. Such device transmits communications by radio, or interferes with the transmission of such communication; or
 - c. Such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or
 - d. Such use or endeavor to use takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or
 - e. Such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;
3. Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the prohibited interception of a wire, oral, or electronic communication;

4. Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the prohibited interception of a wire, oral, or electronic communication; or
5. Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by 18 U.S.C. 2511(2)(a)(ii), 2511(2)(b)–(c), 2511(2)(e), 2516, and 2518; knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation; having obtained or received the information in connection with a criminal investigation; and with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation.

It shall not be unlawful for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.

18 U.S.C. 2511(1), (2)(d)

Stored Wire and Electronic Communications and Transactional Records Access Act

A district must comply with the Stored Wire and Electronic Communications and Transactional Records Access Act, 18 U.S.C. 2701–12.

Whoever intentionally accesses without authorization a facility through which an electronic communication service is provided or intentionally exceeds an authorization to access that facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system commits an offense. 18 U.S.C. 2701(a)

Exceptions

This section does not apply with respect to conduct authorized:

1. By the person or entity providing a wire or electronic communications service;
2. By a user of that service with respect to a communication of or intended for that user; or
3. By sections 18 U.S.C. 2703, 2704, or 2518.

18 U.S.C. 2701(c)

Definitions

Electronic
Communication

“Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce. 18 U.S.C. 2510(12), 2711(1)

Electronic
Storage

“Electronic storage” means:

1. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
2. Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

18 U.S.C. 2510(17), 2711(1)

The term encompasses only the information that has been stored by an electronic communication service provider. Information that an individual stores to the individual’s hard drive or cell phone is not in electronic storage under the statute. Garcia v. City of Laredo, 702 F.3d 788 (5th Cir. 2012)

Electronic
Communications
System

“Electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications. 18 U.S.C. 2510(14), 2711(1)

Electronic
Communication
Service

“Electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications. 18 U.S.C. 2510(15), 2711(1)

Facility

“Facility” includes servers operated by electronic communication service providers for the purpose of storing and maintaining electronic storage. The term does not include technology, such as cell phones and computers, that enables the use of an electronic communication service. Garcia v. City of Laredo, 702 F.3d 788 (5th Cir. 2012)

Person

“Person” means any employee, or agent of the United States or any state or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation. 18 U.S.C. 2510(6), 2711(1)

Technology Lending
Program Grant

~~The commissioner may establish a grant program under which grants are awarded to districts to implement a technology lending program to provide students access to equipment necessary to access and use electronic instructional materials.~~

~~A district may apply to the commissioner of education to participate in the technology lending grant program established under Education Code 32.301. In awarding grants for each school year, the commissioner shall consider:~~

~~The availability of existing equipment to students in the district;~~

~~Other funding available to the district; and~~

~~The district's technology plan.~~

Education Code 32.301(b)

A district may use a grant awarded under this program or other local funds to purchase, maintain, and insure equipment for a technology lending program. Equipment purchased by a district with a grant is the property of the district. Education Code 32.303

kgc 6/30/19: Since the program is established (https://tea.texas.gov/Finance_and_Grants/Grants/Grants_Awarded/2018%E2%80%932019_Technology_Lending/), I don't think we need this other detail.

KGC 7/22/17: per CVC this can wait until U110 or 111 so this whole policy can be considered.

KGC 7/6/17: All of this was added by HB 3526, effective 6/12/17. I wasn't sure about adding it at all since it's optional for the commissioner. There is other detail in the bill, but it is aimed more at the commissioner. Perhaps this should also go at CO or an xref there.

Transfer of
Equipment to
Students

A district may transfer to a student enrolled in the district:

1. Any data processing equipment donated to the district, including equipment donated by a private donor, or a state eleemosynary institution or state agency under Government Code 2175.905 [see Fees, below];
2. Any equipment purchased by the district, to the extent consistent with the provisions at Use of Public Funds, below; and
3. Any surplus or salvage equipment owned by the district.

Education Code 32.102(a)

Before transferring data processing equipment to a student, a district must:

1. Adopt rules governing transfers, including provisions for technical assistance to the student by the district;
2. Determine that the transfer serves a public purpose and benefits the district; and
3. Remove from the equipment any offensive, confidential, or proprietary information, as determined by the district.

Education Code 32.104

Donations

A district may accept:

1. Donations of data processing equipment for transfer ~~to~~ under these provisions; and
2. Gifts, grants, or donations of money or services to purchase, refurbish, or repair data processing equipment.

Education Code 32.102(b)

Fees

A state eleemosynary institution or institution or agency of higher education or other state agency may not collect a fee or other reimbursement from a district for surplus or salvage data processing equipment transferred to the district. Gov~~ernment~~ Code 2175.905(c)

Use of Public Funds

A district may spend public funds to:

1. Purchase, refurbish, or repair any data processing equipment transferred to a student; and
2. Store, transport, or transfer data processing equipment under these provisions.

Education Code 32.105

Eligibility

A student is eligible to receive data processing equipment under these provisions only if the student does not otherwise have home access to data processing equipment, as determined by the district. A district shall give preference to educationally disadvantaged students. Education Code 32.103

Return of
Equipment

Except as provided below, a student who receives data processing equipment from a district under these provisions shall return the equipment to the district not later than the earliest of:

1. Five years after the date the student receives the equipment;
2. The date the student graduates;

3. The date the student transfers to another district; or

4. The date the student withdraws from school.

The requirements above do not apply if, at the time the student is required to return the equipment, the district determines that the equipment has no marketable value.

Education Code 32.106

Data Processing

"Data processing" means information technology equipment and related services designed for the automated storage, manipulation, and retrieval of data by electronic or mechanical means. Govern-
~~ment~~ Code 2054.003(3); Education Code 32.101.

kgc 7/8/19: All of this from Transfer of Equipment was moved from
CQ.

INSURANCE AND ANNUITIES MANAGEMENT
HEALTH AND LIFE INSURANCE

CRD
(LEGAL)

Coverage Requirements

- Districts with 500 or Fewer Employees
A district with 500 or fewer employees is required to participate in the uniform group coverage program established under Insurance Code 1579 (TRS-ActiveCare). *Insurance Code 1579.151; Education Code 22.004(a)*
- Self-Funded Districts
Notwithstanding the above, a district that was individually self-funded on January 1, 2001, may elect not to participate in TRS-ActiveCare. *Insurance Code 1579.151(b)*
- Districts with More Than 500 Employees
A district with more than 500 employees may elect to participate in TRS-ActiveCare. The district shall apply for participation in the manner prescribed by TRS rule. *Insurance Code 1579.152; 34 TAC 41.30*

TRS-ActiveCare

The Teacher Retirement System (TRS) shall implement and administer TRS-ActiveCare. TRS shall establish plans of group coverages for employees participating in the program and their dependents. *Insurance Code 1579.051, .101*

Eligibility

Full-Time Employees

Participation in TRS-ActiveCare is limited to employees of participating districts who are full-time employees and to part-time employees who are participating members in TRS. A “full-time employee” is a participating TRS member who is currently employed by a district in a position that is eligible for membership in TRS and who is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under Insurance Code Chapters 1551, 1601, or 1575 (TRS-Care). *Insurance Code 1579.202; 34 TAC 41.33(2)*

Certain Part-Time Employees

A part-time employee who is not a participating member in TRS is eligible to participate in TRS-ActiveCare only if the employee pays all of the premiums and other costs associated with the health coverage plan selected by the employee. A “part-time employee” is an individual who:

1. Is currently employed by a district for ten hours or more each week;
2. Is employed in a position that is not eligible for membership in TRS or is not eligible for membership in TRS because of a service or disability retirement; and
3. Is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under Insurance Code Chapters 1551, 1601, or 1575 (TRS-Care).

Insurance Code 1579.204; 34 TAC 41.33(6)

INSURANCE AND ANNUITIES MANAGEMENT
HEALTH AND LIFE INSURANCECRD
(LEGAL)

Optional Coverages	A district that participates in TRS-ActiveCare may enter contracts to provide optional insurance coverages for district employees. <i>Education Code 22.004(j)</i>
Other Health Coverage Programs	A district that does not participate in TRS-ActiveCare shall make available to its employees group health coverage provided by a risk pool established under Local Government Code Chapter 172 (“authorized risk pool”), or under a policy of insurance or group contract issued by an insurer, a company subject to Insurance Code Chapter 842, or a health maintenance organization under Insurance Code Chapter 843. <i>Education Code 22.004(b)</i>
Financial Statement	A district that does not participate in TRS-ActiveCare may not contract with an insurer, company, or health maintenance organization to issue a policy or contract for group health insurance, or with any person to assist the district in obtaining or managing the policy or contract unless, before the contract is entered, the insurer, company, organization, or person provides the district with an audited financial statement showing the financial condition of the insurer, company, organization, or person. <i>Education Code 22.004(f)</i>
Small Employer Market Election	<p>A district that does not participate in TRS-ActiveCare may elect to participate in the small employer market without regard to the number of eligible employees in the district. A district that makes this election will be treated as a small employer for all purposes under Insurance Code Chapter 1501.</p> <p>A district that is participating in TRS-ActiveCare may not participate in the small employer market and may not renew a health insurance contract obtained in accordance with Insurance Code 1501.009 after the date on which the program of coverages provided under TRS-ActiveCare is implemented. This provision does not affect a contract for the provision of optional coverages.</p> <p><i>Insurance Code 1501.009</i></p>
<i>Employee Election — Spouses</i>	A district employee who is eligible for coverage under a large or small employer health benefit plan providing coverage to the district’s employees and who is the spouse of another district employee covered under the plan may elect whether to be treated under the plan as an employee or as the dependent of the other employee. <i>Insurance Code 1501.0095</i>
Self-Funded Health-Care Plan	The board may establish a health-care plan for district employees and their dependents. In implementing the plan, the board shall establish a fund to pay, as authorized under the plan, all or part of the actual costs for health care incurred by employees and any dependent whose participation in the program is being supported by deductions from an employee’s salary. The fund consists of money

contributed by the district and money deducted from salaries of employees for dependent or employee coverage. Money for the fund may not be deducted from an employee's salary unless the employee authorizes the deduction in writing. The plan shall attempt to protect the district against unanticipated catastrophic individual loss, or unexpectedly large aggregate loss, by securing individual stop-loss coverage, or aggregate stop-loss coverage, or both, from a commercial insurer.

The board may amend or cancel the district's health-care plan at any regular or special board meeting. If the plan is canceled, any valid claim against the fund for payment of health-care costs resulting from illness or injury occurring during the time the plan was in effect shall be paid out of the fund. If the fund is insufficient to pay the claim, the costs shall be paid out of other available school district funds.

Education Code 22.005

Comparability

The coverage provided by a district that does not participate in TRS-ActiveCare must meet the substantive coverage requirements of Insurance Code Chapters 1251, Subchapter A, Chapter 1364, and Chapter 1366, Subchapter A, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. "Major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under Insurance Code Chapter 1551 (Texas Employees Group Benefits Act).

The following factors shall be considered in determining whether the district's coverage is comparable to the basic health coverage specified above:

1. The deductible amount for service provided inside and outside of the network;
2. The coinsurance percentages for service provided inside and outside of the network;
3. The maximum amount of coinsurance payments a covered person is required to pay;
4. The amount of the copayment for an office visit;
5. The schedule of benefits and the scope of coverage;
6. The lifetime maximum benefit amount; and

7. Verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance (TDI) or is provided by an authorized risk pool or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

*Education Code 22.004(b)**Compliance
Report*

A district that does not participate in TRS ActiveCare shall prepare a report addressing its compliance with Education Code 22.004. The report must be available for review, together with the policy or contract for the group health coverage plan, at the central administrative office of each campus in the district and be posted on the district's Internet website if the district maintains a website, must be based on the district group health coverage plan in effect during the current plan year, and must include:

1. Appropriate documentation of:
 - a. The district's contract for group health coverage with a provider licensed to do business in this state by TDI or an authorized risk pool; or
 - b. A resolution of the board authorizing a self-insurance plan for district employees and of the district's review of district ability to cover the liability assumed;
2. The schedule of benefits;
3. The premium rate sheet, including the amount paid by the district and employee;
4. The number of employees covered by the health coverage plan offered by the district; and
5. Information concerning the ease of completing the report.

*Education Code 22.004(d)***Cost of Coverage**
TRS-ActiveCare

The cost of coverage under TRS-ActiveCare shall be shared by the state, the district, and the employees, as set forth below. *Education Code 22.004(c)*

*State
Contribution*

The state shall provide for each covered employee the amount of \$900 each state fiscal year or a greater amount as provided by the General Appropriations Act. The state contribution shall be distributed through the school finance formulas under Education Code Chapters [41-48](#) and [42-49](#) and used by districts as provided by Education Code ~~42.260~~[48.275](#). *Insurance Code 1579.251(a)*

kgc 7/4/19: HB 3, generally effective 9.1.19

<i>Employee Contribution</i>	<p>An employee covered by the program shall pay that portion of the cost of coverage selected by the employee that exceeds the amount of the state contribution and a district's contribution.</p> <p>A district may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.</p> <p><i>Insurance Code 1579.253</i></p>
Other Health Coverage Programs	<p>The cost of coverage provided by a district that does not participate in TRS-ActiveCare shall be shared by the employees and the district, using the contributions by the state described at Insurance Code Chapter 1579, Subchapter F. [See State Contribution, above] <i>Education Code 22.004(c)</i></p>
District Required Minimum Effort	<p>A district shall, for each fiscal year, use to provide health coverage an amount equal to the number of participating employees of the district multiplied by \$1,800. <i>Insurance Code 1581.052(a)</i></p>
Designation of Compensation for Benefits	<p>An employee who is covered by a cafeteria plan or who is eligible to pay health-care premiums through a premium conversion plan may elect to designate a portion of the employee's compensation to be used as health-care supplementation. [See DEA] <i>Education Code 22.103(a), (c)</i></p>
Use	<p>An employee may use compensation designated for health-care supplementation for any employee benefit, including depositing the designated amount into a cafeteria plan in which the employee is enrolled or using the designated amount for health-care premiums through a premium conversion plan. <i>Education Code 22.106</i></p>
Written Election	<p>Each year, an active employee must elect in writing whether to designate a portion of the employee's compensation to be used as health-care supplementation. An election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. <i>Education Code 22.105</i></p>
Continuation Coverage	<p>Notwithstanding any other law, an employee whose resignation is effective after the last day of an instructional year is entitled to participate or be enrolled in TRS ActiveCare or the district's group health coverage through the earlier of:</p>
After Resignation	<ol style="list-style-type: none"> 1. The first anniversary of the date participation in or coverage under TRS ActiveCare or the district's group health coverage was first made available to district employees for the last instructional year in which the employee was employed by the district; or

2. The last calendar day before the first day of the instructional year immediately following the last instructional year in which the employee was employed by the district.

A district may not diminish or eliminate its contribution [see District Required Minimum Effort, above] before the last date on which the employee is entitled to participation or enrollment.

Education Code 22.004(k), (l); 34 TAC 41.38

During Military
Leave

An employee who is absent from a position of employment by reason of service in the uniformed services may elect to continue coverage under a health plan. The maximum period of coverage of such a person and the person's dependents shall be the lesser of:

1. The 24-month period beginning on the date on which the person's absence begins; or
2. The day after the date on which the person fails to apply for or return to a position of employment. [See DECB]

38 U.S.C. 4317(a)

During FMLA Leave

During any period of leave under the Family and Medical Leave Act (FMLA), a district shall maintain coverage under any group health plan for the duration of the leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.
29 U.S.C. 2614(c); 29 C.F.R. 825.209, .210, .213 [See also DECA]

Upon Termination
or Other Qualifying
Event (COBRA)

In accordance with regulations that the Secretary of Health and Human Services shall prescribe, each group health plan that is maintained by any state that receives funds under 42 U.S.C. Chapter 6A, by any political subdivision of such a state, or by any agency or instrumentality of such a state or political subdivision, shall provide, in accordance with 42 U.S.C. Chapter 6A, Subchapter XX, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan in connection with such group.

*42 U.S.C. 300bb-1(a), 300bb-2(1)**“Qualifying Event”*

“Qualifying event” means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under 42 U.S.C. Chapter 6A, Subchapter XX, would result in the loss of coverage of a qualified beneficiary:

1. The death of the covered employee.
2. The termination, other than by reason of such employee’s gross misconduct, or reduction of hours, of the covered employee’s employment.
3. The divorce or legal separation of the covered employee from the employee’s spouse.
4. The covered employee becoming entitled to benefits under Medicare, 42 U.S.C. 1395 et seq.
5. A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan

*42 U.S.C. 300bb-3**Period of Coverage*

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

1. In the case of the termination or reduction of hours of a covered employee as described at item 2 at “Qualifying Event” above, the date which is 18 months after the date of the termination or reduction of hours.
2. If a qualifying event occurs during the 18 months after the date of the termination or reduction of hours, the date which is 36 months after the date of the termination or reduction of hours.
3. In the case of a qualifying event other than termination or reduction of hours, the date which is 36 months after the date of the qualifying event.
4. In the case of the termination or reduction of hours of a covered employee as described at item 2 at “Qualifying Event” that occurs less than 18 months after the date the covered employee became entitled to benefits under Medicare, 42 U.S.C. 1395 et seq., the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this provision before the close of the 36-month period beginning on the date the covered employee became so entitled.

5. In the case of a qualified beneficiary who is determined, under Title II or XVI of the Social Security Act, 42 U.S.C. 401 et seq., 1381 et seq. (the Social Security Act), to have been disabled at any time during the first 60 days of continuation coverage, any reference in paragraph 1 or 2 to 18 months is deemed a reference to 29 months with respect to all qualified beneficiaries, but only if the qualified beneficiary has provided notice of such determination under 42 U.S.C. 300bb-6(3) before the end of such 18 months.
6. The date on which the employer ceases to provide any group health plan to any employee.
7. The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary.
8. The date on which the qualified beneficiary first becomes, after the date of the election, covered under any other group health plan that satisfies 42 U.S.C. 300bb-2(2)(D)(i), or entitled to benefits under Title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].
9. In the case of a qualified beneficiary who is disabled at any time during the first 60 days of continuation coverage under this subchapter, the month that begins more than 30 days after the date of the final determination under the Social Security Act that the qualified beneficiary is no longer disabled.

42 U.S.C. 300bb-2(2)

Premium

The plan may require payments of a premium for any period of continuation coverage, except that such premium shall not exceed 102 percent applicable premium for such period, and may, at the election of the payor, be made in monthly installments. Individuals entitled to 29 months of continuation coverage may be required to pay premiums not to exceed 150 percent of the usual cost for any month after the 18th month. In no event may the plan require payment of any premium before the day that is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. *42 U.S.C. 300bb-2(3)*

Notice

The employer of an employee under a group health plan must notify the plan administrator of an employee's death, termination, reduction of hours, or eligibility for Medicare payments within 30 days of the date of the qualifying event. *42 U.S.C. 300bb-6(2)-(3)*

Note: See also DEB for continuation benefits that are available to survivors of district peace officers under certain conditions.

**Coverage of
Preexisting
Conditions**

Notwithstanding any other law, group health benefit coverage provided by or offered through a district to its employees under any law other than the uniform group coverage program is subject to the requirements of Insurance Code Sections 1501.102–.105, which limit exclusion for preexisting conditions. This provision applies to all group health benefit coverage provided by or offered through a district to its employees, including a standard health benefit plan issued under Insurance Code Chapter 1507 and health and accident coverage provided through a risk pool established under Local Government Code Chapter 172. *Education Code 22.004(m)*

TRS-ActiveCare

Coverage provided under the uniform group coverage program may not be made subject to a preexisting condition limitation during the initial period of eligibility. *Insurance Code 1579.105*

Federal Law

A group health plan may not impose a preexisting condition exclusion. *42 U.S.C. 300gg-3(a); 45 C.F.R. 146.111, 147.108*

**Health Insurance
Portability and
Accountability Act
(HIPAA)**

The Public Health Service Act (PHS Act) requirements are the following:

1. Limitations on preexisting condition exclusion periods in accordance with section 2701 of the PHS Act as codified before enactment of the Affordable Care Act;
2. Special enrollment periods for individuals and dependents described under section 2704(f) of the PHS Act;
3. Prohibitions against discriminating against individual participants and beneficiaries based on health status under section 2705 of the PHS Act, except that the sponsor of a self-funded non-federal governmental plan cannot elect to exempt its plan from requirements under section 2705(a)(6) and 2705(c) through (f) that prohibit discrimination with respect to genetic information;
4. Standards relating to benefits for mothers and newborns under section 2725 of the PHS Act;
5. Parity in mental health and substance use disorder benefits under section 2726 of the PHS Act;
6. Required coverage for reconstructive surgery following mastectomies under section 2727 of the PHS Act; and

7. Coverage of dependent students on a medically necessary leave of absence under section 2728 of the PHS Act.

Exemption Election A sponsor of a non-federal governmental plan may elect to exempt its plan, to the extent the plan is not provided through health insurance coverage (that is, it is self-funded), from one or more of the requirements described in items 4 through 7, above.

42 U.S.C. 300gg-21(a)(2); 45 C.F.R. 146.180(a)

Form of Election

The election must meet the following requirements:

1. Be made in an electronic format in a form and manner as described by the U.S. Secretary of Health and Human Services in guidance.
2. Be made in conformance with all of the plan sponsor's rules, including any public hearing requirements.
3. Specify the beginning and ending dates of the period to which the election is to apply. This period is a single specified plan year, as defined in 45 C.F.R. 144.103.
4. Specify the name of the plan and the name and address of the plan administrator, and include the name and telephone number of a person the Centers for Medicare and Medicaid Services (CMS) may contact regarding the election.
5. State that the plan does not include health insurance coverage, or identify which portion of the plan is not funded through health insurance coverage.
6. Specify each requirement described in 45 C.F.R. 146.180(a)(1) of this section from which the plan sponsor elects to exempt the plan.
7. Certify that the person signing the election document, including, if applicable, a third party plan administrator, is legally authorized to do so by the plan sponsor.
8. Include, as an attachment, a copy of the notice described in 45 C.F.R. 146.180(f).

42 U.S.C. 300gg-21(a)(2); 45 C.F.R. 146.180(b)

Timing of Election

Absent an extension by the U.S. Department of Health and Human Services CMS for good cause, a plan sponsor or entity acting on behalf of a plan sponsor must file an election with CMS before the first day of the plan year.

A plan sponsor may renew an election through subsequent elections.

42 U.S.C. 300gg-21(a)(2); 45 C.F.R. 146.180(c), (f)

*Contents of
Notice*

A plan that makes the election described in these provisions must notify each affected enrollee of the election, and explain the consequences of the election. The notice must be in writing and must be provided to each enrollee at the time of enrollment under the plan, and on an annual basis no later than the last day of each plan year for which there is an election. A plan may meet the notification requirements by prominently printing the notice in a summary plan description, or equivalent description, that it provides to each enrollee at the time of enrollment, and annually. Also, when a plan provides a notice to an enrollee at the time of enrollment, that notice may serve as the initial annual notice for that enrollee. *42 U.S.C. 300gg-21(a)(2)(C); 45 C.F.R. 146.180(e)(1)*

**Privacy of Health
Information**

To the extent a district is a covered entity under the Administrative Simplification provisions of HIPAA, the district must maintain the privacy of protected health information in accordance with the Privacy Rule, 45 C.F.R. Part 164, Subpart E. *42 U.S.C. Chapter 7, Subchapter XI, Part C.*

Definitions

“Covered Entity”

“Covered entity” means:

1. A health plan;
2. A health-care clearinghouse; or
3. A health-care provider who transmits any health information in electronic form in connection with a transaction covered by 45 C. F. R. Chapter A, Subchapter C.

45 C.F.R. 160.103

*“Protected Health
Information”*

“Protected health information” means individually identifiable health information that is transmitted by electronic media, maintained by electronic media, or transmitted or maintained in any form or medium. “Protected health information” excludes individually identifiable health information in:

1. Education records covered by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g.
2. Medical treatment records, as described at 20 U.S.C. 1232g(a)(4)(B)(iv), on a student who is at least 18 years of age.
3. Employment records held by a covered entity in its role as employer.

