

# Vantage Points

A Board Member's Guide to Update 88

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

PLEASE NOTE: This Update 88 **Vantage Points** and the Localized Update 88 packet may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.

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

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Much of Update 88 incorporates rule changes from the Administrative Code, with topics including curriculum requirements, student assessments, retention and promotion, district awards for teacher excellence, and performance appraisals. Changes not originating from Administrative Code revisions include local policy text addressing employee use of electronic media and notification requirements in the event of a security breach of electronic data.

**Electronic  
Communication**

**Data  
Management**

At CQ(LEGAL), we have added details regarding the district's obligations to notify affected persons in the event of a breach of system security affecting sensitive personal information. The persons that a district must notify in such circumstances and the timelines that a district must comply with vary depending on whether the district owns or only maintains the data, as provided by the Business and Commerce Code.

***CQ(LOCAL) POLICY CONSIDERATIONS:***

Although a district must comply with the legal provisions governing to whom it must give notice and the timing of the notice, the district may establish its own policy addressing notification *methods* in the event of a breach of system security as long as the policy follows the disclosure and timing requirements found in the Business and Commerce Code.

While the district is not required to adopt a policy addressing notification methods to be used in the event of a breach of security, the recommended provisions included in this local policy simplify the Business and Commerce Code requirements and allow for notification to be made through written notice, e-mail, posting on the district's Web site, or through broadcast media. A district that chooses not to adopt local policy provisions would be required to comply with the more detailed notification procedures found in the Business and Commerce Code.

**Electronic Media**

***DH(LOCAL) POLICY CONSIDERATIONS:***

At this code on employee standards of conduct, we have added recommended text on employee use of electronic media. The enclosed policy broadly defines electronic media to include all forms of social media, such as text or instant messaging, e-mail, blogs, chat rooms, video-sharing sites, and posting editorial comments on Web sites, as well as all forms of telecommunication, such as landlines, cell phones, and Web-based applications.

The policy allows for limited communications with students. In accordance with administrative regulations, a certified or licensed employee, or any other

employee with specific approval, may communicate with currently enrolled students through electronic media about matters within the scope of the employee's professional responsibilities, such as communications about an assignment or project. All other employees are prohibited from communicating with students using electronic media. Detailed provisions included in TASB HR Services' *Model Employee Handbook*, which may serve as the district's administrative regulations, address exceptions for family and social relationships and the circumstances under which an employee may use text messaging to communicate with students. The policy also includes a reminder about complying with the district's record retention policies.

In addition, the policy provides that the district's professional standards of conduct apply to an employee's personal use of electronic media. If such use violates law or district policy or interferes with the employee's ability to effectively perform his or her job duties, the employee may be subject to disciplinary action. Detailed provisions on personal use of electronic media are also included in the *Model Employee Handbook*.

**Instruction**  
**Required**  
**Instruction**

At EHAA(LEGAL), we have incorporated amended Administrative Code rules on curriculum requirements, which state that a physical education course must now offer students an opportunity to choose among many types of physical activity, offer both cooperative and competitive games, and be an enjoyable experience for students. On a weekly basis, at least half of a physical education class must be dedicated to moderate or vigorous physical activity.

Changes at EHAC(LEGAL) are the result of revised Administrative Code rules addressing curriculum and reflect new provisions on flexible learning arrangements for students in grades 6–8, information regarding new fine arts requirements for students entering grade 6 in the 2010–11 school year, the change in Foundations of Personal Fitness from a required course for grades 9–12 to an optional one, and revisions to the list of career and technical education career clusters. In addition, details have been added regarding the alcohol awareness program now required as part of any health education course.

**Career and**  
**Technical**  
**Education**

At EHB(LEGAL), we have added a list of career and technical student organizations recognized by the U.S. Department of Education and TEA. We have also revised the policy title from "Career and Technology Education" to "Career and *Technical* Education" to reflect new terminology in federal law and in the Administrative Code. The list of enrichment curriculum subjects at EHAA(LEGAL) has been similarly modified to reflect this new terminology.

**Optional Flexible School Day Program**

We have added existing Administrative Code provisions at EHBC(LEGAL) to clarify that a student enrolled in an optional flexible school day program (OFSDP) may participate in a UIL activity only if the student meets all UIL eligibility criteria, and each district must conduct an annual performance review of student performance under the OFSDP.

**High School Equivalency Program**

At EHBL(LEGAL), amended Administrative Code rules on high school equivalency reflect that a student may now attend a maximum of ten hours of instruction per day in a high school equivalency program (HSEP), an increase from the previous limit of six hours, and that a student who first enters grade 9 during or after the 2011–12 school year must take certain end-of-course exams before entering an HSEP. We have also added an existing Administrative Code provision prohibiting a student enrolled in an HSEP from participating in a UIL activity.