20 U.S.C. 1232g; 45 C.F.R. 160.103 [See FL]

<i>“Plan Sponsor”</i>	The term “plan sponsor” includes the employer in the case of an employee benefit plan established or maintained by a single employer. <i>29 U.S.C. 1002(16)(B)</i>
Sponsors of Group Health Plans	<p>A group health plan, to disclose protected health information to the plan sponsor or to provide for or permit the disclosure of protected health information to the plan sponsor by a health insurance issuer or health maintenance organization (HMO) with respect to the group health plan, must ensure that the plan documents restrict uses and disclosures of such information by the plan sponsor consistent with the requirements of the Privacy Rule.</p> <p>The group health plan, or a health insurance issuer or HMO with respect to the group health plan, may disclose summary health information to the plan sponsor, if the plan sponsor requests the summary health information for the purpose of:</p> <ol style="list-style-type: none"> 1. Obtaining premium bids from health plans for providing health insurance coverage under the group health plan; or 2. Modifying, amending, or terminating the group health plan. <p>The group health plan, or a health insurance issuer or HMO with respect to the group health plan, may disclose to the plan sponsor information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan.</p> <p><i>45 C.F.R. 164.504(f)</i></p>

**Deferred
Compensation—
Section 457**

A district, either alone or by contract with other political subdivisions, may create and administer for its employees a deferred compensation plan, the federal income tax treatment of which is governed by Section 457 of the Internal Revenue Code of 1986, and its subsequent amendments, and may assess a fee on each participating employee for administering the plan. *Gov't Code 609.001(11), .102, .112*

Such a deferred compensation plan shall be established and administered in accordance with Government Code Chapter 609, Subchapter B. *Gov't Code Ch. 609*

A district may contract with an employee for the deferment of any part of the employee's compensation.

Except as provided by Government Code 609.5025, to participate in a deferred compensation plan, an employee must consent in the contract to automatic payroll deductions in an amount equal to the deferred amount.

Gov't Code 609.007(a), (c)

Plan Administrator

A district that creates a deferred compensation plan shall designate a plan administrator for the plan. Districts that create a single plan shall designate jointly a plan administrator for the plan. A plan administrator may be an employee, a nonprofit corporation, an individual, a trustee, a private entity, another political subdivision, or an association of political subdivisions. *Gov't Code 609.103*

"Plan administrator" means the person responsible for administering a deferred compensation plan. *Gov't Code 609.001(5)*

**Duties Regarding
Qualified
Vendors**

A plan administrator shall:

1. Develop and implement criteria and procedures for evaluating a vendor's application to become a qualified vendor. *Gov't Code 609.113(a)*
2. Determine the minimum and maximum number of vendors that may be qualified vendors at any given time. *Gov't Code 609.114*
3. Develop and implement requirements for qualified vendors and their employees concerning disclosure, reporting, standards of conduct, solicitation, advertising, relationships with participating employees, the nature and quality of services provided to those employees, and other matters. *Gov't Code 609.116*

Qualified Investment Product	To be classified as a qualified investment product for a deferred compensation plan, an investment product must be approved by the plan administrator to receive investments under the plan. The approval of an investment product for a 457 plan must be in writing. A qualified investment product may be offered only by a qualified vendor of the deferred compensation plan. <i>Gov't Code 609.003</i>
Roth Contribution Programs	A district may, if authorized by federal law, establish a program in accordance with the applicable federal law under which an employee may designate all or a portion of the employee's contribution under a 457 plan as a Roth contribution at the time the contribution is made or convert all or a portion of the employee's previous contribution under the plan to a Roth contribution. <i>Gov't Code 609.1025</i>
Annuities—Section 403(b)	A district may enter into a salary reduction agreement only if the qualified investment product is an eligible qualified investment and is registered with the Teacher Retirement System (TRS) under V.A.T.S. Article 6228a-5, Section 8A. <i>Art. 6228a-5, Sec. 5(a), V.A.T.S.</i>
Definitions	<p>"Eligible qualified investment product" means a qualified investment product offered by a company that is certified with TRS and offers:</p> <ol style="list-style-type: none">1.—Qualified investment products that are annuity contracts; or2.—Qualified investment products other than annuity contracts. <p>34 TAC 53.1(10); <u>eligible to offer the product under V.A.T.S. Article 6228-5, Section 6.</u> <i>Art. 6228a-5, Sec. 4(32), V.A.T.S.</i></p> <p>A "certified company" is a company that meets all certification requirements that has certified to TRS and been placed on the TRS list of certified companies, and whose certification is not expired, suspended, surrendered, denied, or revoked. 34 TAC 53.1(4)</p> <p>"Qualified investment product" means <u>an annuity or investment product</u> that:</p> <ol style="list-style-type: none">1. Meets the requirements of Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments;2. Complies with applicable federal insurance and securities laws and regulations; and3. Complies with applicable state insurance and securities laws and rules. <p>34 TAC 53.1(17); <i>Art. 6228a-5, Sec. 4(54), V.A.T.S.</i></p>

“Salary reduction agreement” means an agreement between a district and an employee to reduce the employee’s salary for the purpose of making direct contributions to or purchases of a qualified investment product. ~~34 TAC 53.1(23)~~; Art. 6228a-5, Sec. 4(~~75~~), V.A.T.S.

Eligible Company

An insurance company is eligible to offer qualified investment products to the employees of districts under these provisions if the company satisfies the following criteria:

1. ~~†~~The company is licensed by the Texas Department of Insurance and is in compliance with minimum capital and surplus requirements, including applicable risk-based capital and surplus requirements prescribed by rules adopted by the department; and
2. ~~†~~The company has experience in providing qualified investment products and has a specialized department dedicated to the service of qualified investment products, as determined by the district.

A company that offers qualified investment products other than annuity contracts, including a company that offers custodial accounts under Section 403(b)(7), Internal Revenue Code of 1986, is eligible to offer qualified investment products to employees of educational institutions under these provisions.

Art. 6228a-5, Sec. 6(a), (b), V.A.T.S.

~~Employee
Designation~~

~~An employee is entitled to designate any agent, broker, or company through which a qualified investment product may be purchased or contributions may be made.~~

kgc 7/8/19: This formatting looks really weird, but it looks right when the tracked changes aren’t showing. Amy D, make sure the cite appears as a cite and not a margin note.

ARD 7/9/19: Fixed!

Payroll Deduction

To the greatest degree possible, ~~a~~-districts that enter into a salary reduction agreement with employees shall require that contributions to eligible qualified investments be made by automatic payroll deduction and deposited directly in the investment accounts.

Art. 6228a-5, Sec. 5(~~e~~), (f), V.A.T.S.

Prohibitions

A district may not:

1. Refuse to enter into a salary reduction agreement with an employee if the qualified investment product that is the subject of

the salary reduction is an eligible qualified investment ~~and is registered with TRS under V.A.T.S. Article 6228-5, Section 8A,~~ except as provided below at item 8 and Exceptions;

2. Require or coerce an employee's attendance at any meeting at which qualified investment products are marketed;
3. Limit the ability of an employee to initiate, change, or terminate a qualified investment product at any time the employee chooses;
4. Grant exclusive access to an employee by discriminating against or imposing barriers to any agent, broker, or company that provides qualified investment products;
5. Grant exclusive access to information about an employee's financial information, including information about an employee's qualified investment products, to a company or agent or affiliate of a company offering qualified investment products unless the employee consents in writing to the access;
6. Accept any benefit from a company or from an agent or affiliate of a company that offers qualified investment products;
7. Use public funds to recommend a qualified investment product offered by a company or an agent or affiliate of a company that offers a qualified investment product; or
8. Enter into or continue a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction agreement is not an eligible qualified investment, ~~including the investment product of a company whose certification has been denied, suspended, or revoked~~ without first providing the employee with notice in writing that:
 - a. Indicates the reason the subject of the salary reduction agreement is no longer an eligible qualified investment ~~or why certification has been denied, suspended, or revoked~~; and
 - b. Clearly states that by signing the notice the employee is agreeing to enter into or continue the salary reduction agreement.

Exceptions

A district may refuse to enter into a salary reduction agreement with an employee if:

1. The eligible qualified investment product that is the subject of the salary reduction agreement is offered by a company that

does not comply with the district's administrative requirements;

2. The district imposes the administrative requirements uniformly on all companies that offer eligible qualified investment products; and
3. The administrative requirements are necessary to comply with employer responsibilities imposed by:
 - a. Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments;
 - b. Any other provision of the Internal Revenue Code of 1986 that applies to Section 403(b);
 - c. Any regulation adopted in relation to a law described by item (a) or (b) that is effective after December 31, 2007; or
 - d. Any change to V.A.T.S. Article 6228a-5 that becomes effective after January 1, 2007.

Art. 6228a-5, Sec. 9, V.A.T.S.

kgc 7/5/19: All changes from HB 2820, effective 9.1.19

Note: For information on procuring goods and services under Education Code Chapter 44, see CH(LEGAL).

For additional legal requirements applicable to purchases with federal funds, see CBB.

[For information on the new instructional facilities allotment, see CBA.](#)

Board Authority

A district may adopt rules as necessary to implement Government Code Chapter 2269. *Gov't Code 2269.051*

Delegation of Authority

The board may delegate its authority under Government Code Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person.

The board shall provide notice of the delegation, the limits of the delegation, and the name or title of each designated person by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

Gov't Code 2269.053

[For information regarding delegation in the event of a catastrophe, emergency, or natural disaster, see CH.]

Contracts Valued at or Above \$50,000

All district contracts valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method that provides the best value for a district [see also CH]:

1. An interlocal contract. [See CH]
2. Competitive bidding. [See CVA]
3. Competitive sealed proposals. [See CVB]
4. Construction manager-agent method. [See CVC]
5. Construction manager-at-risk method. [See CVD]
6. Design-build method. [See CVE]
7. Job order contract. [See CVF]
8. The reverse auction procedure as defined by Government Code 2155.062(d). [See CH]

Education Code 44.031(a); Gov't Code Ch. 2269

[For information on contract-related fees, see CH.]

<p>Selecting a Contracting Method</p>	<p>A board that considers a construction contract using a method authorized by Government Code Chapter 2269 other than competitive bidding must, before advertising, determine which method provides the best value for the district. <i>Gov't Code 2269.056(a)</i></p>
<p>Exceptions <i>Emergency Damage or Destruction</i></p>	<p>If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and a board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. <i>Education Code 44.031(h)</i></p>
<p><i>Contracts Requiring a Bond</i></p>	<p>A reverse auction procedure, whether the same or similar to that described by Government Code 2155.062, may not be used to obtain services related to a public work contract for which a bond is required under Government Code 2253.021 [see Payment and Performance Bonds, below]. <i>Gov't Code 2253.021(h)</i></p>
<p>Public Notice</p>	<p>Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which a district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. <i>Education Code 44.031(g); Gov't Code 2269.052(a)-(b)</i></p>
<p>Contract Selection Criteria</p>	<p>In determining the award of a contract, the district shall consider and apply:</p> <ol style="list-style-type: none"> 1. Any existing laws, including any criteria, related to historically underutilized businesses; and 2. Any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses. <p>In determining the award of a contract, the district may consider:</p> <ol style="list-style-type: none"> 1. Price.

2. The offeror’s experience and reputation.
3. The quality of the offeror’s goods or services.
4. The impact on the ability of the district to comply with rules relating to historically underutilized businesses.
5. The offeror’s safety record.
6. The offeror’s proposed personnel.
7. Whether the offeror’s financial capability is appropriate to the size and scope of the project.
8. Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Gov’t Code 2269.055

Out-of-State Bidders

A board shall not award a contract for general construction, improvements, services, or public works projects or for purchase of supplies, materials, or equipment to a bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located or a state in which a majority of the manufacturing relating to the contract will be performed. *Gov’t Code 2252.001–.002*

This requirement shall not apply to a contract involving federal funds. A district shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov’t Code 2252.003–.004*

Publishing Criteria

A district shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion. *Gov’t Code 2269.056(b)*

Submission

A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery. *Gov’t Code 2269.059*

Selection

A district shall base its selection among offerors on applicable criteria listed for the particular method used. *Gov’t Code 2269.056(b)*

Making Evaluations Public

A district shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded. *Gov’t Code 2269.056(c), .105*

Required Contract Provisions

[For information on required contract provisions, see CH\(LEGAL\).](#)

kgc 7/7/19: To eliminate duplication. Also, see chatter in CH re: creating a single code (maybe CHE Vendor Relations) for these various requirements and prohibitions that are common to all contracts.

~~A district may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it does not boycott Israel and will not during the term of the contract. Gov't Code 2270.002~~

~~“Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. Gov't Code 808.001(2)~~

Change Orders

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

Education Code 44.0411

Inspection, Verification, and Testing

Independently of the contractor, construction manager-at-risk, or design-build firm, a district shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district. The district shall select the services for which it contracts in accordance with Government Code 2254.004. *Gov't Code 2269.058*

Impact Fees

A district is not required to pay impact fees imposed under Local Government Code Chapter 395 unless the board consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the

board considers advisable to provide for the payment of the fees.
Local Gov't Code 395.022

**Energy Savings
Performance
Contracts**

The contracting and delivery procedures for construction projects described at Government Code Chapter 2269 do not apply to energy savings performance contracts described at Education Code 44.901. *Education Code 44.901(j)* [See CL]

**Professional
Services**

Architects and
Engineers

An architect or engineer required to be selected or designated under Government Code Chapter 2269 has full responsibility for complying with Occupations Code Chapter 1051 or 1001, as applicable.

If the selected or designated architect or engineer is not a full-time employee of the district, the district shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Government Code 2254.004 [see Procuring Professional Services, below].

Gov't Code 2269.057

*Registered
Architect*

An architectural plan or specification for any of the following may be prepared only by an architect registered in accordance with Occupations Code, Title 6, Chapter 1051:

1. A new building constructed and owned by a district that will be used for education, assembly, or office occupancy when the total projected construction costs at the commencement of construction exceed \$100,000.
2. Any alteration or addition to an existing building owned by a district that is, or will be, used for education, assembly, or office occupancy when the total projected construction costs of alteration or addition at the commencement of construction exceed \$50,000 and the alteration or addition requires the removal, relocation, or addition of any walls or partitions or the alteration or addition of an exit.

This section does not prohibit a district from choosing a registered architect or a registered professional engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand, limit, or otherwise alter the scope of a design professional's practice nor does it allow a design professional to prepare an architectural plan or specification described above.

Occupations Code 1051.703; 22 TAC 1.212

*Registered
Engineer*

Electrical or mechanical engineering plans, specifications, and estimates for a district construction project whose contemplated cost

at completion is more than \$8,000 and that involves public health, welfare, or safety must be prepared by a registered professional engineer, and the engineering construction executed under the supervision of such an engineer. *Occupations Code 1001.053; Atty. Gen. Op. C-791 (1966)*

A district is not required to secure the services of a registered professional engineer to prepare plans for or supervise a construction project that does not involve electrical or mechanical engineering and for which the contemplated cost does not exceed \$20,000. *Occupations Code 1001.053*

Certification for Purchases Through Purchasing Cooperatives

A district may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000 unless a person designated by the district certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or
2. The plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

“Purchasing cooperative” means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

Gov’t Code 791.011(j)

Procuring Professional Services

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect. A district may contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031. *Education Code 44.031(f)*

Competitive bids shall not be solicited for professional services of any architect, landscape architect, land surveyor, professional engineer, or state-certified or state-licensed real estate appraiser. Contracts for these professional services shall be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov’t Code 2254.002, .003(a)*

In procuring architectural, engineering, or land-surveying services, a district shall:

1. First select the most highly qualified provider on the basis of demonstrated competence and qualifications; and
2. Then attempt to negotiate a contract with that provider at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land-surveying services, a district shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. A district shall continue this process until the parties enter into a contract.

Gov't Code 2254.004

An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

Contracts for
Engineering or
Architectural
Services

Indemnification

A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which the district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the district against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

Duty to Defend

Except as provided below, a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which the district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the district, the district's agent, the district's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the district exercises control. A covenant or promise may provide for the reimbursement of the district's reasonable attorney's fees in proportion to the engineer's or architect's liability.

*District as
Additional
Insured*

The district may require in a contract for engineering or architectural services that the engineer or architect name the district as an

additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.

Standard of Care

A contract for engineering or architectural services to which a governmental agency is a party must require a licensed engineer or registered architect to perform services:

1. With the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and
2. As expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

In a contract for engineering or architectural services to which the district is a party, a provision establishing a different standard of care than a standard described above is void and unenforceable. If a contract contains a void and unenforceable provision, the standard of care described above applies.

Nothing in these provisions prohibits a district in a contract for engineering or architectural services to which the district is a party from including and enforcing conditions that relate to the scope, fees, and schedule of a project in the contract.

Local Gov't Code 271.904

Right to Work

While engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement under Government Code Chapter 2269, a district:

1. May not consider whether a person is a member of or has another relationship with any organization; and
2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

Gov't Code 2269.054

Collective Bargaining

A district awarding a public work contract funded with state money, including the issuance of debt guaranteed by the state, may not:

1. Prohibit, require, discourage, or encourage a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to an agreement with a collective bargaining organization relating to the project; or

2. ~~d~~Discriminate against a person described by ~~paragraph~~ item 1 based on the person's involvement in the agreement, including the person's status or lack of status as a party to the agreement or willingness or refusal to enter into the agreement.

Gov't Code 2269.0541

kgc 7/7/19: HB 985, effective 9.1.19. Is there a better m1 that both of these could go under bc they are sequential statutes and very similar?

Accessibility

Each facility or part of a facility constructed by, on behalf of, or for the use of a district shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Alterations of facilities that affect or could affect their usability shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by individuals with disabilities. 28 C.F.R. 35.151, 34 C.F.R. 104.23

Payment and Performance Bonds

When a board makes a public work contract for constructing, altering, or repairing a public building or carrying out or completing any public work, it shall require the contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds shall be executed by a corporate surety in accordance with Insurance Code 7.19-1. The bond shall be payable to the board and in a form approved by the board. *Gov't Code 2253.021(a), (d)–(e)*

For a contract in excess of \$100,000, a performance bond shall be executed in the amount of the contract conditioned on the faithful performance of the work according to the plans, specifications, and contract documents. The bond is solely for the protection of a district. *Gov't Code 2253.021(b)*

For a contract in excess of \$25,000, a payment bond shall be executed in the amount of the contract solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. *Gov't Code 2253.021(c)*

Failure to Obtain Payment Bond

If a board fails to obtain a payment bond covering a contract in excess of \$25,000 from the prime contractor, it is subject to the same liability as a surety would be, and a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the contract were subject to Subchapter J, Chapter 53, Property Code. *Gov't Code 2253.027*

- No Bond for Design Services Only A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm. *Gov't Code 2269.311(a)* [See CVE for more information on design/build contracts, including bond amounts.]
- Bond for Insured Loss A board shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor:
1. A performance bond for the benefit of a district, as described above; and
 2. A payment bond, as described above. If the payment bond is not furnished, a district is subject to the same liability that a surety would have if the surety had issued the payment bond and the district had required the bond to be provided.

These bonds shall be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish these bonds.

- Exception to Bond Requirement The requirement that a district secure a performance or payment bond from an insurance company, above, does not apply when a surety company is complying with an obligation under a bond that had been issued for the benefit of the district.

Gov't Code 2253.022

- Prevailing Wage on Public Works** A worker, laborer, or mechanic employed on a public work, exclusive of maintenance work, by or on behalf of a district shall be paid not less than the general prevailing rate of per diem wages. The general prevailing rate of per diem wages is the rate of per diem wages for work of a similar character in the locality in which the work is performed, and also includes the rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for public work with a district. *Gov't Code 2258.001, .021*

A board shall determine, as a sum certain, the general prevailing rate of per diem wages in a district for each craft or type of worker needed to execute the contract and also for legal holiday and overtime work. To ascertain the general prevailing rate of per diem wages, a board shall either conduct a survey of the wages received by classes of workers, laborers, and mechanics employed on projects of a character similar to the contract work in a district or

	<p>adopt the prevailing wage rate as determined by the U.S. Department of Labor. A board shall specify the prevailing rate of per diem wages in the call for bids and in the contract itself. A board's determination of the general prevailing rates of per diem wages shall be final. <i>Gov't Code 2258.001, .022</i></p>
Enforcement	<p>A board, and an agent or officer of the board, shall receive complaints regarding violations of the prevailing wage requirements of Chapter 2258, and withhold money from the contractor as required by statute. Upon receipt of a complaint, a board shall determine, before the 31st day after the date the information is received, whether good cause exists to believe that a contractor or subcontractor has failed to pay the prevailing wage and shall provide written notice of its determination to the contractor or subcontractor and any affected laborer, worker, or mechanic of its initial determination. <i>Gov't Code 2258.051-.052</i></p>
Retainage and Reimbursement	<p>A board shall retain any amounts due under the contract pending a final determination of the violation. Upon a final determination that violations have occurred, a board shall use those retained amounts to pay the laborer, worker, or mechanic the difference between the amount the worker received in wages and the amount the worker would have received at the prevailing rate of per diem wages provided in the arbitrator's award. A board may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made. <i>Gov't Code 2258.052(d), .056</i></p>
Penalty for Noncompliance	<p>The contractor to whom the contract is awarded or any subcontractors of the contractor shall pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the contract. A contractor or subcontractor who fails to pay the specified rates as required shall pay to a district \$60 for each worker, laborer, or mechanic employed for each calendar day or part of a calendar day the worker is paid less than the wage rates specified in the contract. A board must specify this penalty in the contract. If a district does not determine the prevailing wage rates and specify them in the contract, the contractor or subcontractor may not be fined. A board shall use any penalty money collected to offset the costs incurred in administering Government Code Chapter 2258. <i>Gov't Code 2258.023</i></p>
Required Workers' Compensation Coverage	<p>A district that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project. Each subcontractor shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the district. <i>Labor Code 406.096</i></p>

“Project” includes the provision of all services related to a building or construction contract for a district. A district that enters into a building or construction contract on a project shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers’ compensation coverage, using the language required by 28 Administrative Code 110.110(c)(7).
2. As part of the contract, using the language required by 28 Administrative Code 110.110(c)(7), require the contractor to perform the duties and responsibilities pertaining to required workers’ compensation coverage as set out in 28 Administrative Code 110.110(d).
3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person beginning work on the project. This provision includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, but is not limited to, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. “Services” includes, but is not limited to, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
4. Obtain from the contractor a new certificate of coverage showing extension of coverage:
 - a. Before the end of the current coverage period, if the contractor’s current certificate shows that the coverage period ends during the duration of the project; and
 - b. No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project.
5. Retain certificates of coverage on file for the duration of the project and for three years thereafter.

6. Provide a copy of the certificate of coverage to the Texas Department of Insurance, Division of Workers' Compensation upon request and to any person entitled to a copy by law.
7. Use the language contained in 28 Administrative Code 110.110(c)(7) for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

28 TAC 110.110(a)(7), (8), (c)

Exception

This coverage requirement does not apply to sole proprietors or partners of a covered business entity or certain corporate officers, if the sole proprietor, partner or officer is explicitly excluded from the coverage of their business entity through an endorsement to the insurance policy or certificate of authority to self-insure. *Labor Code 406.097; 28 TAC 110.110(i)*

Criminal History

For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).

Impermissible Practices

A board member, employee, or agent of a district who knowingly or with criminal negligence violates the purchasing laws found in Education Code Chapter 44 as described at Education Code 44.032 is subject to criminal penalties. *Education Code 44.032* [See CH]

Enforcement Actions

Government Code Chapter 2269 may be enforced through an action for declaratory or injunctive relief filed not later than the tenth day after the date on which the contract is awarded. *Gov't Code 2269.452*

Defects in
~~Instructional~~
Facilities

A district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of a ~~district~~ ~~instructional~~ facility financed by bonds ~~for which the district receives state assistance under Education Code Chapter 46, Subchapter A (Instructional Facilities Allotment)~~ shall provide the commissioner with written notice of the action by registered or certified mail, return receipt requested, not later than the 30th day after the date the action is filed. If the district fails to comply with this provision, the court or an arbitrator or other adjudicating authority shall dismiss the action without prejudice. The dismissal of an action under this provision extends the statute of limitations on the action for a period of 90 days.

The notice must include a copy of the petition and an itemized list of the defects in the design, construction, renovation, or improvement for which the district is seeking damages under the action.

In an action involving an instructional facility financed by bonds for which the district receives state assistance under Education Code Chapter 46, Subchapter A (Instructional Facilities Allotment),
~~the~~ commissioner may join in the action on behalf of the state to protect the state's share.

A ~~The~~ district that brings an action under these provisions shall use the net proceeds from the action for:

1. ~~¶~~The repair of the defective design, construction, renovation, or improvement of the facility on which the action is brought, including the repair of any ancillary damage to furniture and fixtures;
2. ~~¶~~The replacement of the facility on which the action is brought;
3. ~~¶~~The reimbursement of the district for a repair or replacement;
or
4. ~~¶~~Any other purpose with written approval from the commissioner.
~~the defect or to replace the facility.~~

Education Code 46.008 applies to the repair. A district shall provide to the commissioner an itemized accounting of any repairs made.

The state's share resulting from an action brought under these provisions involving an instructional facility financed by bonds for which the school district receives state assistance under Education Code Chapter 46, Subchapter A is state property. The ~~school~~ district shall send to the comptroller any portion of the state's share not used by the ~~school~~ district to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought ~~defect~~ or to replace the facility. Education Code ~~42.258~~48.272 applies to the state's share.

kgc 7/4/19: HB 3, generally effective 9.1.19, changes the cite at the end. The changes in the sentence before that are statutory tightening (defective design, construction, renovation, or improvement of the instructional facility on which the action is brought).

Everything else from the margin note is from HB 1734, effective 9.1.19.

Definitions
~~“Net Proceeds”~~

“Net proceeds” means the difference between the amount recovered by or on behalf of a school district in an action, by settlement or otherwise, and the legal fees and litigation costs incurred by the district in prosecuting the action.

~~“State's Share”~~

“State's share” means an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by

dividing the amount of state assistance under Education Code Chapter 46, Subchapter A used to pay the principal of and interest on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

~~Education Code 46.011144.151~~

kgc 7/7/19: HB 1734, effective 9.1.19

Attorney General Enforcement

If the attorney general believes that a district has violated or is violating Education Code 44.151(d), (e), or (f) (regarding the use of proceeds, accounting, and the state's share), the attorney general may, after providing at least two weeks' notice to the district, bring an action on behalf of the state to enjoin the district from violating those sections.

In such an action, the attorney general may request and the court may order any other appropriate relief that is in the public interest, including payment of:

1. ~~a~~ civil penalty in an amount not to exceed \$20,000 for each violation;
2. ~~t~~The attorney general's reasonable costs for investigating and prosecuting the violation; or
3. ~~i~~f applicable, the amount of the state's share.

Education Code 44.151

kgc 7/7/19: HB 1734, effective 9.1.19. This is a lot of detail, but the stakes are too high not to include most of it, in my opinion.

Attorney Fees

A governmental contract for general construction, an improvement, a service, or a public works project may not provide for the award of attorney's fees to a district in a dispute in which the district prevails unless the contract provides for the award of attorney's fees to each other party to the contract if that party prevails in the dispute. *Gov't Code 2252.904*

The term includes a contract to obtain professional services subject to Government Code 2254. *Gov't Code 2252.151(3)*

Construction Liability Claims

To assert a claim against a contractor, subcontractor, supplier, or design professional for damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property that is a public building or public work in which the district has an interest, the district must comply with Government Code Chapter 2272. *Gov't Code 2272.002(a)*

kgc 7/7/19: I know we don't put "how to sue" in the manual, but I think we would be remiss if we leave this out entirely. Again, the stakes are too high if a district does it wrong.

HB 1999, 6.14.19; this is a somewhat editorial summary of 2272.002, Applicability of Chapter.

Prohibited Contracts

A district may not enter into a governmental contract with a company identified on a list prepared and maintained under Government Code 806.051 (now Government Code 2270.0201) (companies with business operations in Sudan), 807.051 (now Government Code 2270.0102) (companies with business operations in Iran), and 2252.153 (companies known to have contracts with or provide supplies or services to foreign terrorist organization). *Gov't Code 2252.152*

kgc 7/7/19: The legislature did not clean this up, but these references are meaningless so I recommend the parentheticals to send a user to the right place.

kgc 2/5/19: Govt Code 806.051 is now essentially 2270.0201 but it was amended in 2017; ch. 807 was repealed; Iran is now addressed in Ch. 2270, subch. C. See if lege cleans up and address in U114.

"Governmental contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment. The term includes a contract to obtain professional services subject to Government Code 2254. *Gov't Code 2252.151(3)*

[For other prohibitions, see CH(LEGAL).]

Please Note: This manual does not have policies in all codes. The coding structure is common to all TASB manuals and is designed to accommodate expansion of both (LEGAL) and (LOCAL) policy topics and administrative regulations.

SECTION D: PERSONNEL

DA	EMPLOYMENT OBJECTIVES
DAA	Equal Employment Opportunity
DAB	Genetic Nondiscrimination
DAC	Objective Criteria for Personnel Decisions
DB	EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
DBA	Credentials and Records
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DC	EMPLOYMENT PRACTICES
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DF	TERMINATION OF EMPLOYMENT
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DFD	Hearings Before Hearing Examiner
DFE	Resignation
DFF	Reduction in Force

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SECTION D: PERSONNEL

DFFA	Financial Exigency
DFFB	Program Change
DFFC	Continuing Contracts
DG	EMPLOYEE RIGHTS AND PRIVILEGES
DGA	Freedom of Association
DGB	Personnel-Management Relations
DGBA	Employee Complaints/Grievances
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DH	EMPLOYEE STANDARDS OF CONDUCT
DHA	Gifts and Solicitations
DHB	Reports to State Board for Educator Certification
DHC	Reports to Texas Education Agency
DHE	Searches and Alcohol/Drug Testing
DI	EMPLOYEE WELFARE
DIA	Freedom from Discrimination, Harassment, and Retaliation
DJ	EMPLOYEE RECOGNITION AND AWARDS
DK	ASSIGNMENT AND SCHEDULES
DL	WORK LOAD
DLA	Staff Meetings
DLB	Required Plans and Reports
DM	PROFESSIONAL DEVELOPMENT
DMA	Required Staff Development
DMB	Career Advancement
DMC	Continuing Professional Education
DMD	Professional Meetings and Visitations
DME	Research and Publication
DN	PERFORMANCE APPRAISAL
DNA	Evaluation of Teachers
DNB	Evaluation of Campus Administrators
DP	PERSONNEL POSITIONS
DPB	Substitute, Temporary, and Part-Time Positions

**Nondiscrimination —
in General**

A district 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 [see DAB].

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); Labor Code Ch. 21 (Texas Commission on Human Rights Act); Labor Code Ch. 21, Subch. H (genetic information)

Title VII proscribes employment practices that are overtly discriminatory (disparate treatment), as well as those that are fair in form but discriminatory in practice (disparate impact). Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)

Disparate
Treatment

Disparate treatment (intentional discrimination) occurs when members of a protected group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. 29 C.F.R. 1607.11

Disparate Impact

Disparate impact occurs when an employer uses a particular employment practice that causes a disparate (disproportionate) impact on a protected group and the employer fails to demonstrate that the challenged practice is job-related and consistent with business necessity. 42 U.S.C. 2000e-2(k)(1)(A); Labor Code 21.115, .122

**Bankruptcy
Discrimination**

A district may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under federal bankruptcy laws. A district may not discriminate against a person with whom a bankrupt or debtor has been associated, solely because the bankrupt or debtor is or has been a debtor under federal bankruptcy laws; was insolvent before the commencement of a bankruptcy case or

during the case but before the debtor was granted or denied a discharge; or has not paid a debt that is dischargeable in the bankruptcy case or that was discharged under the bankruptcy laws. *11 U.S.C. 525(a)*

MT 7/2/19: Not sure why Bankruptcy Discrimination was a margin 2, it seems more appropriate as Margin 1, since it isn't necessarily related to the general prohibition on discrimination.

Job Qualification

A district 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*

Employment Postings

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

Harassment of Employees

A district has an affirmative duty to maintain a working environment free of harassment on the basis of a protected characteristic. *42 U.S.C. 2000e et seq.; 29 C.F.R. 1606.8(a), 1604.11* [See DIA]

Retaliation

A district 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 C.F.R. 100.7(e) (Title VI); 34 C.F.R. 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* [See DIA]

Notices

A district 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*

Section 504 Notice

A district that employs 15 or more persons shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability.

The notice shall state:

1. That the district does not discriminate in employment in its programs and activities; and

2. The identity of the district's 504 coordinator.

Methods of notification may include:

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

If a district 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 nondiscrimination policy.

34 C.F.R. 104.8

Age Discrimination

[The prohibition against discrimination on the basis of age applies only to discrimination against an individual 40 years of age or older. Labor Code 21.101](#)

[Bona Fide Employee Benefit Plan](#)

A district 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*

MT 7/2/19: HB 1074 prompted looking at this policy. I don't see a need to include the repeal of 21.054(b) related to employment training programs, but putting the general prohibition against discrimination for individuals 40 years of age and older seemed important.

Sex Discrimination

Gender Stereotypes

A district 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)*

Pregnancy

The prohibition against discrimination on the basis of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. A district shall treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees for all employment-related purposes, including receipt of benefits under fringe benefit programs. *42 U.S.C. 2000e(k); 29 C.F.R. 1604.10; Labor Code 21.106*

Equal Pay

A district may not pay an employee at a rate less than the rate the district pays 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) (Equal Pay Act); 34 C.F.R. 106.54 (Title IX)*

**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 a district demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship to the district's business. "Undue hardship" means more than a *de minimus* (minimal) cost. *42 U.S.C. 2000e(j); 29 C.F.R. 1605.2; Labor Code 21.108*

A district 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*

A person employed or maintained to obtain or aid in obtaining positions for public school employees may not directly or indirectly ask about, orally or in writing, the religion or religious affiliation of anyone applying for employment in a public school of this state. A violation of this provision is a Class B misdemeanor. A person who violates this provision is subject to civil penalties. *Education Code 22.901*

**Disability
Discrimination**

A district 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); 29 C.F.R. 1630.4(b); Labor Code 21.051*

In addition, each district that receives assistance under the Individuals with Disabilities Education Act (IDEA) must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted by the IDEA. *34 C.F.R. 300.177(b)*

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); 29 C.F.R. 1630.4(b); Labor Code 21.005(c)*

Definition of
Disability

"Disability" means:

1. An actual disability: a physical or mental impairment [see definition, below] that substantially limits one or more of an individual's major life activities;
2. A record of having such an impairment; or
3. 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.

*"Regarded As"
Having an
Impairment*

An individual meets the requirement of being "regarded as" having an impairment if the individual establishes that he or she has been subjected to an action prohibited by the ADA 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.

Transitory and
Minor

The "regarded as" prong of the definition 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. The "transitory" exception does not apply to the "actual disability" or "record of disability" prongs of the definition.

*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 C.F.R. 1630.2(g), (j)(1); Labor Code 21.002, .0021

Other Definitions

*"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. 1630.2(h)

“Major Life Activities”

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

“Major life activities” also include the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within the body system.

42 U.S.C. 12102(2); 29 C.F.R. 1630.2(i); Labor Code 21.002

“Qualified Individual”

“Qualified individual” means an individual who:

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires; and
2. With or without reasonable accommodation, can perform the essential functions of such position. Consideration shall be given to a district’s judgment as to what functions of a job are essential. 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); 29 C.F.R. 1630.2(m)

Reasonable
Accommodations

A district is required, absent undue hardship, to make a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the “actual disability” or “record of disability” prongs. A district is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the “regarded as” prong. *42 U.S.C. 12112(b)(5); 29 C.F.R. 1630.2(o)(4), .9; 29 U.S.C. 794; 34 C.F.R. 104.11; Labor Code 21.128* [See DBB regarding medical examinations and inquiries under the Americans with Disabilities Act]

“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 C.F.R. 1630.2(o); 34 C.F.R. 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 the district, and other factors set out in law. *42 U.S.C. 12111(10); 29 C.F.R. 1630.2(p); 34 C.F.R. 104.12(c)*

Discrimination
Based on
Relationship

A district 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 C.F.R. 1630.8; 34 C.F.R. 104.11*

**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 a district acts on the basis of such use.

Drug Testing

A district 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) [See DHE]

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 C.F.R. 1630.3(a); 28 C.F.R. 35.104; Labor Code 21.002(6)(A)*

**Qualification
Standards**

It is unlawful for a district to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the district, is shown to be job related for the position in question and is consistent with business necessity. *29 C.F.R. 1630.10(a)*

Direct Threat to Health or Safety	As a qualification standard, a district 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. <i>42 U.S.C. 12111(3); 29 C.F.R. 1630.2(r); Labor Code 21.002(6)(B)</i>
Vision Standards and Tests	A district 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 the district, is shown to be job-related for the position in question and consistent with business necessity. <i>42 U.S.C. 12113(c); 29 C.F.R. 1630.10(b); Labor Code 21.115(b)</i>
Communicable Diseases	A district 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. <i>42 U.S.C. 12113(e); 29 U.S.C. 705(20)(D); 29 C.F.R. 1630.16(e); Labor Code 21.002(6)(B)</i>
Service Animals	<p>A district that is subject to the jurisdiction of Title I of the ADA (employment discrimination) or to section 504 of the Rehabilitation Act (employment discrimination) shall comply with the reasonable accommodation requirements of those laws with respect to service animals. [See Reasonable Accommodations, above]</p> <p>A district that is not subject to either Title I or section 504 shall comply with Title II of the ADA (discrimination by public entity). An employer that is subject to Title II shall comply with 28 C.F.R. part 35, including the requirements relating to service animals at 28 C.F.R. 35.136 [see FBA].</p> <p><i>28 C.F.R. 35.140</i></p>
Military Service	A district 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. A district 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). <i>38 U.S.C. 4311</i> [See also DECB]
Grievance Policies Section 504	A district that receives federal financial assistance and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for

the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act. *34 C.F.R. 104.7(b), .11*

Americans with
Disabilities Act

A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the ADA. *28 C.F.R. 35.107, .140*

Title IX

A district that receives federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX. *34 C.F.R. 106.8(b); North Haven Board of Education v. Bell, 456 U.S. 512 (1982)*

**Compliance
Coordinator**

A district shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, the Age Act, and the ADA. The district shall notify all employees of the name, office address, and telephone number of the employee(s) so designated. *34 C.F.R. 104.7(b), .11; 28 C.F.R. 35.107, .140; 34 C.F.R. 106.8(b)*

**Student Loan
Repayment**

A district that issues a license may not take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract including by:

1. Denying the person's application for a license or license renewal;
2. Suspending the person's license; or
3. Taking other disciplinary action against the person.

Occupations Code 56.001, .003

MT 7/24/19: SB 37, effective June 7, 2019, prohibits taking disciplinary action if a person defaults on a student loan. I chose not to include all the definitions.

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” (CHRI) means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. *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 (FBI) under Government Code 411.087. *Education Code 22.081(2)*

“Request for CHRI” is the processing and entry of a person’s complete set of fingerprints in DPS’s tenprint database and the comparison of those prints to DPS’s latent print database and if authorized the entry into FBI’s tenprint and comparison to the FBI’s latent print database. *37 TAC 27.172*

Participation in the Criminal History Clearinghouse

The purpose of the clearinghouse is to:

1. Provide authorized entities with the Texas and FBI fingerprint-based criminal history results.
2. Provide authorized entities with subscription and notification service to disseminate updated criminal history information.

Districts shall only submit a request for CHRI on a person who has authorized the access of their information.

Districts may subscribe to a person in the clearinghouse, if the entity has the authority to view the record. Entities shall unsubscribe from a person when it no longer has authority to view a record.

Districts shall validate their subscriptions in accordance with DPS policies. “Validation” is a process whereby the subscriber reviews a subscription to determine whether they are still authorized to receive CHRI on that individual and updates the subscription accordingly. Validations are required on a yearly basis.

Districts shall maintain compliance with the FBI Criminal Justice Information Services Security Policy. Districts shall allow DPS and

the FBI to conduct audits of their clearinghouse accounts to prevent any unauthorized access, use, or dissemination of the information.

37 TAC 27.171, .172(8), .174

Certified Persons

The State Board for Educator Certification (SBEC) shall review the NCHRI of a person who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by a district. *Education Code 22.0831(c)*

**Noncertified
Employees**

Applicability

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

1. A district; 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 a district or shared services arrangement hired before January 1, 2008, see All Other Employees, below.]

Information to DPS
and TEA

Before or immediately after employing or securing the services of a person subject to this section, a district shall send or ensure that the person sends to DPS information that DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

A district shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI of the person and notify the district if the person may not be hired or must be discharged under Education Code 22.085.

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 TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

Criminal History

A district 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. A district may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0833; 19 TAC 153.1109(d)

Districts of Innovation

A prohibition, restriction, or requirement imposed by Education Code Chapter 22, Subchapter C (Criminal History Records) on an open-enrollment charter school applies to the same extent to a district of innovation or other charter entity.

The failure of a district of innovation to provide information required under Education Code 22.0832 may result in termination of the district's designation as a district of innovation. [See AF]

Education Code 22.0815

MT 7/11/19: HB 3, section 2A.013 applies NCHRI rules related to charter schools, to districts of innovation. I struggled with how to present this in the PRM, so if you have other suggestions, I'm open to them.

MT 7/24/19: Amended to match statutory language. I don't know how to present 22.0832 as it pertains to TEA's review of NCHRI of OECS employees. If you have an idea of how to do so, I'm all ears.

Substitute Teachers

This section applies to a person who is a substitute teacher for a district or shared services arrangement.

Applicability

For purposes of the CHRI review requirements, 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.

Information to DPS and TEA

A district shall send or ensure that a person to whom this section applies sends to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

A district shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI and certification records of the person and notify the district 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.

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 TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

Criminal History

A district shall obtain all CHRI that relates to a person to whom this section applies through the clearinghouse. A district may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0836; 19 TAC 153.1101(5), .1111(d)

Student Teachers

Applicability

This section applies to a person participating in an internship consisting of student teaching to receive a teaching certificate.

Criminal History

A student teacher may not perform any student teaching until:

1. The student teacher has provided to a district 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. The district has obtained from DPS all CHRI that relates to a student teacher. A district may also obtain CHRI relating to a student teacher from any other law enforcement agency, criminal justice agency, or private consumer reporting agency. A district may require a student teacher to pay any costs related to obtaining the CHRI.

Education Code 22.0835

Coordination of Efforts

TEA, SBEC, a district, and a shared services arrangement may coordinate as necessary to ensure that criminal history reviews authorized or required under Education Code Chapter 22, Subchapter C are not unnecessarily duplicated. *Education Code 22.0833(h)*

All Other Employees

A district shall obtain CHRI that relates to a person who is not subject to an NCHRI review under Education Code Chapter 21, Subchapter C and who is an employee of:

1. The district; 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.

A district may obtain the CHRI from:

1. DPS;
2. A law enforcement or criminal justice agency; or
3. A private consumer reporting agency [see Consumer Credit Reports, below].

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

Note: For criminal history record provisions regarding volunteers, see GKG. For provisions on employees of entities that contract with a district, see CJA.

Confidentiality of Record

CHRI that a district obtains from DPS, including any identification information that could reveal the identity of a person about whom 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 the district; and
2. May be disclosed or used by the district 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 DPS, but to the information contained, wholly or partly, in a document’s original form or any subsequent form or use.

A district or an individual may not confirm the existence or nonexistence of CHRI to any person who is not eligible to receive the information.

Gov’t Code 411.084

CHRI obtained by a district, 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, TEA, or SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

An employee of a district may request from the district a copy of any CHRI related to that employee that the district has obtained from DPS. The district 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)

Destruction of CHRI A district shall destroy CHRI obtained from 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)

Confidentiality of Information Obtained from Applicant or Employee

A district 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).

The district shall destroy the information not later than the first anniversary of the date the information is received.

Education Code 22.08391

Unauthorized Disclosure of CHRI

A person commits a Class B misdemeanor if the person knowingly or intentionally:

1. Obtains CHRI in an unauthorized manner, uses the information for an unauthorized purpose, or discloses the information to a person who is not entitled to the information; or
2. Violates a DPS rule adopted under Government Code Chapter 411, Subchapter F.

A person commits a second degree felony if the person:

1. Obtains, uses, or discloses CHRI for remuneration or for the promise of remuneration; or
2. Employs another person to obtain, use, or disclose CHRI for remuneration or for the promise of remuneration.

Gov't Code 411.085

Refusal to Hire Convicted Applicants

A district shall [discharge or](#) refuse to hire an [employee or](#) applicant for employment if the district obtains information through a CHRI review that ~~is~~:

~~If~~ the ~~employee or~~ [employee or](#) applicant has been:

~~1. Convicted of~~ [or placed on deferred adjudication community supervision for](#) :

~~a. A felony under Penal Code Title 5;~~

~~b. 1. A~~ [an](#) offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or

2. Convicted of:

a. A felony 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

~~e.b.~~ An offense under the laws of another state or federal law that is equivalent to an offense under ~~paragraphs~~item 1 or 2-a, above. ~~or b;~~ and

~~2. At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.~~

ARD 8/7/19: Added "employee" to intro to accurately reflect statute, per MT/CVC

Exception

However, a district is not required to refuse to hire an 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 the date the person's employment will begin; and
2. The applicant for employment satisfied all terms of the court order entered on conviction.

Certification to Commissioner

Each school year, the superintendent shall certify to the commissioner that the district has complied with the above provisions.

Sanctions

SBEC may impose a sanction on an educator who does not refuse to hire an applicant for employment if the educator knew that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with Education Code 21.009(e), or knew or should have known, through a CHRI review, that the applicant has been convicted of or placed on deferred adjudication community supervision for an offense described above.

SBEC may impose a sanction on a superintendent who falsely or inaccurately certified to the commissioner that the district had complied with Education Code 22.085. [See Certification to Commissioner, above]

Termination for Failure to Disclose

A district may discharge an employee if the district obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to SBEC or to the district. An employee so discharged is considered to have been discharged for misconduct for the purposes of Labor Code 207.044 (unemployment compensation).

Education Code 22.085; 19 TAC 249.15(b)(12), (14) [See DF-~~for Discharge of Convicted Employees~~]

MT 7/3/19: HB 3 amends 22.085(a) and (e) removing requirement that offense requiring sex offender registry involve a minor victim and adding deferred adjudication community supervision for an offense requiring sex offender registry.

MT 7/24/19: Changed intro language as per CVC query.

Consumer Credit Reports

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

Obtaining Reports

A district may not procure a consumer report for employment purposes unless:

1. The district 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.

Adverse Action

Before taking any adverse action based on the consumer report, a district 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)

Address Discrepancies

“Notice of address discrepancy” means a notice sent to a user by a consumer reporting agency that informs the user of a substantial

difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

A district must develop and implement reasonable policies and procedures designed to enable the district, 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.

If a district regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, the district must also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which the district has reasonably confirmed is accurate, to the consumer reporting agency.

16 C.F.R. 641.1

Disposal of Records

A district 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 C.F.R. 682.3

- Employment Policies** A board shall adopt a policy providing for the employment and duties of district personnel. The policy shall provide that:
1. A board employs and evaluates the superintendent;
 2. A superintendent has sole authority to make recommendations to a board regarding the selection of all personnel, except that the board may delegate final authority for those decisions to the superintendent [see Superintendent Recommendation, below];
 3. Each principal must approve each teacher or staff appointment to the principal's campus as provided by Education Code 11.202 [see DK and DP];
 4. Notice will be provided of vacant positions [see Posting of Vacancies, below]; and
 5. Each employee has the right to present grievances to the board. [See Grievances, below]

Education Code 11.1513

Tax Identifier A board shall adopt a policy prohibiting the use of social security numbers as employee identifiers other than for tax purposes [see Social Security Numbers, below]. *Education Code 11.1514* [See DBA]

Contract Positions A board shall establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply. *Education Code 21.002(c)* [See DCB and DCC]

Delegation of Authority A district's employment policy may specify the terms of district employment or delegate to the superintendent the authority to determine the terms of employment with the district. *Education Code 11.1513(c)* [For nepotism implications, see BBFB and DBE]

Internal Auditor If a district employs an internal auditor, the board shall select the internal auditor and the internal auditor shall report directly to the board. *Education Code 11.170* [See CFC]

Superintendent Recommendation A board may accept or reject a superintendent's recommendation regarding the selection of district personnel and shall include the board's acceptance or rejection in the minutes of the board's open meeting, in the certified agenda or tape recording of a closed meeting, or in the recording required under Government Code 551.125 or 551.127, as applicable. If a board rejects a superintendent's recommendation, the superintendent shall make alternative recommendations until the board accepts a recommendation. *Education Code 11.1513(b)*

Pre-employment
Affidavit

An applicant for a certified or licensed position [see Professional Personnel at DBA(LEGAL)] with a school district, including a district of innovation, must submit, using a form adopted by [the Texas Education Agency \(TEA\)](#), 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, for a charge, whether the charge was determined to be true or false.

An applicant is not precluded from being employed based on a disclosed charge if the district determines based on the information disclosed in the affidavit that the charge was false.

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

The State Board for Educator Certification (SBEC) may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant for a position described by Education Code 21.003(a) or (b) despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.

*Education Code 21.009*TEA Internet Portal

TEA shall develop and maintain an internet portal through which required reports may be confidentially and securely filed and TEA makes available:

1. ~~4.~~ The registry of persons who are not eligible to be employed in public schools; and
2. ~~2.~~ Information indicating that a person is under investigation.

*Education Code 22.095*Registry of Persons
Not Eligible for
Employment

TEA shall maintain and make available through its internet portal a registry of persons who are not eligible to be employed by a district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement.

A district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement shall discharge or refuse to hire a person listed on the registry.

The registry must list:

1. An employee of an open enrollment charter school determined by TEA under Education Code 22.0832 as a person who would not be eligible for educator certification based on their national criminal history record information (NCHRI);
2. A noncertified person determined by TEA to be not eligible for employment based on the person's criminal history record information (CHRI), as provided by Education Code 22.0833 [Ssee DBAA];
3. A person who is not eligible for employment based on CHRI received by TEA under Education Code 21.058(b) indicating that a certified employee is required to register as a sex offender;
4. A person whose certification or permit is revoked by SBEC on a finding that the person engaged in misconduct described by Education Code 21.006(b)(2)(A) or (A-1) [Ssee DHB]; and
5. A noncertified person who is determined by the commissioner under Education Code 22.094 to have engaged in misconduct described by Education Code 22.093(c)(1)(A) or (B) [Ssee DHC].

Education Code 22.092

MT 7/7/19: HB 3. Not sure where to put this, but the requirement for districts to discharge or refuse to hire, needs a home. I decided to put it after pre-employment affidavits in this policy, but am open to another policy if there's a better fit.

MT 7/24/19: Added detail per queries from LRS and Jov. I don't particularly like the list of who will be in the registry, but if we want that level of detail, there it is.

Posting of Vacancies

A district's employment policy must provide that not later than the tenth school day before the date on which a district fills a vacant position for which a certificate or license is required as provided by Education Code 21.003 [see DBA], other than a position that affects the safety and security of students as determined by the board, the district must provide to each current district employee:

1. Notice of the position by posting the position on:
 - a. A bulletin board at:
 - (1) A place convenient to the public in the district's central administrative office, and

- (2) The central administrative office of each campus during any time the office is open; or
 - b. The district's internet website, if the district has a website; and
2. A reasonable opportunity to apply for the position.

*Education Code 11.1513(d)***Exception**

If, during the school year, a district must fill a vacant position held by a teacher, as defined by Education Code 21.201 [see DCB], in less than ten school days, the district must provide notice of the position in the manner described above as soon as possible after the vacancy occurs. However, a district is not required to provide the notice for ten school days before filling the position or to provide a reasonable opportunity to apply for the position. *Education Code 11.1513(e)*

Grievances

A district's employment policy must provide each employee with the right to present grievances to the board. The policy may not restrict the ability of an employee to communicate directly with a member of the board regarding a matter relating to the operation of a district, except that the policy may prohibit ex parte communication relating to:

1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and
2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the board.

Education Code 11.1513(i)–(j) [See DGBA]**Transfers**

A district's employment policy may include a provision for providing each current district employee with an opportunity to participate in a process for transferring to another school in or position with the district. *Education Code 11.1513(c)(3)* [See DK]

Contract Employees

A district shall employ each classroom teacher, principal, librarian, nurse, or school counselor under a probationary contract, a continuing contract, or a term contract. A district is not required to employ a person other than these listed employees under a probationary, continuing, or term contract. *Education Code 21.002*

"Classroom Teacher"

"Classroom teacher" means an educator who is employed by a district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting. The term does not include a teacher's aide or a full-time administrator. *Education Code 5.001(2)*

Minimum Length of Contract

A contract between a district and an educator must be for a minimum of ten months of service. An educator employed under a ten-month contract must provide a minimum of 187 days of service.
Education Code 21.401(a), (b)

Proportionate Reduction

If a district anticipates providing less than 180 days of instruction for students during a school year, as indicated by the district's academic calendar, the district may reduce the number of days of service proportionately. A reduction by the district does not reduce an educator's salary. Education Code 21.401(c-1)

Commissioner Waiver

The commissioner of education may reduce the number of days of service if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools, ~~but such~~ a reduction by the commissioner does not reduce an educator's salary. Education Code 21.401(c), 25.081(b)

~~Education Code 21.401~~

MT 7/2/19: SB 2073, effective 6/10/2019, permits reducing duty days proportionate to a reduction of instructional days. Broke this out into sub-paragraphs to illustrate the two ways to reduce number of duty days. Added reasons under 25.081 for comm'r to reduce days and added citation.

MT 7/24/19: Flipped order of Proportionate Reduction and Commissioner Waiver as per LRS and JOY suggestion.

Educational Aides

A board shall establish a plan to encourage the hiring of educational aides who show a willingness to become certified teachers. Education Code 54.363(f)

Employment of Retirees

A district shall file a monthly certified statement of employment of a retiree in the form and manner required by TRS. A district shall inform TRS of changes in status of the district that affect the district's reporting responsibilities.

The certified statement must include information regarding: 0.

1. Employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003, and are performing duties or providing services on behalf of or for the benefit of the district that employees of the district would otherwise perform or provide; and
2. Retirees who retired within twelve full, consecutive calendar months of the month of the monthly certified statement and are performing duties or providing services for or on behalf of

the district that employees of the district would otherwise perform or provide, and are:

- a. Waiving, deferring, or forgoing compensation for the services or duties;
- b. Performing the duties or providing the services as an independent contractor; or
- c. Serving as a volunteer without compensation and performing the same duties or providing the same services for a reporting entity that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

A district that fails to attain a completed status for the monthly certified statement as required by 34 Administrative Code 31.2 shall pay to TRS, in addition to the required employer surcharges and any applicable penalty interest on the unpaid amounts, the late fee established in 34 Administrative Code 31.2(d) for each business day that the monthly certified statement fails to attain a completed status.

An administrator of a district who is responsible for filing the statement, and who knowingly fails to file the statement, commits an offense.

Gov't Code 824.6022, 825.403(k); 34 TAC 31.2

Former Board Member Employment

A board member is prohibited from accepting employment with the district until the first anniversary of the date the board member's membership on a board ends. *Education Code 11.063* [See BBC]

New Hires I-9 Forms

A district shall ensure that an employee properly completes section 1—"Employee Information and Verification"—on Form I-9 at the time of hire.

A district must verify employment eligibility, pursuant to the Immigration Reform and Control Act, and complete Form I-9 by the following dates:

1. Within three business days of initial hiring. If a district hires an individual for employment for a duration of less than three business days, the district must verify employment at the time of hire. A district shall not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times. When a district rehires an individual, the district may, in lieu of

completing a new I-9, inspect a previously completed I-9 executed within three years of the date of rehire, to determine whether the individual is still eligible to work.

2. For an individual whose employment authorization expires, not later than the date of expiration.

8 C.F.R. 274a.2(b)(1)(ii), (iii), (vii), (viii)

New Hire Reporting

A district shall furnish to the Directory of New Hires (Texas Attorney General's Office) a report that contains the name, address, and social security number of each newly hired employee. The report shall also contain a district's name, address, and employer identification number.

A district may also provide, at its option, the employee's date of hire, date of birth, expected salary or wages, and the district's payroll address for mailing of notice to withhold child support.

A district shall report new hire information on a Form W-4 or an equivalent form, by first class mail, telephonically, electronically, or by magnetic media, as determined by the district and in a format acceptable to the attorney general.

Deadline

New hire reports are due:

1. Not later than 20 calendar days after the date a district hires the employee; or
2. In the case of a district transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

New hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.

Penalties

A district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105.

42 U.S.C. 653a(b), (c); Family Code 234.101–.105; 1 TAC 55, Subch. I

Social Security Numbers

A board shall adopt a policy prohibiting the use of the social security number of an employee of the district as an employee identifier other than for tax purposes. *Education Code 11.1514* [See DBA]

Federal Law

A district shall not deny to any individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number.

Exceptions

The federal law does not apply to:

1. Any disclosure that is required by federal statute. The United States Internal Revenue Code provides that the social security number issued to an individual for purposes of federal income tax laws shall be used as the identifying number for taxpayers;
2. Any disclosure to a district maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual; or
3. Any use for the purposes of establishing the identity of individuals affected by any tax, general public assistance, driver's license, or motor vehicle registration law within a district's jurisdiction.

Statement of Uses

A district that requests disclosure of a social security number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it.

Privacy Act of 1974, Pub. L. No. 93-579, Sec. 7, 88 Stat. 1896, 1897 (1974)

Employment Assistance Prohibited

Federal Law

A district that receives Title I funds shall have regulations or policies that prohibit any individual who is a school employee, contractor, or agent, or a district, from assisting a school employee in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or district knows, or has probable cause to believe, that such school employee engaged in sexual misconduct regarding a minor or student in violation of the law.

This requirement shall not apply if the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the implementing regulations under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations; and:

1. The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee engaged in sexual misconduct regarding a minor or student in violation of the law;

2. The school employee has been charged with and acquitted or otherwise exonerated of the alleged misconduct; or
3. The case or investigation remains open and there have been no charges filed against, or indictment of, the school employee within four years of the date on which the information was reported to a law enforcement agency.

20 U.S.C 7926 [See also CJ]

State Law

SBEC may suspend or revoke a certificate, impose other sanctions against the person, or refuse to issue a certificate to the person if:

1. The person assists another person in obtaining employment at a school district, [private school](#), or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and
2. The person knew that the other person has previously engaged in sexual misconduct with a minor or student in violation of the law.

The commissioner may require a school district to revoke or decline to issue a school district teaching permit under Education Code 21.055 issued to or requested by a person subject to SBEC action above.

Education Code 21.0581; 19 TAC 249.15(b)(13)

[MT 7/2/19: SB 1230, effective 9/1/2019, adds obtaining employment at a private schools to the prohibition on assisting a person in obtaining employment if the person previously engaged in misconduct with a minor.](#)

**Minimum Salary
Schedule —
Educators**

A district shall pay each classroom teacher, full-time librarian, full-time school counselor, or full-time nurse not less than the minimum monthly salary, based on the employee's level of experience, specified in Education Code 21.402 and 19 Administrative Code 153.1021.

Definitions

~~“Classroom
Teacher”~~

“Classroom teacher” means an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting, focusing on the delivery of the Texas Essential Knowledge and Skills, and who holds the relevant certificate from the State Board for Educator Certification (SBEC). Although noninstructional duties do not qualify as teaching, necessary functions related to the educator's instructional assignment, such as instructional planning and transition between instructional periods, should be applied to creditable classroom time.

~~“Librarian”~~

“Librarian” means an educator who provides full-time library services and holds the relevant certificate from SBEC.

~~“Counselor”~~

“Counselor” means an educator who provides full-time counseling and guidance services and holds the relevant certificate from SBEC.

~~“Nurse”~~

“Nurse” means an educator employed to provide full-time nursing and health-care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

~~“Full-Time”~~

“Full-time” means contracted employment for at least ten months (187 days) for 100 percent of the school day, in accordance with the definitions of school day in Education Code 25.082, employment contract in Education Code 21.002, and school year in Education Code 25.081.

19 TAC 153.1022(a)

Placement on
Salary Schedule

The Commissioner's rules determine the experience for which a teacher, librarian, school counselor, or nurse is to be given credit in placing the teacher, librarian, school counselor, or nurse on the minimum salary schedule. A district shall credit the teacher, librarian, school counselor, or nurse for each year of experience, whether or not the years are consecutive. *Education Code 21.402(a), .403(c); 19 TAC 153.1022*

Employees
Formerly on Career
Ladder

A teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary the teacher or librarian received for the 1994–95 school year as long as the teacher or librarian is employed by the same district.

In addition, a teacher or librarian who was on level two or three of the career ladder is entitled, as long as he or she is employed by the same district, to placement on the minimum salary schedule according to the guidelines at Education Code 21.403(d). *Education Code 21.402(f), .403(d)*

Pay Increases

A district shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. *Tex. Const. Art. III, Sec. 53*

Public Hearing— Contract Employees

A district may not pay an employee or former employee more than an amount owed under a contract with the employee unless the district holds at least one public hearing. Notice of the hearing must be given in accordance with notice of a public meeting under the Texas Open Meetings Act [see BE].

The board must state the following at the public hearing:

1. The source and exact amount of the payment;
2. The reason the payment is being offered including the public purpose that will be served by making the payment; and
3. The terms for distribution of the payment that effect and maintain the public purpose.

~~Local~~ Gov't Code 180.007

Increase in Basic Allotment

During any school year for which the maximum amount of the basic allotment provided under Education Code 48.015-(a) or (b) is greater than the maximum amount provided for the preceding school year, a district must use at least 30 percent of the district's increased funding to provide compensation increases to full-time district employees other than administrators as follows:

1. 75 percent must be used to increase the compensation paid to classroom teachers, full-time librarians, full-time school counselors certified under Education Code Chapter 21, Subchapter B, ~~Chapter 21~~, and full-time school nurses, prioritizing differentiated compensation for classroom teachers with more than five years of experience; and
2. 25 percent may be used as determined by the district to increase compensation paid to full-time district employees.

"Compensation" includes benefits such as insurance premiums.

Education Code 48.051(c), (d)

MT 7/2/19: HB 3. This seemed like as good a place as any to put this provision.

Salary Advances and Loans	A district shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. <i>Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)</i>
Designation of Compensation for Benefits	An employee who is covered by a cafeteria plan or who is eligible to pay health-care premiums through a premium conversion plan may elect to designate a portion of the employee’s compensation to be used as health-care supplementation. The amount designated may not exceed the amount permitted under federal law. <i>Education Code 22.103</i>
Use	An employee may use the compensation designated for health-care supplementation for any employee benefit, including depositing the designated amount into a cafeteria plan in which the employee is enrolled or using the designated amount for health-care premiums through a premium conversion plan. <i>Education Code 22.106</i>
Annual Election	Each school year, an active employee must elect in writing whether to designate a portion of the employee’s compensation to be used as health-care supplementation. The election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. <i>Education Code 22.105</i>
Definition	For purposes of the designation of compensation as health-care supplementation, “employee” means an active, contributing member of the Teacher Retirement System (TRS) who: <ol style="list-style-type: none">1. Is employed by a district;2. Is not a retiree eligible for coverage under Insurance Code Chapter 1575 (retiree group health benefits);3. Is not eligible for coverage by a group insurance plan under Insurance Code Chapter 1551 (state employee health insurance) or Chapter 1601 (state university employee health insurance); and4. Is not an individual performing personal services for the district as an independent contractor. <i>Education Code 22.101(2)</i>
TRS Contributions for New Hires	During each fiscal year, a district shall pay an amount equal to the state contribution rate, as established by the General Appropriations Act for the fiscal year, applied to the aggregate compensation

of new members of the retirement system, during their first 90 days of employment.

“New member” means a person first employed on or after September 1, 2005, including a former member who withdrew retirement contributions under Government Code 822.003 and is reemployed on or after September 1, 2005.

On a monthly basis, a district shall:

1. Certify to TRS the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments under this section for the payroll periods; and
2. Retain information, as determined by TRS, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

A district must remit the amount required under this section to TRS at the same time the district remits the member’s contribution. In computing the amount required to be remitted, a district shall include compensation paid to an employee for the entire pay period that contains the 90th calendar day of new employment.

Gov’t Code 825.4041

**TRS Surcharge for
Rehired Retirees**

TRS Fund
Contributions

During each payroll period for which a retiree is reported, a district shall contribute to the retirement system for each retiree reported an amount based on the retiree’s salary equal to the sum of:

1. The current contribution amount that would be contributed by the retiree if the retiree were an active, contributing member; and
2. The current contribution amount authorized by the General Appropriations Act that the state would contribute for that retiree if the retiree were an active, contributing member.

Gov’t Code 825.4092(b)

Health Insurance
Contributions

In addition, each payroll period and for each rehired retiree who is enrolled in TRS Care (retiree group health insurance), a district shall contribute to the TRS Care trust fund an amount established by TRS. In determining the amount to be contributed by the district, TRS shall consider the amount a retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree’s and enrolled dependents’ participation in the group program. If more than one employer reports

the retiree to TRS during a month, the amount of the required payment shall be prorated among employers.

Exception

A district is not required to contribute these amounts for a retiree who retired from the retirement system before September 1, 2005.

Gov't Code 825.4092(c), (e); Insurance Code 1575.204(b)

**Notice Regarding
Earned Income Tax
Credit**

Not later than March 1 of each year, a district shall provide employees with information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

1. In person;
2. Electronically at the employee's last known e-mail address;
3. Through a flyer included, in writing or electronically, as a payroll stuffer; or
4. By first class mail to the employee's last known address.

A district may not satisfy this requirement solely by posting information in the workplace.

In addition, a district may provide employees with IRS publications and forms, or information prepared by the comptroller, relating to the earned income tax credit.

Labor Code 104.001-.003

Decreasing Pay

The Commissioner has held that a district may reduce educator compensation if it gives sufficient warning of a possible reduction in pay when educators can still unilaterally resign from their contracts. A sufficient warning must be both formal enough and specific enough to give educators a meaningful opportunity to decide whether to continue employment with a district. *Brajenovich v. Alief Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 021-R10-1106 (2009)*

Widespread Salary
Reductions

The following provisions apply only to a widespread reduction in the amount of annual salaries paid to classroom teachers in a district based primarily on district financial conditions rather than on teacher performance.

For any school year in which a district has reduced the amount of the annual salaries paid to classroom teachers from the amount paid for the preceding school year, the district shall reduce the amount of the annual salary paid to each district administrator or other professional employee by a percent or fraction of a percent that is equal to the average percent or fraction of a percent by which teacher salaries have been reduced.

Education Code 21.4032

A board may not reduce salaries until the district has complied with the requirements at Education Code 21.4022 [see Salary Reduction/Furlough Process, below]. *Education Code 21.4022*

Furlough Program In accordance with district policy [see DFFA], a board may implement a furlough program and reduce the number of days of service otherwise required under Education Code 21.401 [see DC] by not more than six days of service during a school year if the Commissioner certifies that the district will be provided with less state and local funding for that year than was provided to the district for the 2010–11 school year. *Education Code 21.4021(a)*

A board may not implement a furlough program until the district has complied with the requirements at Education Code 21.4022 [see Salary Reduction/Furlough Process, below]. *Education Code 21.4022*

Funding Levels Not later than July 1 of each year, the Commissioner shall determine for each district whether the estimated amount of state and local funding per student in weighted average daily attendance to be provided to the district under the Foundation School Program for maintenance and operations for the following school year is less than the amount provided to the district for the 2010–11 school year. If the amount estimated to be provided is less, the Commissioner shall certify the percentage decrease in funding to be provided to the district. *Education Code ~~42.009~~48.010*

MT 7/2/19: HB 3 changed this citation.

Salaries Notwithstanding Education Code 21.402 (minimum salary schedule), a board may reduce the salary of an employee who is furloughed in proportion to the number of days by which service is reduced. Any reduction in the amount of the annual salary must be equally distributed over the course of the employee's current contract with the district.

Furlough Days A furlough program must subject all contract personnel to the same number of furlough days. An educator may not be furloughed on a day that is included in the number of days of instruction required under Education Code 25.081 [see EB]. Implementation of a furlough program may not result in an increase in the number of required teacher workdays. An educator may not use personal, sick, or any other paid leave while the educator is on a furlough.

Contract Resignation If a board adopts a furlough program after the date by which a teacher must give notice of resignation from a probationary, term,

or continuing contract [see DFE], an employee who subsequently resigns is not subject to sanctions imposed by SBEC.

No Appeal

A decision by a board to implement a furlough program is final and may not be appealed and does not create a cause of action or require collective bargaining.

Education Code 21.4021

Salary Reduction /
Furlough Process

A board may not implement a furlough program under Education Code 21.4021 or reduce salaries until the district has complied with the requirements below.

*Employee
Involvement*

A district must use a process to develop a furlough program or other salary reduction proposal, as applicable, that:

1. Includes the involvement of the district's professional staff; and
2. Provides district employees with the opportunity to express opinions regarding the furlough program or salary reduction proposal, as applicable, at the public meeting described below.

Public Meeting

A board must hold a public meeting at which the board and district administration present:

1. Information regarding the options considered for managing the district's available resources, including consideration of a tax rate increase and use of the district's available fund balance;
2. An explanation of how the district intends, through implementation of a furlough program or salary reductions, as applicable, to limit the number of district employees who will be discharged or whose contracts will not be renewed. Any explanation of a furlough program must state the specific number of furlough days proposed to be required; and
3. Information regarding the local option residence homestead exemption.

The public and district employees must be provided with an opportunity to comment at the public meeting.

Education Code 21.4022

**Incentive Grants—
Contract Provision**

A district shall provide in employment contracts that qualifying employees may receive an incentive payment under an awards program established under Education Code Chapter 21, Subchapter O (Educator Excellence Award Program and Educator Excellence Innovation Program) if the district participates in the program. A district shall indicate that any incentive payment distributed is considered a payment for performance and not an entitlement as part of an employee's salary. *Education Code 21.415*

**Educator Excellence
Innovation Program**

The Educator Excellence Innovation Program (EEIP) is a grant program under which a district may receive a competitive grant for the purposes of systematically transforming educator quality and effectiveness. [The Texas Education Agency \(TEA\)](#) will give priority to districts that receive Title I funding and have at a majority of district campuses a student enrollment that is at least 50 percent educationally disadvantaged.

Eligibility

A district is eligible to apply for EEIP grant funds if the district:

1. Completes and submits a Notice of Intent to Apply to TEA by the date established by the [Commissioner of education](#);
2. Complies with all assurances in the Notice of Intent to Apply and grant application;
3. Participates in the required technical assistance activities established by the [Commissioner](#), including establishing leadership teams, master teachers, mentor teachers, and instructional coaches and developing career pathways;
4. Agrees to participate for four years; and
5. Complies with any other activities set forth in the program requirements.

An eligible district must submit an application in a form prescribed by the [Commissioner](#). Each eligible applicant must meet all deadlines, requirements, and assurances specified in the application. The [Commissioner](#) may waive any eligibility requirements as specified in 19 Administrative Code 102.1073.

Local Plan

An eligible district that intends to participate in the EEIP shall submit a local educator excellence innovation plan to TEA. A local educator excellence innovation plan must address the elements at 19 Administrative Code 102.1073(e)(2).

A district must act pursuant to its local board policy [see DEAA (LOCAL)] for submitting a local educator excellence innovation plan and grant application to TEA. A local decision to approve and

submit a plan and grant application may not be appealed to the [Commissioner](#).

A district may renew its local educator excellence innovation plan for three consecutive school years without resubmitting a full grant application to TEA. With TEA approval, a district may amend its local plan in accordance with 19 Administrative Code 102.1073(c) and (h) for each school year the district receives a program grant.

Use of Grant Funds

A district may use grant funds only to carry out purposes of the program as described at Education Code 21.7011, in accordance with the district's local plan, which may include the following specific methods or procedures:

1. Implementation and administration of a high-quality mentoring program for teachers in the first three years of classroom teaching using mentors who meet the qualifications prescribed by Education Code 21.458 [see [MENTOR TEACHERS Mentor Teachers](#), below];
2. Implementation of a teacher evaluation system using multiple measures that include:
 - a. The results of classroom observation, which may include student comments;
 - b. The degree of student educational growth and learning; and
 - c. The results of teacher self-evaluation;
3. To the extent permitted under Education Code Chapter 25, Subchapter C, restructuring of the school day or school year to provide for embedded and collaborative learning communities for the purpose of professional development [see EC];
4. Establishment of an alternative teacher compensation or retention system; and
5. Implementation of incentives designed to reduce teacher turnover.

Waiver Request

A district may apply to the [Commissioner](#) in writing for a waiver to exempt the district or one or more district campuses from one or more of the statutory sections listed at Education Code 21.7061(a).

The application for the waiver must demonstrate:

1. Why waiving the identified section of the Education Code is necessary to carry out the purposes of the program;

2. Approval for the waiver by a vote of a majority of the members of the board;
3. Approval for the waiver by a vote of a majority of the educators employed at each campus for which the waiver is sought; and
4. Evidence that the voting occurred during the school year and in a manner that ensured that all educators entitled to vote had a reasonable opportunity to participate in the voting.

Neither the board nor the superintendent may compel a waiver of rights under Education Code 21.7061.

Not later than April 1 of the year in which the waiver application is submitted, the Commissioner shall notify the district in writing whether the application has been granted or denied. A waiver expires when the waiver is no longer necessary to carry out the purposes of the program, in accordance with the district's local educator excellence innovation plan.

Education Code Ch. 21, Subch. O; 19 TAC 102.1073

Local Optional Teacher Designation System

A district may designate a certified classroom teacher as a master, exemplary, or recognized teacher for a five-year period based on the results from single year or multiyear appraisals that comply with Education Code 21.351 or 21.352 [see DNA].

Standards

The commissioner shall establish performance and validity standards for each local optional teacher designation system that:

1. Must provide a mathematical possibility that all teachers eligible for a designation may earn the designation; and
2. May not require a district to use an assessment instrument adopted under Education Code 39.023 to evaluate teacher performance.

A classroom teacher that holds a National Board Certification issued by the National Board for Professional Teaching Standards may be designated as recognized.

Assistance

TEA shall develop and provide technical assistance for districts that request assistance in implementing a local optional teacher designation system, including assistance in prioritizing high needs campuses.

No Property Right

A teacher has no vested property right in a teacher designation assigned under a local optional teacher designation system. A teacher designation is void in the determination that the designation was issued improperly, and the Administrative Procedure Act

Teacher Incentive Allotment

does not apply to the voiding of a local optional teacher designation.

For each classroom teacher with a local optional teacher designation, a school district is entitled to an allotment, adjusted by high needs and rural factors, as determined under Education Code 48.112.

A district shall annually certify that:

1. Funds received were used as follows:
 - a. At least 90 percent was used for the compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed; and
 - b. Any other funds were used for costs associated with implementing the local optional teacher designation system, including efforts to support teachers in obtaining designations; and
2. The district prioritized high needs campuses in the district in using funds.

Evaluations

TEA shall periodically conduct evaluations of the effectiveness of the local optional teacher designation systems and the teacher incentive allotment and report the results of the evaluations to the legislature. A school district that has implemented a local optional teacher designation system or received funds under the teacher incentive allotment shall participate in the evaluations.

Education Code 21.3521, 48.112

MT 7/3/19: HB 3 adds TEC 21.3521—the Local Optional Teacher Designation System for designating certified classroom teachers as master, exemplary, or recognized. TEC 48.112 provides for an allotment. The formula for calculating the allotment and factors seemed too detailed to put in policy.

Mentor Teachers

A district may assign a mentor teacher to each classroom teacher who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned. A teacher assigned as a mentor must:

1. To the extent practicable, teach in the same school;
2. To the extent practicable, teach the same subject or grade level, as applicable; and
3. Meet the qualifications prescribed by [E](#) Commissioner's rules.

<u>Assignment of Mentor</u>	<u>To be assigned as a mentor, a teacher must agree to serve as a mentor teacher for at least one school year. The assignment must begin not later than the 30th day of employment of the classroom teacher to whom the mentor teacher is assigned. A district must agree to assign a mentor to a new classroom teacher for at least two school years.</u>
<u>Requirements for Mentor</u>	The Commissioner's rules must require that a mentor teacher: <ol style="list-style-type: none">1. Complete a research-based mentor and induction training program approved by the Commissioner;2. Complete a training program provided by the district; and3. <u>Have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance; and</u>4. <u>Demonstrate interpersonal skills, instructional effectiveness, and leadership skills.</u>
<u>Training</u>	<u>A district must provide training to mentor teachers and any appropriate district and campus employees who work with the classroom teacher or supervise the classroom teacher. The training must be completed by the mentor teacher and the district and campus employees before the beginning of the school year. A district shall also provide supplemental training to mentor teachers and employees during the school year. The training must include content related to best mentorship practices.</u> <p>A district may apply to the Commissioner for funds for a mentor teacher program. A district may use the funds only for providing:</p> <ol style="list-style-type: none">1. Mentor teacher stipends;2. Scheduled release time for mentor teachers and the classroom teachers to whom they are assigned for meeting and engaging in mentoring activities; and3. Mentoring support through providers of mentor training.
<u>Mentoring Sessions</u>	<u>A mentor teacher must meet with each classroom teacher assigned to the mentor not less than 12 hours each semester. Observations of the mentor by the classroom teacher being mentored or of the classroom teacher being mentored by the mentor may count toward the 12 hours of meeting time required for the semester.</u> <p><u>Unless the district has created a mentoring curriculum as provided below, the mentoring sessions must address the following topics:</u></p> <ol style="list-style-type: none">1. <u>Orientation to the context, policies, and practices of the school district;</u>

2. Data-driven instructional practices;
3. Specific instructional coaching cycles, including coaching regarding conferences between parents and the classroom teacher;
4. Professional development; and
5. Professional expectations.

Subject to approval by TEA, in determining the topics to be addressed in the mentoring sessions, a school district may create an appropriate curriculum that meets the district needs.

A district must:

1. Designate a specific time during the regularly contracted school day for meetings between mentor teachers and classroom teachers assigned to a mentor; and
2. Schedule release time or a reduced teaching load for mentor teachers and classroom teachers under this section to facilitate mentoring activities, including classroom observations or participation in supportive coaching.

Allotment

A school district that has implemented a mentoring program is entitled to an allotment to fund the mentoring program and provide stipends for mentor teachers under a formula adopted by the commissioner.

Funding may be used only for providing:

1. Mentor teacher stipends;
2. Scheduled release time for mentor teachers and the classroom teachers to whom they are assigned for meeting and engaging in mentoring activities; and
3. Mentoring support through providers of mentor training.

Education Code 21.458, 48.114; 19 TAC 153.1011

MT 7/3/19: HB 3 amends mentor teacher program including: adding 21.458(a-1) related to how long a mentor teacher must serve; adding (b)(4) related to qualifications; adding (b-1) related to when training must be provided; repealing (c) related to how a district can use mentor grant funds; and adding (f), (f-1), and (g) related to mentoring sessions. Added 48.114 related to allotment, which mirrors repealed (c).

Master Teacher Grant Programs

~~The Commissioner shall establish master reading, mathematics, technology, and science teacher grant programs to encourage~~

~~teachers to become certified as master teachers and to work with other teachers and students to improve student performance.
Education Code 21.410-.413~~

~~Application~~

~~A district may apply to the Commissioner for grants for each identified high-need campus to be used to pay year-end stipends to certified master teachers.~~

~~Use of Funds~~

~~Grant funds may be used only for the purpose of paying a year-end stipend to a master teacher whose primary duties are to teach reading, mathematics, technology, or science and to serve as a reading, mathematics, technology, or science teacher mentor for the amount of time and in the manner established by the district.~~

~~Payments~~

~~The Commissioner shall reduce payments to a district proportionately to the extent a teacher does not meet the requirements for a master teacher for the entire school year.~~

~~If a teacher qualifies as a master teacher for a partial month, a district's written policy will determine how the district counts the partial month, for example, as no month served or as an entire month served. Only whole months shall be entered on the application by a district on the teacher's behalf.~~

~~Education Code sections 21.410-.413 do not create a property right to a grant or stipend. A master teacher stipend is not considered in determining whether the district is paying the teacher the minimum monthly salary under Education Code 21.402.~~

~~Designation of
Teacher~~

~~A district that employs more certified master teachers than the number of grants available shall designate which certified master teacher(s) to assign the duties required to receive the state stipends. The designation is based on a written policy adopted by the board. A district's decision is final and may not be appealed.~~

~~A district may not apportion among teachers a stipend paid with a grant the district receives under this program. A district may use local money to pay additional stipends in amounts determined by the district.~~

~~*Education Code 21.410-.413; 19 TAC Ch. 102, Subch. BB*~~

MT 7/3/19: SB 1376 consolidated the various master teacher programs into one, repealing 21.411-.413; however HB 3 repealed 21.410 as well, so the whole grant program is gone. The Local Optional Teacher Designation System (above) seems to be a replacement.

**Achievement
Academy Stipends**

A stipend received by a teacher who attends a literacy achievement, mathematics achievement, or a reading-to-learn academy is not considered in determining whether a district is paying the

teacher the minimum monthly salary under Education Code 21.402. *Education Code 21.4552(d), .4553(d), .4554(d)*

A stipend received by a school counselor or teacher who attends a postsecondary education and career counseling academy under Education Code 33.009 is not considered in determining whether a district is paying the school counselor or teacher the minimum monthly salary under Education Code 21.402. *Education Code 33.009(h)*

Autism Training

[A district may provide a salary incentive or similar compensation to a teacher who completes training provided by a regional education service center \(ESC\) relating to autism. A school district that decides to provide an incentive or compensation shall adopt a policy to implement this section. *Education Code 21.465*](#)

MT 7/5/19: HB 3 adds 21.465 to provide authority to give incentive to attend autism training.

**Retirement
Incentives**

A district may not offer or provide a financial or other incentive to an employee to encourage the employee to retire from the Teacher Retirement System of Texas. *Education Code 22.007*

**Attendance
Supplement**

A district shall not deny an educator a salary bonus or similar compensation given in whole or in part on the basis of educator attendance because of the educator's absence from school for observance of a religious holy day observed by a religion whose places of worship are exempt from property taxation under Tax Code 11.20. *Education Code 21.406*

Duty Weapon and Badge

On the death of a peace officer employed by a district, the district shall provide, at no cost, the officer's duty weapon, if any, and badge to the officer's designated beneficiary or, if there is no designated beneficiary, to the officer's estate. A district shall provide peace officers with a form on which they may designate their beneficiaries for this purpose. If a district peace officer dies and is to be buried in the person's uniform, the district shall provide the uniform at no cost. *Gov't Code 615.102-.103*

Survivor Benefits

The following provisions apply to a person employed by a district as a peace officer or in another position listed at Government Code 615.001 and who dies as a result of a personal injury, as defined at Government Code 615.021 and 615.072, sustained in the line of duty.

Notice to ERS

The surviving spouse and children of the deceased employee may be eligible for benefits under Government Code Chapter 615, Subchapter B. ~~As soon as practicable~~ Not later than the 30th day after the date of the death of a peace officer or other covered employee that occurs in the performance of duties in the individual's position or as a result of an action that occurs while the individual is performing those duties, a district shall furnish proof of death to the Employees Retirement System (ERS). A district shall furnish any evidence and information required by ERS regardless of whether the district believes the individual's death satisfies eligibility requirements. If a district fails to furnish proof of death as required, the attorney general may use any means authorized by law, including filing suit for a writ of mandamus against the district, to compel compliance. *Gov't Code 615.041*

MT 7/3/19: HB 872, effective 9/1/19, amends provisions related to information an employer must send to ERS when law enforcement officers are killed in the line of duty.

Continuation of Health Insurance

The surviving spouse and any dependents of the deceased employee may be entitled to purchase or continue health insurance benefits through the district under Government Code Chapter 615, Subchapter D. A district shall provide written notice to an eligible survivor of the survivor's rights not later than the tenth day after the date of the employee's death. Not later than the 150th day after the employee's death, the district shall send a subsequent written notice by certified mail to any eligible survivor who has not already elected to purchase or continue coverage on or before that date.

If an eligible survivor is a minor child, the district shall also provide notice, at the same time, to the child's parent or guardian unless, after reasonable effort, the parent or guardian cannot be located.

COMPENSATION AND BENEFITS
FRINGE BENEFITS

DEB
(LEGAL)

Gov't Code 615.075

Note: This policy addresses leaves in general. For provisions regarding the Family and Medical Leave Act (FMLA), including FML for an employee seeking leave because of a relative's military service, see DECA. For provisions addressing leave for an employee's military service, see DECB.

State Leave

State Personal
Leave

A district shall provide employees with five days per year of state personal leave, with no limit on accumulation and no restrictions on transfer among districts. A district may provide additional personal leave beyond this minimum.

A board may adopt a policy governing an employee's use of state personal leave, except that the policy may not restrict the purposes for which the leave may be used.

Education Code 22.003(a)

State Sick Leave
(Accumulated Prior
to 1995)

District employees retain any sick leave accumulated as state minimum sick leave under former Section 13.904(a) of the Education Code. Accumulated state sick leave shall be used only for the following:

1. Illness of the employee.
2. Illness of a member of the employee's immediate family.
3. Family emergency.
4. Death in the employee's immediate family.
5. During military leave [see Use During Military Leave, below].

Acts of the 74th Legislative Session, Senate Bill 1, Sec. 66

Former Education
Service Center
Employees

A district shall accept the sick leave accrued by an employee who was formerly employed by a regional education service center (ESC), not to exceed five days per year for each year of employment. *Education Code 8.007*

Order of Use

A board's policy governing an employee's use of state personal leave may not restrict the order in which an employee may use state personal leave and any additional personal leave provided by the school district.

An employee who retains any state sick leave is entitled to use the state sick leave, state personal leave, or local personal leave in any order to the extent that the leave the employee uses is appropriate to the purpose of the leave.

Education Code 22.003(a), (f)

Use During Military Leave An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. "Personal leave" includes personal or sick leave available under former law or provided by local policy. *Education Code 22.003(d), (e)* [See DECB]

Temporary Disability Each full-time educator shall be given a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties. The contract or employment of the educator may not be terminated while the educator is on a leave of absence for temporary disability. For purposes of temporary disability leave, pregnancy is considered a temporary disability.

At Employee's Request A request for a leave of absence for temporary disability must be made to a superintendent. The request must:

1. Be accompanied by a physician's statement confirming inability to work;
2. State the date requested by the educator for the leave to begin; and
3. State the probable date of return as certified by the physician.

By Board Authority A board may adopt a policy providing for placing an educator on leave of absence for temporary disability if, in the board's judgment in consultation with a physician who has performed a thorough medical examination of the educator, the educator's condition interferes with the performance of regular duties. The educator shall have the right to present to the board testimony or other information relevant to the educator's fitness to continue in the performance of regular duties. [See DBB]

Return to Active Duty The educator shall notify the superintendent of a desire to return to active duty no later than the 30th day before the expected date of return. The notice must be accompanied by a physician's statement indicating the educator's physical fitness for the resumption of regular duties.

Placement An educator returning to active duty after a leave of absence for temporary disability is entitled to an assignment at the school where the educator formerly taught, subject to the availability of an appropriate teaching position. In any event, the educator shall be placed on active duty no later than the beginning of the next school year. A principal at another campus voluntarily may approve the appointment of an employee who wishes to return from leave of absence. However, if no other principal approves the assignment by the beginning of the next school year, a district must place the

	<p>employee at the school at which the employee formerly taught or was assigned.</p>
Length of Absence	<p>A superintendent shall grant the length of leave of absence for temporary disability as required by the individual educator. A board may establish a maximum length for a leave of absence for temporary disability, but the maximum length may not be less than 180 calendar days.</p> <p><i>Education Code 21.409; Atty. Gen. Op. DM-177 (1992); Atty. Gen. Op. H-352 (1974)</i></p>
Sick Leave Different from Temporary Disability Leave	<p>An employee's entitlement to sick leave is unaffected by any concurrent eligibility for a leave of absence for temporary disability. The two types of leave are different, and each must be granted by its own terms. <i>Atty. Gen. Op. H-352 (1974)</i></p>
Assault Leave	<p>In addition to all other days of leave, a district employee who is physically assaulted during the performance of regular duties is entitled to the number of days of leave necessary to recuperate from physical injuries sustained as a result of the assault. The leave shall be paid as set forth below at Coordination with Workers' Compensation Benefits.</p> <p>A district employee is physically assaulted if the person engaging in the conduct causing injury to the employee:</p> <ol style="list-style-type: none">1. Could be prosecuted for assault; or2. Could not be prosecuted for assault only because the person's age or mental capacity makes the person a nonresponsible person for purposes of criminal liability.
Notice of Rights	<p>Any informational handbook a district provides to employees in an electronic or paper form or makes available by posting on the district's website must include notification of an employee's rights regarding assault leave, in the relevant section of the handbook. Any form used by a district through which an employee may request personal leave must include assault leave as an option.</p>
Assignment to Assault Leave	<p>At the request of an employee, a district must immediately assign the employee to assault leave. Days of assault leave may not be deducted from accrued personal leave. Assault leave may not extend more than two years beyond the date of the assault. Following an investigation of the claim, a district may change the assault leave status and charge the leave against the employee's accrued personal leave or against the employee's pay if insufficient accrued personal leave is available.</p>

Coordination with
Workers'
Compensation
Benefits

Notwithstanding any other law, assault leave benefits due to an employee shall be coordinated with temporary income benefits due from workers' compensation so the employee's total compensation from temporary income benefits and assault leave benefits will equal 100 percent of the employee's weekly rate of pay.

Education Code 22.003(b)–(c-1)

**Religious
Observances**

A district shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of district business. Such absence shall be without pay unless applicable paid leave is available. *42 U.S.C. 2000e(j), 2000e-2(a); Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, (1986); Pinsker v. Joint Dist. No. 28J of Adams and Arapahoe Counties, 735 F.2d 388 (10th Cir. 1984)*

**Compliance with a
Subpoena**

An employer may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. *Labor Code 52.051(a)*

Note: A Texas federal court held that by omitting any reference to governmental entities from Labor Code 52.051, the state legislature intended to exclude governmental entities from the definition of "employer" contained within that section. Therefore, the statute did not waive a county's governmental immunity from liability for claims of retaliatory discharge of an employee for complying with a subpoena. *Alcala v. Texas Webb County, 620 F. Supp. 2d 795 (S.D. Tex. 2009)*

Jury Duty

~~A district may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against an employee because of the employee's compliance with a summons to appear as a juror. For each regularly scheduled workday on which a nonsalaried employee serves in any phase of jury service, a district shall pay the employee the employee's normal daily compensation. An employee's accumulated personal leave may not be reduced because of the employee's service in compliance with a summons to appear as a juror [see DG]. *Education Code 22.006*~~

MT 7/3/19: HB 504 and SB 370 protect employees who serve on juries. I'm adding CPRC 122.001 to DG along with the deleted provisions above. I'm just keeping the provision from 22.006 related to leave here with a xref to DG.

**Attendance at
Truancy Hearing**

A district may not terminate the employment of a permanent employee because the employee is required under Family Code 65.062(b) to attend a truancy court hearing. *Family Code 65.063*

**Developmental
Leaves of Absence**

A board may grant a developmental leave of absence for study, research, travel, or other suitable purpose to an employee working in a position requiring a permanent teaching certificate who has served in a district at least five consecutive school years.

A developmental leave of absence may be granted for one school year at one-half salary or for one-half of a school year at full salary paid to the employee in the same manner, on the same schedule, and with the same deductions as if the employee were on full-time duty.

An employee on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be an employee of a district for purposes of participating in programs, holding memberships, and receiving benefits afforded by employment in a district.

Education Code 21.452

**Leave for Sick Foster
Child**

An employer commits an unlawful employment practice under Labor Code, Chapter 21 if:

1. The employer administers a leave policy under which an employee is entitled to personal leave to care for or otherwise assist the employee's sick child; and
2. The leave policy does not treat in the same manner as an employee's biological or adopted minor child any foster child of the employee who:
 - a. Resides in the same household as the employee; and
 - b. Is under the conservatorship of the Texas Department of Family and Protective Services.

Labor Code 21.0595

Absence Control

Uniform enforcement of a reasonable absence-control rule is not retaliatory discharge. For example, a district that terminates an employee for violating a reasonable absence-control provision cannot be liable for retaliatory discharge as long as the rule is uniformly enforced. *Howell v. Standard Motor Prods., Inc.*, 2001 U.S. Dist LEXIS 12332 (N. D. Tex. 2001) (Family and Medical Leave Act case); *Specialty Retailers v. DeMoranville*, 933 S.W.2d 490 (Tex. 1996) (age discrimination case); *Continental Coffee Products Co. v. Cazarez*, 937 S.W.2d 444 (Tex. 1996) (workers' compensation claim); *Gonzalez v. El Paso Natural Gas Co.*, 40 F.E.P. Cases

(BNA) 353 (Tex. App.—El Paso 1986, no pet.) (sex discrimination case)

[Some employees may have protected status even after the expiration of all other leave. See DAA.]

Note: For a detailed treatment of termination and nonrenewal of educator contracts, see policies DFAA and DFAB (Probationary Contracts), DFBA and DFBB (Term Contracts), and DFCA (Continuing Contracts).

Withholding Information

An attempt by any district employee to encourage or coerce a child to withhold information from the child's parent is grounds for discharge or suspension under Education Code 21.104 (probationary contracts), 21.156 (continuing contracts), and 21.211 (term contracts). *Education Code 26.008(b)*

Registry of Persons Not Eligible for Employment

A district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement shall discharge or refuse to hire a person listed on TEA's registry of persons who are not eligible to be employed. [See DC] Education Code 22.092

MT 7/25/19: Added reference to Internet portal with xref to DC at CVC request.

Discharge of Convicted Employees

A district shall discharge or refuse to hire an employee or applicant for employment if the district obtains information through a criminal history record information (CHRI) review that:

~~¶~~the employee or applicant has been:

~~4.~~ Convicted of or placed on deferred adjudication community supervision for:

~~a.~~ A felony under Penal Code Title 5;

1. A an offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or

2. Convicted of:

~~b.~~a. A felony 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

~~e.~~b. An offense under the laws of another state or federal law that is equivalent to an offense under paragraphs item 1 or 2-a., above, ~~or b.~~ and

~~At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.~~

**Certain Offenses
Against Students**

Mandatory
Termination

If a district receives notice that SBEC has revoked the certificate of a person based on conviction of or placement on deferred adjudication community supervision for an offense for which the person is required to register as a sex offender under Code of Criminal Procedure, Chapter 62, or a conviction of a felony under Penal Code Title 5 if the victim of the offense was under 18 years of age at the time the offense was committed, the district shall:

1. Immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and
2. If the person is employed under a probationary, continuing, or term contract, with the approval of the board or its designee:
 - a. Suspend the person without pay;
 - b. Provide the person with written notice that the person's contract is void [see Notice to Employee, below]; and
 - c. Terminate the employment of the person as soon as practicable.

Education Code 21.058(a), (c)

Discretionary
Termination

If a district becomes aware that a person employed by the district under a probationary, continuing, or term contract has been convicted of or received deferred adjudication for a felony offense, and the person is not subject to the mandatory termination provision above, the district may, with the approval of the board or its designee:

1. Suspend the person without pay;
2. Provide the person with written notice that the person's contract is void [see Notice to Employee, below]; and
3. Terminate the employment of the person as soon as practicable.

Education Code 21.058(c-1)

Notice to Employee

A person's probationary, continuing, or term contract is void if, with the approval of the board or its designee, the district provides written notice to the person, under the mandatory or discretionary termination provisions above, that the person's contract is void.

Education Code 21.058(c-2)

No Appeal

Action taken by a district under the mandatory or discretionary terminations provisions above is not subject to appeal under Education Code Chapter 21 and the notice and hearing requirements of Chapter 21 do not apply to the action. *Education Code 21.058(e)*

Invalid or Expired Certification

An employee's probationary, term, or continuing contract is void if the employee:

1. Does not hold a valid certificate or permit issued by SBEC;
2. Fails to fulfill the requirements necessary to renew or extend the employee's temporary, probationary, or emergency certificate or any other certificate or permit issued under Education Code Chapter 21, Subchapter B; or
3. Fails to comply with any requirement under Education Code Chapter 22, Subchapter C [criminal history review, see DBAA], if the failure results in suspension or revocation of the employee's certificate.

Education Code 21.0031(a)

A certificate or permit is not considered to have expired if:

1. The employee has completed the requirements for renewal of the certificate or permit;
2. The employee submitted the request for renewal before the expiration date; and
3. The date the certificate or permit would have expired is before the date SBEC takes action to approve the renewal of the certificate or permit.

Education Code 21.0031(f)

District's Options

If a district has knowledge that an employee's contract is void under Education Code 21.0031(a), the district may:

1. Terminate the employee;
2. Suspend the employee with or without pay; or
3. Retain the employee for the remainder of the school year on an at-will employment basis in a position that does not require a contract under Education Code 21.002, at the employee's existing rate of pay or at a reduced rate.

The employee is not entitled to the minimum salary prescribed by Education Code 21.402.

Education Code 21.0031(b)

Exception	<p>A district may not terminate or suspend an employee under 21.0031(b) because of the employee's lack of a valid certificate or permit, or failure to renew or extend a certificate or permit, if:</p> <ol style="list-style-type: none"> 1. The employee requests an extension from SBEC to renew, extend, or otherwise validate the employee's certificate or permit; and 2. Not later than the tenth day after the date the contract is void, the employee takes necessary measures to renew, extend, or otherwise validate the employee's certificate or permit, as determined by SBEC. <p><i>Education Code 21.0031(b-1)</i></p>
No Appeal or Chapter 21 Hearing	<p>A school district's decision under Education Code 21.0031(b) is not subject to appeal under Education Code Chapter 21, and the notice and hearing requirements of that chapter do not apply to the decision. <i>Education Code 21.0031</i></p>
Applicability	<p>These void contract provisions do not affect the rights and remedies of a party in an at-will employment relationship and do not apply to a certified teacher assigned to teach a subject for which the teacher is not certified. <i>Education Code 21.0031; Nunez v. Simms, 341 F.3d 385 (5th Cir. 2003)</i></p>
Report to SBEC	<p>A superintendent shall report the educator's termination to SBEC if the conditions set forth at Education Code 21.006 exist. [See DHB]</p>
Report to Superintendent	<p>A principal shall report the educator's termination to the superintendent if the conditions set forth at Education Code 21.006 exist. [See DP]</p>
Falsification of Military Record	<p>A district may discharge an employee, regardless of whether the employee is employed under an employment contract, if the district determines, based on a reasonable factual basis, that the employee, in obtaining the employee's employment or any benefit relating to the employee's employment, falsified or otherwise misrepresented any information regarding the employee's military record in a manner that would constitute an offense under Penal Code 32.54.</p> <p>An employment contract entered into by a district with an employee discharged by the employer under Labor Code Chapter 105 is void and unenforceable as against public policy. [See DF series]</p> <p><i>Labor Code Ch. 105</i></p>

**Employee Free
Speech**

District employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to his or her official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.

Garcetti v. Ceballos, 547 U.S. 410 (2006); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) [See also GKD]

**Whistleblower
Protection**

A board or its agents shall not 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 a district or another public employee to an appropriate law enforcement authority.

A “report” is made to an “appropriate law enforcement authority” if the authority is a part of a state or local governmental entity or the federal government that the employee in good faith believes is authorized to:

1. Regulate under or enforce the law alleged to be violated in the report; or
2. Investigate or prosecute a violation of criminal law.

Gov’t Code 554.002

A supervisor who suspends or terminates the employment of or takes an adverse personnel action against an employee for reporting a violation of law shall be subject to civil penalties. *Gov’t Code 554.008*

Definitions

“Employee” means an employee or appointed officer who is paid to perform services for a district. It does not include independent contractors. *Gov’t Code 554.001(4)*

“Law” means a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance. *Gov’t Code 554.001(1)*

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

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

Wichita County v. Hart, 917 S.W.2d 779 (Tex. 1996)

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 training and experience.

Tex. Dep’t of Transp. v. Needham, 82 S.W.3d 314 (Tex. 2002)

Whistleblower Complaints

An employee who alleges a violation of whistleblower protection may sue a district for injunctive relief, actual damages, court costs, and attorney’s fees, as well as other relief specified in Government Code 554.003. *Gov’t Code 554.003*

Initiate Grievance

Before suing, an employee must initiate action under a district’s grievance policy or other applicable policies concerning suspension or termination of employment or adverse personnel action.

The employee must invoke a district’s grievance procedure not 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.

Legal Action

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

1. Exhaust a district’s grievance procedures, in which case the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under Government Code Chapter 554; or
2. Terminate district grievance procedures and sue within the time lines established by Government Code 554.005 and 554.006.

Gov’t Code 554.005, 554.006 [See DGBA regarding grievance procedures]

Burden of Proof

If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation of law, in which case the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report.

Affirmative Defense	<p>It is an affirmative defense to a whistleblower suit that the district would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under the whistleblower law.</p> <p><i>Gov't Code 554.004</i></p>
Notice of Rights	<p>A board shall inform its employees of their rights regarding whistleblower protection by posting a sign in a prominent location in the workplace. The design and content of the sign shall be as prescribed by the attorney general. <i>Gov't Code 554.009</i></p>
Right to Report a Crime	<p>A district employee may report a crime witnessed at the school to any peace officer with authority to investigate the crime. A district may not adopt a policy requiring a school employee to refrain from reporting a crime witnessed at the school or to report a crime witnessed at the school only to certain persons or peace officers. <i>Education Code 37.148</i></p>
Protection for Reporting Child Abuse	<p>A board or its agents <u>district</u> may not suspend or terminate the employment of, or otherwise discriminate <u>against, or take other adverse employment action</u> against; a professional employee who in good faith:</p> <ol style="list-style-type: none"> 1. Reports child abuse or neglect to: <ol style="list-style-type: none"> 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. <p><u>"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 under Family Code 261.101.</u></p> <p>A person <u>may sue for injunctive relief, damages, or both if, the person whose employment is suspended or terminated from the person's employment; or who is otherwise</u> discriminated against; <u>or suffers any other adverse employment action in violation of the foregoing may sue for injunctive relief, damages, or both.</u></p>

A district employee who has a cause of action under [the provisions at Whistleblower Protection, above](#), may not bring an action under Protection for Reporting Child Abuse.

Family Code 261.110

MT 7/3/19: HB 621, effective 9/1/19, adds adverse employment actions to actions employer is prohibited from taking related to a report of child abuse under Family Code 261.101.

Protection from Disciplinary Proceedings

For purposes of the following provisions, “disciplinary proceeding” means discharge or suspension of a professional employee, or termination or nonrenewal of a professional employee’s term contract. [See DGC regarding immunity] *Education Code 22.0512(b)*

Reporting Child Abuse or Maltreatment

A district employee may not be subject to any disciplinary proceeding resulting from an action taken in compliance with Education Code 38.0041 [prevention of child abuse and other maltreatment, see FFG]. *Education Code 38.0041(g)*

Use of Physical Force

A professional employee may not be subject to disciplinary proceedings for the employee’s use of physical force against a student to the extent justified under Penal Code 9.62. This provision does not prohibit a district from enforcing a policy relating to corporal punishment or bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment. *Education Code 22.0512(a); Tex. Att’y Gen. Op. GA-0202 (2004)*

Penal Code 9.62 provides that the use of force, other than deadly force, against a person is justified:

1. If the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
2. When and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

[Penal Code 9.62](#)

MT 7/8/19: SB 1451 protects teachers from discipline arising from documentation of student misconduct.

MT 7/25/19: Removed documentation of student discipline as per Joy and LRS request. 37.002(b-1) from SB 1451 is now in FO.

**Failure to Follow
Scope and Sequence**

A district may not penalize a teacher who does not follow a recommended or designated scope and sequence for a subject in the required curriculum under Education Code 28.002(a) in a particular grade level based on the teacher's determination that the teacher's students need more or less time in a specific area to demonstrate proficiency in the ~~TEKS~~ essential knowledge and skills for that subject and grade level [see EHAA].

A district may take appropriate action with respect to a teacher for conduct described above based on documented evidence of a deficiency in classroom instruction obtained through observation or substantiated and documented third-party information.

Education Code 28.0027(b), (c)

MT 7/2/19: HB 4310, effective 6-14-2019. JW put subsection (a) in EHAA.

**Instructional
Materials and
Technological
Equipment**

A board may not require an employee who acts in good faith to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned. An employee may not waive this provision by contract or any other means.

Exception

A district may enter into a written agreement with an employee whereby the employee assumes financial responsibility for electronic instructional material or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the employee to use the electronic instructional material or technological equipment for personal business.

The written agreement shall be separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to enter into such an agreement as a condition of employment.

Education Code 31.104(e); 19 TAC 66.107(c)

Jury Duty

A district may 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. An employee who is discharged, threatened with discharge, intimidated, or coerced is entitled to return to the same employment that the employee held when summoned for jury or grand jury service if the employee, as soon as practical after re-

leave from jury or grand jury service, gives the employer actual notice that the employee intends to return. *Civ. Prac. & Remedies Code 122.001*

A district may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against a school district employee because of the employee's compliance with a summons to appear as a juror. For each regularly scheduled workday on which a nonsalaried employee serves in any phase of jury service, a school district shall pay the employee the employee's normal daily compensation [see DEC]. *Education Code 22.006*

MT 7/3/19: Adding CPRC 122.001, which applies to public employers after SB 370 and grand jurors after HB 504. Moved TEC 22.006 from DEC, leaving only provision related to prohibiting reduction of personal leave.

**Breaks for Nursing Mothers—
Nonexempt Employees**

A district shall provide a nonexempt employee a reasonable break to express breast milk, each time the employee needs to express breast milk for her nursing child, for one year after the child's birth. The district shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

A district is not required to compensate the employee receiving reasonable break time for any work time spent for such purpose.

A district that employs fewer than 50 employees is not subject to these requirements if the requirements would impose an undue hardship by causing the district significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the district.

29 U.S.C. 207(r)

Right to Express Breast Milk

A district employee is entitled to express breast milk at the employee's workplace. *Gov't Code 619.002*

The district shall develop a written policy on the expression of breast milk by employees under Government Code Chapter 619. The policy must state that the district shall support the practice of expressing breast milk and make reasonable accommodations for the needs of employees who express breast milk.

A district shall provide a reasonable amount of break time for an employee to express breast milk each time the employee has need to express the milk. The district shall provide a place, other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk.

A district may not suspend or terminate the employment of, or otherwise discriminate against, an employee because the employee has asserted the employee's rights under Government Code Chapter 619. Government Code Chapter 619 does not create a private or state cause of action against a district.

Gov't Code Ch. 619

**Charitable
Contributions**

A board or a district employee may not directly or indirectly require or coerce any district employee to:

1. Make a contribution to a charitable organization or in response to a fund-raiser; or
2. Attend a meeting called for the purpose of soliciting charitable contributions.

A board or district employee may not directly or indirectly require or coerce any district employee to refrain from the same acts.

Education Code 22.011

Protection of Nurses

A district may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission relating to patient care that:

1. Would constitute grounds for reporting the nurse to the Board of Nurse Examiners under Occupations Code Chapter 301, Subchapter I;
2. Constitutes a minor incident, as defined at Occupations Code 301.419; or
3. Would violate Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners, if the nurse notifies the district at the time of the refusal that this is the reason for refusing to engage in the act or omission.

Occupations Code 301.352(a)

Educator Ethics

Educators shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom.

The State Board for Educator Certification (SBEC) shall provide for the adoption, amendment, and enforcement of an educator's code of ethics [see DH(EXHIBIT)]. SBEC is solely responsible for enforcing the ethics code for purposes related to certification disciplinary proceedings.

Education Code 21.041(b)(8); 19 TAC 247.1(b), (c)

Public Servants

All district employees are "public servants" and therefore subject to Title VIII of the Penal Code, regarding offenses against public administration, including restrictions on the acceptance of illegal gifts, honoraria and expenses, and abuse of office. *Penal Code 1.07(a)(41), Title VIII* [See DBD and BBFA]

Electronic Communication 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 a website, including a social media website or a social networking website.

A school district shall adopt a written policy concerning electronic communications between a school employee and a student enrolled in the district.

The policy adopted under this section must:

1. Include provisions designed to prevent improper electronic communications between a school employee and a student;
2. Allow a school employee to elect to not disclose to students the employee's personal telephone number or e-mail address; and
3. Include provisions instructing a school employee about the proper method for notifying appropriate local administrators about an incident in which a student engages in improper communications with the school employee.

Education Code 38.027

Public Information on Private Device

[A current or former board member or employee of a district who maintains public information on a privately owned device shall:](#)

1. ~~f~~ Forward or transfer the public information to the district or a district server to be preserved as provided by Government Code 552.004(a); or
2. ~~p~~ Preserve the public information in its original form in a backup or archive and on the privately owned device for the time described under 552.004(a).

Gov~~ernment~~ Code 552.004(b) [See GB]

MT 7/25/19: Adding the provision above to match BBI.

MT 7/7/19: SB 944, section 6, adds requirement for temporary custodians to return public information or face possible disciplinary action.

MT 7/25/19: Moved to 552.233 (b) and (c) to GB as per comments.

Ineligible for Loss of Retirement Annuity for Conviction of Certain Felonies

A person is not eligible to receive a service retirement annuity from the Teacher Retirement System (TRS) if the person is convicted of a qualifying felony and the victim is a student.

"Qualifying felony" means an offense that is punishable as a felony under the following sections of the Penal Code:

1. Section 21.02 (continuous sexual abuse of young child or children);
2. Section 21.12 (improper relationship between educator and student); or
3. Section 22.011 (sexual assault) or Section 22.021 (aggravated sexual assault).

The term includes any federal offense that contains elements that are substantially similar to the elements of a felony offense described above.

Not later than the 30th day after the date of a person's conviction for a qualifying felony, the school at which the person was employed shall provide written notice of the conviction to TRS. The notice must comply with rules adopted by TRS.

Gov't Code 824.009

MT 7/10/19: Edited heading to be more descriptive.

Transportation or Storage of Firearm in School Parking Area

A district may not prohibit a school employee who holds a license to carry a handgun under Government Code, Chapter 411, Subchapter H, from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle

in a parking lot, parking garage, or other parking area provided by the district and may not regulate the manner in which the handgun, firearm, or ammunition is stored in the vehicle, provided that the handgun, firearm, or ammunition is not in plain view.

This does not authorize a person to possess, transport, or store a handgun, a firearm, or ammunition in violation of Education Code 37.125 or Penal Code 46.03 or 46.035, or other law. [See GKA]

Education Code 37.0815

MT 7/5/19: HB 1143, applies with 19-20 SY, amends 37.0815 to prohibit district from regulating the manner in which a firearm is stored in a vehicle.

Tobacco and E-Cigarettes

A board shall prohibit smoking or using e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property.

Enforcement

A board shall ensure that district personnel enforce the policies on school property.

Education Code 38.006(b) [See also FNCD and GKA]

Drug and Alcohol Abuse Program

A board shall prohibit the use of alcoholic beverages at school-related or school-sanctioned activities on or off school property.

Education Code 38.007(a)

Federal Drug-Free Workplace Act

A district that receives a direct federal grant must agree to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the district’s workplace and specifying the actions that will be taken against employees for violations of the prohibition;
2. Establishing a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The district’s policy of maintaining a drug-free workplace;
 - c. Available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed on employees for drug abuse violations;

3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the required statement;
4. Notifying the employee in the required statement that as a condition of employment in the grant the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the district of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;
5. Notifying the granting agency within 10 days after receiving notice from an employee or otherwise receiving actual notice of a conviction;
6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by 41 U.S.C. section 8104; and
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of the above requirements.

41 U.S.C. 8103(a)(1)

Dietary Supplements

Except as provided at Education Code 38.011(b), a district employee 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 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 student with whom the employee has contact as part of the employee's duties.

An employee who violates items 1 or 2, above, commits a Class C misdemeanor offense.

Education Code 38.011

Low-THC Cannabis

A district may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the possession of low-THC cannabis, as authorized by Health and Safety Code Chapter 487. *Health and Safety Code 487.201*

Note: This policy applies to a district of innovation under Education Code, Chapter 12A. [See AF]

Permissive Reports

The superintendent may notify the State Board for Educator Certification (SBEC) of any educator misconduct that he or she believes in good faith may be subject to sanctions under 19 Administrative Code, Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, and/or Chapter 247, Educators' Code of Ethics. 19 TAC 249.14(d)

Required Reports

A superintendent shall notify SBEC if:

1. An educator employed by or seeking employment with the district, or an applicant or holder of an SBEC certificate, has a criminal record and the district 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 under Government Code 411.0845;
2. An educator's employment at the district was terminated and there is evidence that the educator engaged in misconduct listed below [see Reportable Misconduct, below];
3. The educator submitted a notice of resignation and there is evidence that the educator engaged in misconduct listed below [see Reportable Misconduct, below]; or
4. The educator engaged in conduct that violated the assessment instrument security procedures established under Education Code 39.0301.

Education Code 21.006, 22.087; 19 TAC 249.14(d)

**Reportable
Misconduct**

A superintendent shall make a report to SBEC under items 2 and 3, above, if an educator was terminated or resigned and there is evidence that the educator:

1. Sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;
2. Possessed, transferred, sold, or distributed a controlled substance, as defined by Health and Safety Code Chapter 481 or by 21 U.S.C. 801 et seq.;
3. Illegally transferred, appropriated, or expended school property or funds;
4. Attempted by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle the individual

to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;

5. Committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or
6. Solicited or engaged in sexual conduct or a romantic relationship with a student or minor.

Education Code 21.006(b); 19 TAC 249.14(d)

Investigation

A superintendent shall complete an investigation of an educator that involves evidence that the educator may have engaged in misconduct described above at Reportable Misconduct, items 1 and ~~2~~6, despite the educator's resignation from employment before completion of the investigation. *Education Code 21.006(b-1); 19 TAC 249.14(d)(3)(C)*

MT 7/8/19: Change required by edits conforming TAC rules to statute.

Deadline to Report

The superintendent shall promptly notify SBEC in writing by filing a report within seven business days after the date the superintendent receives a report from a principal [see DP(LEGAL)] or knew of the circumstances described above. *Education Code 21.006(c); 19 TAC 249.14(d)* [See Required Reports, above]

Contents of Report

The report must be in writing and in a form prescribed by SBEC; and may be filed through a confidential and secure internet portal developed and maintained by SBEC. The report shall include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator and the factual circumstances requiring the report and 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 name of the agency.

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

The name of the student or minor is not public information under the Public Information Act. [See GBAA] *Education Code 21.006(h)*

MT 7/3/19: HB3 amends 21.006(c-1) to permit filing a report to SBEC through its portal.

Notice

To the Board and
Educator

A superintendent shall notify the board and the educator of the filing of a written report with SBEC. The superintendent shall notify the board before filing the report. *Education Code 21.006(d); 19 TAC 249.14(d)(3)(B)*

Before Accepting
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)(A)*

Exception to Notice Requirements

A superintendent is not required to notify SBEC or file a report with the board if, before the educator's termination or resignation, 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)

MT 7/3/19: SB 1476, effective 6/14/19 and applying with the 19-20 SY, creates an exception to the notice requirements when an employee resigns or is terminated and there is evidence of certain misconduct.

Policy to Notify Parents

The board shall adopt a policy under which notice is provided to the parent or guardian of a student with whom an educator is alleged to have abused or otherwise committed an unlawful act with a student or minor. [See FFF] *Education Code 21.0061*

Sanctions for Failure to Report	SBEC shall determine whether to impose sanctions, including an administrative penalty against a superintendent who fails to file a report. <i>Education Code 21.006(f); 19 TAC 249.14(d), (h), .15(b)(4)</i>
Administrative Penalty	If a superintendent is required to file a report and fails to file the report by the required date, SBEC may impose an administrative penalty of not less than \$500 and not more than \$10,000. SBEC may not renew the certification of an educator against whom an administrative penalty is imposed until the penalty is paid. <i>Education Code 21.006(i)</i>
Criminal Offense	A superintendent required to file a report commits a state jail felony if the superintendent fails to file the report by the required date with intent to conceal an educator's criminal record or alleged incident of misconduct. <i>Education Code 21.006(j)</i>
Immunity	A superintendent or principal who, in good faith and while acting in an official capacity, files a report with SBEC or communicates with another superintendent 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. <i>Education Code 21.006(e)</i>
Definitions	"Abuse" includes the following acts or omissions:
"Abuse"	<ol style="list-style-type: none">1. Mental or emotional injury to a student or minor that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;2. Causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;3. Physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or4. Sexual conduct harmful to a student's or minor's mental, emotional, or physical welfare. <p><i>19 TAC 249.3(1)</i></p>
"Reported Criminal History"	"Reported criminal history" means information concerning any formal criminal justice system charges and dispositions. The term in-

cludes arrests, detentions, indictments, criminal informations, convictions, deferred adjudications, and probations in any state or federal jurisdiction. *19 TAC 249.3(44)*

“Solicitation of a Romantic Relationship”

“Solicitation of a romantic relationship” means deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or patterns of exclusivity, but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:

1. Behavior, gestures, expressions, or communications with a student that are unrelated to the educator’s job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior include:
 - a. The nature of the communications;
 - b. The timing of the communications;
 - c. The extent of the communications;
 - d. Whether the communications were made openly or secretly;
 - e. The extent that the educator attempts to conceal the communications;
 - f. If the educator claims to be counseling a student, SBEC may consider whether the educator’s job duties included counseling, whether the educator reported the subject of the counseling to the student’s guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and
 - g. Any other evidence tending to show the context of the communications between educator and student.
2. Making inappropriate comments about a student’s body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images.
3. Making sexually demeaning comments to a student.

4. Making comments about a student's potential sexual performance.
5. Requesting details of a student's sexual history.
6. Requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator.
7. Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party.
8. Inappropriate hugging, kissing, or excessive touching.
9. Providing the student with drugs or alcohol.
10. Violating written directives from school administrators regarding the educator's behavior toward a student.
11. Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage.
12. Any other acts tending to show that the educator solicited a romantic relationship with the student.

19 TAC 249.3(51)

Note: ~~This~~ [The provisions of this](#) policy ~~applies~~ [apply](#) to a district of innovation under Education Code, Chapter 12A. [See AF]

Misconduct of Noncertified Employees

~~This section~~ [Education Code 22.093](#) applies to a district employee who does not hold ~~SBEC~~-certification [issued by the State Board for Educator Certification \(SBEC\)](#) or a school district teaching permit.

Notice to TEA of Termination or Resignation

A superintendent shall notify [the Texas Education Agency \(TEA\)](#) if an employee was terminated or resigned and there is evidence that the employee:

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; ~~or.~~

Investigation

A superintendent shall complete an investigation of an employee that involves evidence that the employee may have engaged in misconduct described above, despite the employee's resignation from employment before completion of the investigation.

Principal Notification

A principal must notify the superintendent not later than the seventh business day after the date of an employee's termination or resignation following an alleged incident of misconduct described above.

Deadline to Report

A superintendent must notify TEA 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 above.

Form of Report

The report must be in writing and in a form prescribed by the commissioner [of education](#). The name of a student or minor who is the victim of abuse or unlawful conduct by an employee must be included in the report, but the name of the student or minor is not public information under the [Public Information Act \(PIA\)](#).

Notice to the Board and Employee

A superintendent shall notify the board ~~of trustees~~ and the employee of the filing of the report.

Immunity

A superintendent or principal who in good faith and while acting in an official capacity files a report or makes a notification is immune from civil or criminal liability that might otherwise be incurred or imposed.

Sanctions for Failure to Report

The commissioner shall refer an educator who fails to file a report to SBEC, who will determine whether to impose sanctions against the educator.

Criminal Offense

A superintendent commits an offense if the superintendent fails to timely file the report with intent to conceal an employee's criminal record or alleged incident of misconduct.

A principal commits an offense if the principal fails to timely provide notice with intent to conceal an employee's alleged incident of misconduct.

An offense [under Education Code 22.093\(k\)](#) is a state jail felony.

Review of District Records

The commissioner may review district records to ensure compliance with the requirement to report misconduct.

Education Code 22.093

MT 7/7/19: HB 3 provisions related to reporting terminations and resignations following allegations of misconduct of noncertified employees. I think a new policy is in order to parallel DHB(H).

Staff Development	The staff development provided by a district to an educator other than a principal must be conducted in accordance with standards developed by the district and designed to improve education in the district.
Educator	
Principal	The staff development provided by a district to a principal shall be governed by Education Code 21.3541 and rules adopted under that section. [See DNB] <i>Education Code 21.451(a), (a-1)</i>
Training Specifics— Educators	Staff development shall be predominantly campus-based, related to achieving campus performance objectives, and developed and approved by the campus-level committee. A district may use district-wide staff development that has been developed and approved through the district-level decision process. [See BQA and BQB, as appropriate] Staff development may include: <ol style="list-style-type: none">1. Training in technology, conflict resolution, and discipline strategies, including classroom management, district discipline policies, and the Student Code of Conduct;2. Training in preventing, identifying, responding to, and reporting incidents of bullying;3. Digital learning; and4. Instruction as to what is permissible under law, including opinions of the United States Supreme Court, regarding prayer in public school. The digital learning training must discuss basic technology proficiency expectations and methods to increase an educator's digital literacy; and assist an educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices. <i>Education Code 21.451(b)–(d), (d-3), (g)</i>
<i>Students with Disabilities</i>	Staff development must include training that is evidence-based, as defined by Section 8101, Every Student Succeeds Act (20 USC 7801), that relates to the instruction of students with disabilities and is designed for educators who work primarily outside the area of special education. A district is required to provide such training only if the educator does not possess the knowledge and skills necessary to implement

the individualized education program developed for a student receiving instruction from the educator. A district may determine the time and place at which the training is delivered.

In developing or maintaining such training, a district must consult persons with expertise in research-based practices for students with disabilities, including colleges, universities, private and non-profit organizations, regional education service centers, qualified district personnel, and any other persons identified as qualified by the district.

Education Code 21.451(d)(2), (e)–(f)

Suicide Prevention

Staff development must include suicide prevention training that must be provided to all new district educators on an annual basis, as part of a new employee orientation and to existing district educators on the following schedule adopted by [Texas Education Agency \(TEA\)](#) rule:

1. All districts shall provide the training to all new educators as a part of new employee orientation during the 2016–17 school year.
2. Each subsequent school year, districts shall provide the training to all new educators as a part of new employee orientation.
3. Districts shall provide the training to all currently employed educators on or by September 30, 2016.

The suicide prevention training must use a best practice-based program recommended by the Texas Department of State Health Services (TDSHS) in coordination with TEA. The training may be satisfied through independent review of suicide prevention training material that complies with guidelines developed by TEA and is offered online.

Suicide prevention training that was provided to existing educators by a district on or after September 1, 2013, may be used to meet the requirements if the training program is on the recommended best practice-based list, or is an online program that meets the TEA guidelines for independent review.

Districts shall maintain records that include the name of each educator who participated in the training.

Education Code 21.451(d)(3)–(d-2); 19 TAC 153.1013

[Staff Development Account](#)

[A district that receives resources from the commissioner of education's staff development account must pay to the commissioner for](#)

[deposit in the account an amount equal to one-half of the cost of the resources provided to the district. Education Code 21.453\(c\)](#)

MT 7/5/19: Moved up from below.

**Mental Health
Support Programs**

The Texas Department of State Health Services (DSHS), in coordination with TEA and regional education service centers (ESCs), shall provide and annually update a list of recommended best practice-based programs and research-based practices in the areas specified below for implementation in public elementary, junior high, middle, and high schools within the general education setting. Each school district may select from the list a program or programs appropriate for implementation in the district:

1. Early mental health intervention;
2. Mental health promotion;
3. Building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;
4. Substance abuse prevention and intervention;
5. Suicide prevention;
6. Grief-informed and trauma-informed practices;
7. Positive behavior interventions and supports and positive youth development; and
8. Safe, supportive, and positive school climate.

"School climate" means the quality and character of school life, including interpersonal relationships, teaching and learning practices, and organizational structures, as experienced by students enrolled in the district, parents of those students, and personnel employed by the district.

The programs on the list must include components that provide for training counselors, teachers, nurses, administrators, and other staff, as well as law enforcement officers and social workers who regularly interact with students, to:

1. Recognize students at risk of committing suicide, including students who are or may be the victims of or who engage in bullying;
2. Recognize students displaying early warning signs and a possible need for early mental health or substance abuse intervention, which warning signs may include declining academic

performance, depression, anxiety, isolation, unexplained changes in sleep or eating habits, and destructive behavior toward self and others; and

3. Intervene effectively with students described above by providing notice and referral to a parent or guardian so appropriate action, such as seeking mental health or substance abuse services, may be taken by a parent or guardian.

Required Training

A district shall provide training described in components 1–3, above, for teachers, counselors, principals, and all other appropriate personnel. The district may use a program from the DSHS list above to satisfy the training requirements. [See Mental Health Support Programs, above]

A district is required to provide the training at an elementary school campus only to the extent that sufficient funding and programs are available. A school district may implement a program on the list described at Health and Safety Code 161.325 to satisfy the training requirements. [See FFB]

If a district provides the training, a district employee must participate in the training at least one time, and the district shall maintain records that include the name of each district employee who participated in the training.

Health and Safety Code 161.325

MT 7/5/19: HB 18 amends suicide prevention and mental health support provisions above; however they are effective 12/1/19 and apply beginning w the 20-21 SY, so I will wait until U115 to put them in policy.

Child Abuse, Sex Trafficking, and Maltreatment

A district's methods for increasing awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children [see BQ, district improvement plan, and FFG] must ~~address in-~~ clude employee training concerning prevention techniques for and recognition of sexual abuse, sex trafficking, and all other maltreatment of children, including the sexual abuse, sex trafficking, and other maltreatment of children with significant cognitive disabilities.

The training must be provided as part of employee orientation to all new employees and to existing district employees on a schedule adopted by TEA until all district employees have taken the training. The training may be included in staff development under Education Code 21.451.

The training shall address:

1. Factors indicating a child is at risk for sexual abuse, [sex trafficking](#), or other maltreatment;
2. Likely warning signs indicating a child may be a victim of sexual abuse, [sex trafficking](#), or other maltreatment;
3. Internal procedures for seeking assistance for a child who is at risk for sexual abuse, [sex 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 of sexual abuse, [sex trafficking](#), or other maltreatment; and
5. Community organizations that have relevant existing research-based programs and that are able to provide training or other education for [district](#) employees, students, and parents.

A district shall maintain records of the training that include the name of each employee who participated.

If a district determines that the district does not have sufficient resources to provide the required training, the district shall work with a community organization to provide the training at no cost to the district.

Education Code 38.0041(c)–(f)

MT 7/3/19: HB 111, effective 5/31/19, adds that methods for increasing staff awareness must include the sexual abuse, sex trafficking, and other maltreatment of children with significant cognitive disabilities. Changes from SB 2039 (2017), which added sex trafficking, were not in policy.

Trauma-Informed Care

A district's efforts to increase awareness and implementation of trauma-informed care must include training to new and existing employees. [See BQ, FFBA] Education Code 38.036(c)

MT 7/5/19: SB 11, effective 6/6/19, adds requirement for trauma-informed training. Details are at FFBA.

Student Discipline

Each principal or other appropriate administrator who oversees student discipline shall, at least once every three school years, attend professional development training regarding Education Code Chapter 37, Subchapter G. The professional development shall include training relating to the distinction between a discipline management technique used at the principal's discretion under Education Code 37.002(a) and the discretionary authority of a teacher to

remove a disruptive student under Education Code 37.002(b) [see FOA].

The professional development training may be provided in coordination with an education service center through the use of distance learning methods, such as telecommunications networks, and using available TEA resources.

Education Code 37.0181

Test Administration Procedures

A district shall ensure that test coordinators and administrators receive training to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. 19 TAC 101.3031(c)

MT 7/10/19: Amended TEA rules relating to test administration, effective April 23, 2019, now have explicit requirement that districts ensure training. Rule previously stated “the commissioner shall require training activities... .” (44 TexReg 1985)

Cybersecurity Training

Employees identified by the district with access to a district computer system or database must complete a cybersecurity training program selected by the board. [See CQB] Government Code 2054.5191(a-1)

MT 7/5/19: HB 3834 effective 6/14/19 requires cybersecurity training. The substance of the bill is at CQB. Putting general requirement with xref here.

Special Programs Training

Texas Adolescent
Literacy Academies

A teacher shall attend a Texas adolescent literacy academy under 19 Administrative Code 102.1101 if:

1. The teacher teaches at a campus that receives a rating that reflects unacceptable performance and that fails to meet the state system safeguard performance target in reading for one or more student groups; and
2. The teacher teaches in general education, special education, or English as a second language for students in grade 6, 7, or 8, and:
 - a. The teacher is a certified, full-time English language arts and reading teacher who instructs English language arts and/or reading for at least 50 percent of the teacher’s instructional duties; or

- b. The teacher is a certified, full-time content area teacher who instructs mathematics, science, and/or social studies for at least 50 percent of the teacher's instructional duties.

A teacher described above is required to complete the training not later than December 31 of the calendar year in which the rating that reflects unacceptable performance is assigned.

A teacher who is required to attend an academy is eligible for a teacher stipend upon completion of face-to-face training if funds have been appropriated and are available for that purpose. A teacher who completes online training is not eligible for a stipend.

The stipend shall not be considered in determining whether a district is paying the teacher the state minimum monthly salary [see DEA and DEAA].

Each school district with teachers required to attend and complete Texas adolescent reading academies must maintain records to verify teacher attendance and completion in accordance with the district's record retention policy.

Education Code 21.4551(c), (e); 19 TAC 102.1101

Teacher Literacy
Achievement
Academies

A district shall ensure that:

1. Not later than the 2021–2022 school year, each classroom teacher in kindergarten or first, second, or third grade and each principal at a campus with kindergarten or first, second, or third grade has attended a teacher literacy achievement academy developed under Education Code 21.4552; and
2. Each classroom teacher and each principal initially employed in a grade level or at a campus described above for the 2021–2022 school year or a subsequent school year has attended a teacher literacy achievement academy developed under ~~Section~~ Education Code 21.4552 before the teacher's or principal's first year of placement in that grade level or campus.

~~[See EHAB K-3 Reading Standards]~~ Education Code 28.0062(a)(2)
[See EHAB for kindergarten–grade 3 reading standards]

MT 7/8/19: HB 3, section 2.013, requires districts to ensure that certain teachers and principals attend teacher literacy achievement academies.

Gifted and Talented
Education

A district shall ensure that:

1. Before assignment to the program for gifted students, teachers who provide instruction and services that are part of the

program have a minimum of 30 hours of staff development that includes nature and needs of gifted/talented students, assessment of student needs, and curriculum and instruction for gifted students.

2. Teachers without the required training who provide instruction and services that are part of the gifted/talented program complete the 30-hour training requirement within one semester.
3. Teachers who provide instruction and services that are part of a program for gifted students receive a minimum of six hours annually of professional development in gifted education.
4. Administrators and counselors who have authority for program decisions have a minimum of six hours of professional development that includes nature and needs of gifted/talented students and program options.

19 TAC 89.2

**Elective Bible
Course**

A teacher of an elective Bible course offered under Education Code 28.011 [see EMI] must hold a minimum of a High School Composite Certification in language arts, social studies, or history with, where practical, a minor in religious or biblical studies. The teacher must successfully complete the staff development training developed by the commissioner ~~of education~~ with respect to Bible elective courses. *Education Code 28.011(f)*

**Automated External
Defibrillators**

A district shall annually make available to employees and volunteers instruction in the principles and techniques of cardiopulmonary resuscitation and the use of an automated external defibrillator (AED).

The instruction provided in the use of AEDs must meet guidelines for approved AED training under Health and Safety Code 779.002. Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other employee specified by the commissioner, and each student who serves as an athletic trainer, must:

1. Participate in the instruction; and
2. Receive and maintain certification in the use of an AED from the American Heart Association, the American Red Cross, or a similar nationally recognized association.

Education Code 22.902

**Extracurricular
Activity Safety
Training**

The following persons must satisfactorily complete [an Extracurricular Activity Safety Training Program](#); ~~the extracurricular safety training program developed by the commissioner:~~

1. A coach or sponsor for an extracurricular athletic activity;
2. A trainer, unless the trainer has completed the educational requirements for licensure as a licensed athletic trainer set forth at 22 Administrative Code 871.7 and the continuing education requirements at 22 Administrative Code 871.12;
3. A physician who is employed by a district or who volunteers to assist with an extracurricular athletic activity, unless the physician attends a continuing medical education course that specifically addresses emergency medicine; and
4. A director responsible for a school marching band.

The training ~~may~~ must be conducted by the University Interscholastic League (UIL) or by a district, the American Red Cross, the American Heart Association, or a similar organization, or by the University Interscholastic League (UIL); another organization as determined by the UIL.

Education Code 33.202(b), (e), (f); 19 TAC 76.1003

MT 7/23/19: SB 1376 makes UIL responsible for developing training. Decided to delete provision from (a) regarding who develops. District is no longer permitted to conduct training under amendments to (e).

Records

A superintendent shall maintain complete and accurate records of the district's compliance and the district shall make available to the public proof of compliance for each person employed by or volunteering for the district who is required to receive safety training.

A campus that is determined by a superintendent to be out of compliance with the safety training requirements shall be subject to the range of penalties determined by the UIL.

Education Code 33.206; 19 TAC 76.1003(e)

Steroids

A district shall require that each employee who serves as an athletic coach at or above the seventh grade level for an extracurricular athletic activity sponsored or sanctioned by the UIL complete:

1. The educational program developed by the UIL regarding the health effects of steroids; or
2. A comparable program developed by the district or a private entity with relevant expertise.

Education Code 33.091(c-1)

Concussions

At least once every two years, the following employees shall take a training course from an authorized provider in the subject matter of concussions:

1. A coach of an interscholastic athletic activity shall take a course approved by the UIL.
2. An athletic trainer who serves as a member of a district's concussion oversight team shall take a course approved by the Texas Department of Licensing and Regulation (TDLR) or a course approved for continuing education credit by the licensing authority for athletic trainers.
3. A [school nurse or](#) licensed health-care professional, other than an athletic trainer, who serves as a member of a district's concussion oversight team shall take a course approved by the UIL, TDLR, or the appropriate licensing authority for the profession.

The employee must submit proof of timely completion of an approved course to the superintendent or designee. A [school nurse or](#) licensed health-care professional who is not in compliance with these training requirements may not serve on a concussion oversight team in any capacity. [See FM]

Education Code 38.158

[MT 7/11/19: HB 961 adds nurses to concussion oversight team and adds them to the training requirement.](#)

Seizure Recognition and Related First Aid

[A school nurse employed by a district must complete a TEA-approved online course of instruction for school nurses regarding managing students with seizure disorders that includes information about seizure recognition and related first aid.](#)

[A district employee, other than a school nurse, whose duties at the school include regular contact with students must complete a TEA-approved online course of instruction for school personnel regarding awareness of students with seizure disorders that includes information about seizure recognition and related first aid.](#)

[Education Code 38.033\(a\), \(b\)](#)

[\[See FFAF for information about a seizure management and treatment plan.\]](#)

[MT 7/5/19: HB 684, effective 6/14/19, applies w the 19-20 SY, requires seizure recognition training. TEA must approve online course by 12/1/19.](#)

**Resources for Staff
Development**

If a district receives resources from the commissioner's staff development account, it must pay to the commissioner for deposit in the account an amount equal to one-half of the cost of the resources provided to the district. *Education Code 21.453(b)*

MT 7/5/19: Moving this provision up to Staff Development section as it does not pertain to all the other training in this policy.

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Teacher Appraisal

The employment policies adopted by the board must require a written evaluation of each teacher at annual or more frequent intervals.

A teacher appraisal must be done at least once ~~during~~^{for} each school year. A teacher may be appraised less frequently if the teacher agrees in writing and the teacher's most recent evaluation rated the teacher as at least proficient, or the equivalent, and did not identify any area of deficiency. A teacher who is appraised less frequently than annually must be appraised at least once during each period of five school years.

Education Code 21.203, .352(c)

MT 7/3/19: HB3 changed "during" to "for."

Interim Evaluations and Guidance

In addition to conducting a complete appraisal as frequently as required by Education Code 21.352(c), a district shall require that appropriate components of the appraisal process, such as classroom observations and walk-throughs, occur more frequently as necessary to ensure that a teacher receives adequate evaluation and guidance. A district shall give priority to conducting appropriate components more frequently for inexperienced teachers or experienced teachers with identified areas of deficiency. *Education Code 21.352(c-1)*

Required Components

The statutorily required components of teacher appraisal are defined as follows:

1. The implementation of discipline management procedures is the teacher's pedagogical practices that produce student engagement and establish the learning environment.
2. The performance of teachers' students is how the individual teacher's students progress academically in response to the teacher's pedagogical practice as measured at the individual teacher level by one or more student growth measures.

19 TAC 150.1001(f)

Notice and Use of Evaluations

A district shall use a teacher's consecutive appraisals from more than one year, if available, in making employment decisions and developing career recommendations for the teacher. *Education Code 21.352(e)*

The district shall notify a teacher of the results of any appraisal of the teacher in a timely manner so that the appraisal may be used as a developmental tool by the district and the teacher to improve the overall performance of the teacher. *Education Code 21.352(f)*

**Role of
Extracurricular
Activities**

A teacher who directs extracurricular activities in addition to performing classroom teaching duties shall be appraised only on the basis of classroom teaching performance and not on performance in connection with extracurricular activities. *Education Code 21.353*

**Disciplinary
Referrals**

A district may not assign an area of deficiency to a teacher solely on the basis of disciplinary referrals made by the teacher or documentation regarding student conduct submitted by the teacher under Education Code 37.002-(Discretionary Removal). [See FOA for discretionary removal] A district is not prohibited from assigning an area of deficiency to a teacher based on documented evidence of a deficiency in classroom management obtained through observation or a substantiated report. *Education Code 21.352(a-1)*

MT 7/3/19: SB 1451, effective 6/10/19 and applying w the 19-20 SY, prohibits assigning a deficiency for disciplinary referrals.

MT 7/25/19: Discussed with Jasmine, she is removing 21.352 (a-1) from FOA, so there is no longer duplication, and she is adding a xref to DNA.

**Access to
Evaluations**

A district shall maintain a written copy of the evaluation of each teacher's performance in the teacher's personnel file.

Each teacher is entitled to receive a written copy of the evaluation promptly on its completion. The evaluation and any rebuttal may be given to another school district at which the teacher has applied for employment at the request of that district.

Education Code 21.352(c)

Confidentiality

A document evaluating the performance of a teacher or administrator is confidential and is not subject to disclosure under the Public Information Act, Government Code 552. *Education Code 21.355(a)* [For disclosure requirements on evaluations, See-see GBA]

~~A district may give TEA a document evaluating the performance of a teacher employed by the district for purposes of an investigation conducted by TEA. A document provided to TEA remains confidential unless the document becomes part of the record in a contested case under the Administrative Procedures Act, Government Code, Chapter 2001.~~

~~Except as provided by a court order prohibiting disclosure, a document provided to TEA may be used in a disciplinary proceeding against a teacher if the document may be admitted under rules of evidence applicable to a contested case under Government Code 2001.081.~~

~~*Education Code 21.355*~~

~~MT 7/3/19: SB 1230, effective 9/1/19, mandates giving TEA an evaluation document for purposes of investigations. The bill mandates providing the same to a requesting district. This provision was previously in the law as permissive, but was not included in this policy.~~

~~MT 7/23/19: Changes above made pursuant to CVC email dated 7/22/19, 21.355 (c)-(e) moved to GBA(LEGAL)~~

Two Appraisal Methods

A district shall use one of the following methods to appraise teachers:

1. The teacher appraisal system recommended by the commissioner of education [see State Method (T-TESS), below]; or
2. A local teacher appraisal system [see District Option and Campus Option, below].

Education Code 21.352(a); 19 TAC 150.1001(a)

Selection of Appraisal Method

A superintendent, with the approval of a board, may select the state appraisal method. Each district or campus wanting to select or develop an alternative teacher appraisal system must follow the requirements set forth below at District Option or Campus Option. *19 TAC 150.1001(c)*

Notice to Service Center

A superintendent shall notify the executive director of the district's regional education service center in writing of the district's choice of appraisal system when using an alternative to the state appraisal method and detail the components of that system by the first day of instruction for the school year in which the alternative system is used.

A district shall submit annually to its service center a summary of the campus-level evaluation scores from the state appraisal method or the district's locally adopted appraisal system, in a manner prescribed by the commissioner.

19 TAC 150.1008

Note: The following provisions apply to teacher appraisal using the state appraisal method.

State Method (T-TESS)

The commissioner's recommended teacher appraisal system, the Texas Teacher Evaluation and Support System (T-TESS), was developed in accordance with Education Code 21.351. *19 TAC 150.1001(b), .1002(a)*

Orientation and Annual Review

A district shall ensure that all teachers are provided with an orientation to the T-TESS no later than the final day of the first three

weeks of school and at least two weeks before the first observation when:

1. The teacher is new to the district;
2. The teacher has never been appraised under the T-TESS; or
3. District policy regarding teacher appraisal has changed since the last time the teacher was provided with an orientation to the T-TESS.

The teacher orientation shall be conducted in a face-to-face setting during a district's first year of T-TESS implementation and include all state and local appraisal policies and the local appraisal calendar. In addition to the orientation, campuses may hold other sessions sufficient in length allowing teachers to actively participate in a discussion of the T-TESS specifics and to have their questions answered.

19 TAC 150.1006

Appraisers

The teacher appraisal process requires at least one certified appraiser. An appraiser must be the teacher's supervisor or a person approved by the board.

*Campus
Administrator*

Only a campus administrator may act as a certified appraiser, except as provided below.

Under the T-TESS, a "campus administrator" includes a principal, an assistant principal, an administrator who holds a comparable administrator/supervisor certificate established by the State Board for Educator Certification, or supervisory staff whose job description includes the appraisal of teachers and who is not a classroom teacher.

An individual other than a campus administrator may act as a certified appraiser if:

1. The individual has been certified by completing the required training prior to conducting appraisals; and
2. In the case where the certified appraiser is a classroom teacher, the certified appraiser:
 - a. Conducts appraisals at the same school campus at which the certified appraiser teaches if the certified appraiser is the chair of a department or grade level whose job description includes classroom observation responsibilities; or
 - b. Does not conduct appraisals of classroom teachers who teach at the same campus as the certified appraiser if

the certified appraiser is not a department or grade-level chair.

Training and Certification

Before conducting appraisals, an appraiser must be certified by having satisfactorily completed the state-approved T-TESS appraiser training and having passed the T-TESS certification examination, and must have received Instructional Leadership Training (ILT), Instructional Leadership Development (ILD), or Advanced Educational Leadership (AEL) certification. Appraisers without ILT, ILD, or AEL certification before January 1, 2016, may not take ILT or ILD to satisfy the requirement. Periodic recertification and training shall be required.

Education Code 21.351(c); 19 TAC 150.1005

Appraisal Calendar

A district shall establish a calendar for teacher appraisals and provide that calendar to teachers within three weeks from the first day of instruction. The appraisal period for each teacher must include all of the days of the teacher's contract.

Observations during the appraisal period must be conducted during the required days of instruction for students during one school year.

The appraisal calendar shall:

1. Exclude observations in the two weeks after the day of completion of the T-TESS orientation in the school years when an orientation is required; and
2. Indicate a period for end-of-year conferences that ends no later than 15 working days before the last day of instruction for students.

19 TAC 150.1003(d)

A teacher may be given advance notice of the date or time of an appraisal, but advance notice is not required. *Education Code 21.352(d); 19 TAC 150.1003(c)*

Assessment of
Teacher
Performance

Each teacher must be appraised each school year, except as provided below at Less-Than-Annual Appraisal. Whenever possible, an appraisal shall be based on the teacher's performance in fields and teaching assignments for which he or she is certified. *19 TAC 150.1003(a)*

During the appraisal period, the certified appraiser shall evaluate and document teacher performance specifically related to the domain criteria as identified in 19 Administrative Code 150.1002(a) and the performance of teachers' students as defined in 19 Administrative Code 150.1001(f)(2). *19 TAC 150.1003(e)*

*Less-Than-
Annual Appraisal*

A teacher may receive a full appraisal less than annually if the teacher agrees in writing and the teacher's most recent full appraisal resulted in the teacher receiving summative ratings of at least proficient on nine of the sixteen dimensions and did not identify any area of deficiency, defined as a rating of Improvement Needed or its equivalent, on any of the sixteen dimensions identified in 19 Administrative Code 150.1002(a) or the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2). A teacher who receives a full appraisal less than annually must receive a full appraisal at least once during each period of five school years.

District policy may stipulate:

1. Whether the option to receive a full appraisal less frequently than annually is to be made available to teachers;
2. Whether the option to receive a full appraisal less frequently than annually is to be adopted district-wide or is to be campus specific;
3. If the appraisal accompanying a teacher new to a district or campus meets this option, whether the appraisal is to be accepted or whether that teacher is to be appraised by the new campus administrator; and
4. Whether a certified appraiser may place a teacher on the traditional appraisal cycle as a result of performance deficiencies documented in accordance with 19 Administrative Code 150.1003(b)(6) and (f) (related to cumulative data regarding teacher performance in addition to formal classroom observations).

A school district may choose annually to review the written agreement to have less frequent full appraisals with the teacher. However, at the conclusion of the school year, the district may modify appraisal options through board policy and may make changes to expectations for appraisals that apply to all teachers regardless of a teacher's participation in the appraisal option in the previous year(s).

In a year in which a teacher does not receive a full appraisal due to meeting the requirements, a teacher shall participate in:

1. The Goal-Setting and Professional Development Plan process;
2. The performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2); and

3. A modified end-of-year conference that addresses:
 - a. The progress on the Goal-Setting and Professional Development Plan;
 - b. The performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2); and
 - c. The following year's Goal-Setting and Professional Development plan.

19 TAC 150.1003(l)

*Domains and
Dimensions*

Each teacher shall be appraised on the following domains and dimensions of the T-TESS rubric that is aligned to the Texas Teacher Standards in 19 Administrative Code Chapter 149 (relating to Commissioner's Rules Concerning Educator Standards):

1. Domain I. Planning, which includes the following dimensions:
 - a. Standards and alignment;
 - b. Data and assessment;
 - c. Knowledge of students; and
 - d. Activities.
2. Domain II. Instruction, which includes the following dimensions:
 - a. Achieving expectations;
 - b. Content knowledge and expertise;
 - c. Communication;
 - d. Differentiation; and
 - e. Monitor and adjust.
3. Domain III. Learning Environment, which includes the following dimensions:
 - a. Classroom environment, routines, and procedures;
 - b. Managing student behavior; and
 - c. Classroom culture.
4. Domain IV. Professional Practices and Responsibilities, which includes the following dimensions:
 - a. Professional demeanor and ethics;

- b. Goal setting;
- c. Professional development; and
- d. School community involvement.

The evaluation of each of the dimensions above shall consider all data generated in the appraisal process. The data for the appraisal of each dimension shall be gathered from pre-conferences, observations, post-conferences, end-of-year conferences, the Goal-Setting and Professional Development Plan process, and other documented sources.

Each teacher shall be evaluated on the 16 dimensions in Domains I–IV identified above using the following categories:

1. Distinguished;
2. Accomplished;
3. Proficient;
4. Developing; and
5. Improvement needed.

*Student
Performance*

Beginning with the 2017–18 school year, each teacher appraisal shall include the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2) (relating to student growth measures).

If calculating a single overall summative appraisal score for teachers, the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2), shall count for at least 20 percent of a teacher's summative score.

Each teacher shall be evaluated on the performance of teachers' students using one of the terms from the following categories:

1. Distinguished or well above expectations;
2. Accomplished or above expectations;
3. Proficient or at expectations;
4. Developing or below expectations; or
5. Improvement needed or well below expectations.

19 TAC 150.1002

Appraisal Process

The annual teacher appraisal, or full appraisal, shall include:

1. A completed and appraiser-approved Goal-Setting and Professional Development Plan that shall be:
 - a. Submitted to the teacher's appraiser within the first six weeks from the day of completion of the T-TESS orientation for teachers in their first year of appraisal under the T-TESS or for teachers new to the district; or
 - b. Initially drafted in conjunction with the teacher's end-of-year conference from the previous year, revised as needed based on changes to the context of the teacher's assignment during the current school year, and submitted to the teacher's appraiser within the first six weeks of instruction; and
 - c. Maintained throughout the course of the school year by the teacher to track progress in the attainment of goals and participation in professional development activities detailed in the approved plan;
 - d. Shared with the teacher's appraiser prior to the end-of-year conference; and
 - e. Used after the end-of-year conference in the determination of ratings for the goal setting and professional development dimensions of the T-TESS rubric;
2. For a teacher in the first year of appraisal under the T-TESS or for teachers new to the district, a Goal-Setting and Professional Development Plan conference prior to the teacher submitting the plan to the teacher's appraiser;
3. After a teacher's first year of appraisal under the T-TESS within the district, an observation pre-conference conducted prior to announced observations;
4. At least one classroom observation of a minimum of 45 minutes, with additional walk-throughs and observations conducted at the discretion of the certified appraiser and in accordance with the Education Code 21.352(c-1). Additional observations and walk-throughs do not require an observation post-conference. Additional observations and walk-throughs do require a written summary if the data gathered during the additional observation or walk-through will impact the teacher's summative appraisal ratings, in which case the written summary shall be shared within ten working days after the completion of the additional observation or walk-through. Title 19 Administrative Code 150.1004 (relating to Teacher Re-

sponse and Appeals) applies to a written summary of an additional observation or walk-through that will impact the teacher's summative appraisal ratings;

5. An observation post-conference that:
 - a. Shall be conducted within ten working days after the completion of an observation;
 - b. Is diagnostic and prescriptive in nature;
 - c. Includes a written report of the rating of each dimension observed that is presented to the teacher only after a discussion of the areas for reinforcement and areas for refinement; and
 - d. Can allow for, at the discretion of the appraiser, a revision to an area for reinforcement or refinement based on the post-conference discussion with the teacher;
6. Cumulative data from written documentation collected regarding job-related teacher performance, in addition to formal classroom observations;
7. An end-of-year conference that:
 - a. Reviews the appraisal data collected throughout the current school year and previous school years, if available;
 - b. Examines and discusses the evidence related to the teacher's performance on the four dimensions of Domain IV of the T-TESS rubric;
 - c. Examines and discusses evidence related to the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2) (relating to student growth measures), when available; and
 - d. Identifies potential goals and professional development activities for the teacher for the next school year; and
8. A written summative annual appraisal report to be provided to the teacher within ten working days of the conclusion of the end-of-year conference.

19 TAC 150.1003(b)

*Shorter
Observations*

By written, mutual consent of the teacher and the certified appraiser, the required 45 minutes of observation may be conducted in shorter time segments. The time segments must aggregate to at least 45 minutes. *19 TAC 150.1003(g)*

<i>Cumulative Data</i>	<p>The certified appraiser is responsible for documentation of cumulative data. Any third-party information from a source other than the certified appraiser that the certified appraiser wishes to include as cumulative data shall be verified and documented by the certified appraiser. Any documentation that will influence the teacher's summative annual appraisal report must be shared in writing with the teacher within ten working days of the certified appraiser's knowledge of the occurrence. The principal shall also be notified in writing of the cumulative data when the certified appraiser is not the teacher's principal. <i>19 TAC 150.1003(f)</i></p>
Summative Report	<p>A written summative annual appraisal report shall be shared with the teacher no later than 15 working days before the last day of instruction for students. The written summative annual appraisal report shall be placed in the teacher's personnel file by the end of the appraisal period. <i>19 TAC 150.1003(h)</i></p>
End-of-Year Conference	<p>An end-of-year conference shall be held within a time frame specified on the district calendar, no later than 15 working days before the last day of instruction for students. The end-of-year conference shall focus on the data and evidence gathered throughout the appraisal year; the teacher's efforts as they pertain to Domain IV; the results of the performance of teachers' students, when available, as defined in 19 Administrative Code 150.1001(f)(2); and the potential goals and professional development plans for the following year. The written summative annual appraisal report shall be shared with the teacher within ten working days following the conclusion of the end-of-year conference but no later than 15 working days before the last day of instruction.</p> <p>In cases where the certified appraiser is not an administrator on the teacher's campus, either the principal, assistant principal, or another supervisory staff member designated as an administrator on the campus must participate in the end-of-year conference.</p> <p><i>19 TAC 150.1003(i), (j)</i></p>
Additional Documentation	<p>Any documentation collected after the end-of-year conference but before the end of the contract term during one school year may be considered as part of the appraisal of a teacher. If the documentation affects the teacher's evaluation in any dimension, another summative report shall be developed to inform the teacher of the changes. <i>19 TAC 150.1003(k)</i></p>
Teacher Response and Rebuttal	<p>A teacher may submit a written response or rebuttal at the following times:</p>

1. For Domains I, II, and III, after receiving a written observation summary or any other written documentation related to the ratings of those three domains; or
2. For Domain IV and for the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2), after receiving a written summative annual appraisal report.

Any written response or rebuttal must be submitted within ten working days of receiving a written observation summary, a written summative annual appraisal report, or any other written documentation associated with the teacher's appraisal. A teacher may not submit a written response or rebuttal to a written summative annual appraisal report for the ratings in Domains I, II, and III if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to submit a written response or rebuttal.

Education Code 21.352(c); 19 TAC 150.1004(a), (b)

Request for Second Appraisal

A teacher may request a second appraisal by another certified appraiser at the following times:

1. For Domains I, II, and III, after receiving a written observation summary with which the teacher disagrees; or
2. For Domain IV and for the performance of teachers' students, as defined in 19 Administrative Code 150.1001(f)(2), after receiving a written summative annual appraisal report with which the teacher disagrees.

The second appraisal must be requested within ten working days of receiving a written observation summary or a written summative annual appraisal report. A teacher may not request a second appraisal by another certified appraiser in response to a written summative annual appraisal report for the ratings of dimensions in Domains I, II, and III if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to request a second appraisal.

A teacher may be given advance notice of the date or time of a second appraisal, but advance notice is not required.

The second appraiser shall make observations and walk-throughs as necessary to evaluate the dimensions in Domains I–III or shall review the Goal-Setting and Professional Development Plan for evidence of goal attainment and professional development activities,

when applicable. Cumulative data may also be used by the second appraiser to evaluate other dimensions.

A district shall adopt written procedures for determining the selection of second appraisers. The procedures shall be disseminated to each teacher at the time of employment and updated annually or as needed.

Education Code 21.352(c); 19 TAC 150.1004(c)–(g)

Note: The following provisions apply to teacher appraisal using a district-developed appraisal method.

District Option

A district that does not choose to use the T-TESS must develop its own teacher-appraisal system supported by locally adopted policy and procedures and by the processes outlined below.

Development of
Appraisal System

The district-level planning and decision-making committee shall:

1. Develop an appraisal process;
2. Develop evaluation criteria, including discipline management and performance of the teachers' students; and
3. Consult with the campus-planning and decision-making committee on each campus in the district.

Appraisal Process

The appraisal process shall include:

1. At least one appraisal each year, or less frequently if in accordance with Education Code 21.352(c) [see Teacher Appraisal, above];
2. A conference between the teacher and the appraiser that is diagnostic and prescriptive with regard to remediation needed in overall performance by category; and
3. Criteria based on observable, job-related behavior, including:
 - a. Teachers' implementation of discipline management procedures, as defined in 19 Administrative Code 150.1001(f)(1); and
 - b. Beginning with the 2017–18 school year, the performance of the teachers' students as defined in 19 Administrative Code 150.1001(f)(2).

Board Acceptance

A district-level planning and decision-making committee shall submit the appraisal process and criteria to the superintendent, who shall submit the appraisal process and criteria to the board with a recommendation to accept or reject.

The board may accept or reject, with comments, the appraisal process and performance criteria, but may not modify the process or criteria.

Education Code 21.352(a)(2), (b); 19 TAC 150.1007(a)

Note: The following provisions apply to teacher appraisal using a campus-developed appraisal method.

Campus Option

A campus within a district may choose to develop a local appraisal system.

Development of Appraisal System

The campus planning and decision-making committee shall:

1. Develop an appraisal process;
2. Develop evaluation criteria, including discipline management and performance of the teachers' students; and
3. Submit the process and criteria to the district-level planning and decision-making committee.

Appraisal Process

The appraisal process shall include:

1. At least one appraisal each year, or less frequently if in accordance with Education Code 21.352(c) [see Teacher Appraisal above];
2. A conference between the teacher and the appraiser that is diagnostic and prescriptive with regard to remediation needed in overall performance by category; and
3. Criteria based on observable, job-related behavior, including:
 - a. Teachers' implementation of discipline management procedures, as defined in 19 Administrative Code 150.1001(f)(1); and
 - b. Beginning with the 2017–18 school year, the performance of the teachers' students as defined in 19 Administrative Code 150.1001(f)(2).

Board Acceptance

Upon submission of the appraisal process and criteria to the district-level planning and decision-making committee, the committee shall make a recommendation to accept or reject the appraisal process and criteria and transmit that recommendation to the superintendent.

The superintendent shall submit to the board:

1. The recommended campus appraisal process and criteria;

2. The district-level planning and decision-making committee's recommendation; and
3. The superintendent's recommendation.

The board may accept or reject, with comments, an appraisal process and performance criteria, but may not modify the process or criteria.

Education Code 21.352(a)(2), (b); 19 TAC 150.1007(b)

Note: The following provision applies to appraiser training under a local appraisal process (district- or campus-developed).

Appraisers

A district that locally develops and adopts its own educator appraisal system should have a clearly defined set of procedures for training appraisers. The district should identify the qualities appraisers must demonstrate and include appropriate proficiency checks to evaluate the performance of all educators performing appraisals under the district's locally adopted appraisal systems. The school district shall be responsible for documenting that appraisers have met training criteria established by the district. *19 TAC 244.3*

Note: The standards to be used to inform the training, appraisal, and professional development of teachers are outlined in 19 Administrative Code 149.1001.

Frequency

The employment policies adopted by a board must require a written evaluation at annual or more frequent intervals of each principal, supervisor, school counselor, or other full-time, certified professional employee, and nurse. *Education Code 21.203(a)*

District funds may not be used to pay an administrator who has not been appraised in the preceding 15 months. *Education Code 21.354(d)*

Principal Appraisal

A district shall appraise each principal annually. In appraising principals, a school district shall use either:

1. The appraisal system and school leadership standards and indicators developed or established by the commissioner of education; or
2. An appraisal process and performance criteria developed by the district in consultation with the district-level and campus-level committees [see BQA and BQB] and adopted by the board.

Education Code 21.3541(f), (g); 19 TAC 150.1023(a)

The commissioner's recommended principal appraisal system, the Texas Principal Evaluation and Support System (T-PESS), was developed in accordance with Education Code 21.3541.

The superintendent, with the approval of the board, may select the T-PESS. Each school district wanting to select or develop an alternative principal appraisal system must follow Education Code 21.3541, and 19 Administrative Code 150.1026 (relating to Alternatives to the Commissioner's Recommended Principal Appraisal System).

19 TAC 150.1021(b), (c)

Notice to ESC

The superintendent shall notify the executive director of its regional education service center in writing of the school district's choice of appraisal system when using an alternative to the commissioner's recommended appraisal system and detail the components of that system by the first day of instruction for the school year in which the alternative system is used.

Each school district shall submit annually to its regional education service center a summary of the evaluation scores from the T-PESS or the district's locally adopted appraisal system, in a manner prescribed by the commissioner.

19 TAC 150.1027

Texas Principal
Evaluation and
Support System
(T-PESS)

Each principal shall be appraised on the following standards and indicators of the T-PESS rubric that is aligned to the Texas Administrator Standards in 19 Administrative Code, Chapter 149 (relating to Commissioner's Rules Concerning Educator Standards):

1. Standard I. Instructional Leadership, which includes four indicators;
2. Standard II. Human Capital, which includes four indicators;
3. Standard III. Executive Leadership, which includes four indicators;
4. Standard IV. School Culture, which includes five indicators; and
5. Standard V. Strategic Operations, which includes four indicators.

The evaluation of each of the standards and indicators above shall consider all data generated in the appraisal process.

Each principal shall be evaluated on the attainment and progress toward at least one goal, as referenced in 19 Administrative Code 150.1023 (relating to Appraisals, Data Sources, and Conferences). At least one goal shall be focused on the improvement of the principal's practice, as captured in the T-PESS rubric indicators and descriptors.

If calculating a single overall summative appraisal score for principals, the rating for the attainment of goals shall count for:

1. At least 20 percent of a principal's summative score for a principal who has served at least one year in his or her role on the same campus; or
2. At least 30 percent of a principal's summative score for a principal who is in his or her first year as principal on a particular campus.

Each principal shall be evaluated on each of the 21 indicators in Standards I–V identified above and on the attainment of each goal, using the following categories:

1. Distinguished;
2. Accomplished;
3. Proficient;
4. Developing; and
5. Improvement needed.

Beginning with the 2017–18 school year, each principal appraisal shall include the campus-level academic growth or progress of the students enrolled at the principal's campus.

If calculating a single overall summative appraisal score for principals, the measure of student growth or progress shall count for:

1. At least 20 percent of a principal's summative score for a principal who has served two or more years in his or her role on the same campus;
2. At least 10 percent of a principal's summative score for a principal who has served one year in his or her role on the same campus; or
3. May not be included in calculating a single overall summative appraisal score for a principal who is in his or her first year as principal on a particular campus.

Each principal shall be evaluated on student growth or progress using one of the terms from the following categories:

1. Distinguished;
2. Accomplished;
3. Proficient;
4. Developing; or
5. Improvement needed.

19 TAC 150.1022

*Appraisal
Procedures*

The annual principal appraisal shall include:

1. At least one appraiser-approved goal that shall be:
 - a. Initially drafted in conjunction with the principal's end-of-year conference from the previous year, as applicable, revised as needed based on changes to the context of the principal's assignment at the beginning of the current school year, and submitted to the principal's appraiser; and
 - b. Maintained throughout the course of the school year by the principal to track progress in the attainment of goals and the actions taken to achieve the goals;
 - c. Shared with the principal's appraiser prior to the end-of-year conference; and

- d. Used after the end-of-year conference in the determination of ratings for the attainment of goals;
2. A pre-evaluation conference prior to the principal submitting his or her goals to the principal's appraiser;
3. A mid-year conference to determine and discuss progress toward the attainment of goals;
4. An end-of-year conference that:
 - a. Reviews data collected throughout the current school year and previous school years, if available;
 - b. Examines and discusses the artifacts and evidence related to the principal's performance on the 21 indicators of T-PESS rubric and the attainment of goals;
 - c. Examines and discusses evidence related to student growth or progress measures, as described in 19 Administrative Code 150.1022(f)–(h), when available; and
 - d. Identifies potential goals and professional development activities for the principal for the next school year; and
5. A written summative annual appraisal report to be provided to the principal after the conclusion of the end-of-year conference.

Calendar Each school district shall establish a calendar for the appraisal of principals and provide that calendar to principals prior to the pre-evaluation conference.

Appraisal Report The written summative annual appraisal report shall be placed in the principal's personnel file by the end of the appraisal period.

Additional Documentation Any documentation collected after the end-of-year conference but before the end of the contract term during one school year may be considered as part of the appraisal of a principal. If the documentation affects the principal's evaluation in any indicator, the attainment of goals, or a measure of student growth or progress, another summative report shall be developed to inform the principal of the changes prior to the end of the contract term.

19 TAC 150.1023(b)–(e)

Appraiser Qualifications The principal appraisal process requires at least one certified appraiser. Before conducting an appraisal, an appraiser must be certified by having satisfactorily completed the state-approved T-PESS. Periodic recertification and training may be required. *19 TAC 150.1024*

Orientation

A district shall ensure that a principal is provided with an orientation of the T-PESS either prior to or in conjunction with the pre-evaluation conference when:

1. The principal is new to the district;
2. The principal has never been appraised under the T-PESS; or
3. District policy regarding principal appraisal has changed since the last time the principal was provided with an orientation to the T-PESS.

The principal orientation shall include all state and local appraisal policies and the local appraisal calendar.

19 TAC 150.1025

Alternatives to
T-PESS

A district that does not choose to use the T-PESS must develop its own principal appraisal system supported by locally adopted policy and procedures; developed in consultation with the district-level and campus-level committees established under Education Code 11.251; and adopted by the board. *Education Code 21.3541; 19 TAC 150.1026*

Note: The standards, indicators, knowledge, and skills to be used to align with the training, appraisal, and professional development of principals are outlined in 19 Administrative Code 149.2001.

**Appraisal of Campus
Administrators Other
Than Principals**

A district shall appraise each campus administrator, other than a principal, annually using either:

1. The commissioner's recommended appraisal process and performance criteria; or
2. An appraisal process and performance criteria developed by the district in consultation with the district- and campus-level committees and adopted by the board.

Education Code 21.354(c)

A district may use the T-PESS to appraise campus administrators other than principals provided the school district makes appropriate modifications to ensure that the T-PESS rubric and components fit the job descriptions of the campus administrators other than principals evaluated with the T-PESS. A district using T-PESS for administrators other than principals shall evaluate administrators on the attainment and progress toward at least one goal, as referenced in 19 Administrative Code 150.1023 (relating to Appraisals, Data Sources, and Conferences). At least one goal shall be focused on

the improvement of the administrator's practice, as captured in the T-PESS rubric indicators and descriptors.

Each school district wanting to select or develop a local appraisal system for campus administrators other than principals must use an appraisal process and performance criteria developed in consultation with the district- and campus-level committees established under Education Code 11.251; and adopted by the board.

Education Code 21.354(c)(2); 19 TAC 150.1028, 244.2(c)

Appraisers

A district using T-PESS for administrators other than principals or that locally develops and adopts its own educator appraisal system should have a clearly defined set of procedures for training appraisers. The school district should identify the qualities appraisers must demonstrate and include appropriate proficiency checks to evaluate the performance of all educators performing appraisals under the district's adopted appraisal systems. The school district shall be responsible for documenting that appraisers have met training criteria established by the district. *19 TAC 244.2(c), .3*

School Counselors

The commissioner shall develop and periodically update an evaluation form for use by districts in evaluating school counselors.
Education Code 21.356

Confidentiality

A document evaluating the performance of ~~an~~ a teacher or administrator is confidential and is not subject to disclosure under the Public Information Act, Government Code 552. [Education Code 21.355 \(a\)](#) [[For disclosure requirements on evaluations, See see GBA](#)]

~~A district may give TEA a document evaluating the performance of an administrator employed by the district for purposes of an investigation conducted by TEA. A document provided to TEA remains confidential unless the document becomes part of the record in a contested case under the Administrative Procedures Act, Government Code, Chapter 2001.~~

~~Except as provided by a court order prohibiting disclosure, a document provided to TEA may be used in a disciplinary proceeding against an administrator if the document may be admitted under rules of evidence applicable to a contested case under Government Code 2001.081.~~

~~*Education Code 21.355*~~

[MT 7/5/19: SB 1230, effective 9/1/19, mandates giving TEA an evaluation document for purposes of investigations. The bill mandates](#)

~~providing the same to a requesting district. This provision was previously in the law as permissive, but was not included in this policy.~~

MT 7/23/19: Changes above made pursuant to CVC email dated 7/22/19. Moved 21.355 (c)-(e) to GBA(LEGAL).

Principal	A board, by local policy, shall adopt qualifications for principals. <i>Education Code 11.202(c)</i>
Qualifications	
Certification	State Board for Educator Certification (SBEC) rules establish the requirements for receiving a principal certificate and for first-time principals in Texas. <i>19 TAC Ch. 241</i>
Duties	The principal shall be the instructional leader of the school and shall be provided with adequate training and personnel assistance to assume that role. <i>Education Code 11.202(a)</i>
	A principal shall:
	<ol style="list-style-type: none"> 1. Approve all teacher and staff appointments for the campus. [See DK] 2. Set specific education objectives for the campus, through the planning process. 3. Develop budgets for the campus. 4. Assume administrative responsibility and instructional leadership, under the supervision of the superintendent, for discipline at the campus. 5. Assign, evaluate, and promote all personnel assigned to the campus. 6. Recommend to the superintendent the termination, suspension, or nonrenewal of an employee assigned to the campus. 7. Perform any other duties assigned by the superintendent pursuant to board policy. 8. Regularly consult with the campus-level committee in the planning, operation, supervision, and evaluation of the campus educational program. [See BQ series] 9. Each school year, with the assistance of the campus-level committee, develop, review, and revise the campus improvement plan. [See BQ] 10. (For high school principals only) Serve, or appoint someone to serve, as deputy registrar for the county in which the school is located. <i>Election Code 13.046</i>
	<i>Education Code 11.202(b), .253(c), (h)</i> [See also DMA]
Principal's Report to Superintendent	A principal must notify the superintendent not later than the seventh business day after the date:
	<u>Educators</u>

1. Of an educator's termination of employment or resignation following an alleged incident of misconduct under Education Code 21.006(b); or
2. The principal knew about an educator's criminal record under Education Code 21.006(b)(1).

Education Code 21.006(b-2); 19 TAC 249.14(e) [See Required Reports at DHB([LEGAL](#))]

Noncertified
Employees

A principal must notify the superintendent not later than the seventh business day after the date of a noncertified employee's termination or resignation following allegations that the employee:

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.

Education Code 22.093(e); [See Principal Notification at DHC(LEGAL)]

*Sanctions and
Administrative
Penalty*

SBEC determines whether to impose sanctions, including an administrative penalty, against a principal who fails to provide notification to a superintendent. *Education Code 21.006(f), 22.093(i); 19 TAC 249.14(e), (h)*

If a principal is required to notify a superintendent about an educator's criminal record or alleged incident of misconduct and fails to provide the notice by the required date, SBEC may impose an administrative penalty of not less than \$500 and not more than \$10,000. SBEC may not renew the certification of an educator against whom an administrative penalty is imposed until the penalty is paid. *Education Code 21.006 (i)*

Criminal Offense

A principal required to notify a superintendent about an employee's ~~educator's~~ criminal record or alleged incident of misconduct commits a state jail felony if the principal fails to provide the notice by the required date with intent to conceal an educator's criminal record or alleged incident of misconduct. *Education Code 21.006(j), 22.093(k)*

MT 7/7/19: HB3 adding principal notification requirements for non-certified employees along with citations to similar sanctions and criminal offense provisions. Main policy for this reporting is DHC.