**Automatic Admissions**

New Administrative Code provisions concerning automatic admission to an institution of higher education have been incorporated at EIC(LEGAL):

- The policy now includes information on admission of students in the top 25 percent of their high school class to certain universities.
- In addition to existing requirements for admission, by the end of the student’s junior year, a student must now submit an official transcript or diploma that indicates whether the student has satisfied the requirements regarding successful completion of the Recommended or Advanced/Distinguished Achievement graduation program.
- In providing information about automatic admission to junior and senior students, districts must now obtain written acknowledgment of the notification from the student and student’s parent.
- Automatic admissions decisions must be based on the most recent available class rank, which cannot be earlier than the end of grade 11.

**Retention and Promotion**

Major revisions to Administrative Code rules addressing retention and promotion prompted substantial changes at EIE(LEGAL) to address notification of grade advancement requirements, promotion standards, clarification of which students are subject to grade advancement, details on accelerated instruction, grade placement committee procedures, and exceptions to grade advancement testing.

***EIE(LOCAL) POLICY CONSIDERATIONS:***

For consistency with the changes made at EIE(LEGAL), recommended changes to this local policy text address the requirement that any student in grades 3–8 who fails to demonstrate proficiency on a state-mandated assessment receive accelerated instruction, while students in grades 5 and 8 are also subject to grade advancement testing requirements, previously referred to in the Administrative Code as the “student success initiative.” The standards for promotion upon appeal previously listed in the policy are recommended for deletion, as they no longer appear in the Administrative Code. The grade placement committee must consider the standards listed in EIE(LEGAL) and additional standards, if any, adopted by the board.

In addition, we have made a recommended revision to indicate that a “parent,” for purposes of decisions related to grade advancement requirements, may include a person designated by an authorization agreement to have responsibility for a student in all school-related matters.

**Assessments**

Provisions throughout EKBA(LEGAL) regarding assessment of limited English proficient (LEP) students reflect significant changes to the Administrative Code made as a result of House Bill 3, passed during the 81<sup>st</sup> Texas Legislative Session. Changes include new documentation requirements for the language proficiency assessment committee (LPAC); a new provision allowing postponement of the exit-level assessment during an LEP student’s first 12 months of enrollment in a U.S. school; provisions on excluding asylee and refugee test results from the district’s accreditation and performance ratings; new documentation requirements on testing and exemptions of LEP students in special education; and a new provision that subjects LEP students to grade advancement requirements, unless they are otherwise eligible for an exemption or exclusion.

We have added at EKB(LEGAL) new Administrative Code provisions regarding the implementation schedule for end-of-course assessments.

**Juvenile Residential Facilities**

A new policy at EEM(LEGAL) provides an overview of instructional services for students in juvenile residential facilities. A district is obligated to provide educational services to these students because of their status as district residents if educational services are not otherwise being provided.

<b>Employees</b>	We have incorporated at DEA(LEGAL) existing law regarding breaks for non-exempt employees and have added new provisions requiring districts to provide nonexempt employees breaks for breastfeeding. Districts are not required to pay a nonexempt employee for a breastfeeding break, and districts with fewer than 50 employees are exempt from the provision.
<b>Fair Labor Standards Act</b>	
<b>Awards and Grants</b>	New Administrative Code rules prompted changes at DEAA(LEGAL) regarding the District Awards for Teacher Excellence (DATE) program. The policy now specifies that principals are eligible for DATE awards, includes additional information on exclusions from the awards, and clarifies that the district planning committee, not the board, makes exceptions to minimum award amounts.
	New Administrative Code rules also prompted revisions at this policy regarding master teacher grant programs. Grant funds for certified master teachers may now be used to pay a stipend to a master teacher whose primary duties are to teach reading, mathematics, technology, or science.
<b>Family and Medical Leave</b>	The National Defense Authorization Act for Fiscal Year 2010 expands employee leave benefits for a qualifying exigency arising from a relative's military service. Previously this type of leave was available only if the relative was serving in the reserves. Now it is available if the relative is on "covered active duty." This change is reflected at DECA(LEGAL), where we have also added citations to the definitions of relevant terms for ease of use.
<b>Work Load</b>	At DL(LEGAL), we have added two existing statutory provisions regarding lunchtime duties for classroom teachers and librarians. Implementation of the required 30-minute duty-free lunch period may not result in a lengthened school day, and a teacher or librarian may not be required to supervise students during lunch for more than one day per week.
<b>Staff Development</b>	In changes reflected at DMA(LEGAL), Senate Bill 451, passed by the 81 <sup>st</sup> Texas Legislature, requires the district to provide certain educators who work primarily outside the area of special education with staff development relating to instruction of students receiving special education services. We have also incorporated at this policy existing statutory provisions requiring teachers of elective Bible courses to complete Commissioner-developed training and requiring certain middle school teachers to attend a reading academy if their campus fails to meet performance standards on the state reading assessment instrument.
	Revised Administrative Code rules have been incorporated to provide that an athletic trainer who has completed the educational and continuing education

requirements for licensure does not have to complete extracurricular safety training.

**Performance  
Appraisals**

At DNA(LEGAL), we have deleted several detailed provisions addressed in TEA's *Professional Development System and Appraisal Teacher Manual* and have incorporated changes from amended Administrative Code rules:

- A district must submit to its regional ESC a summary of the evaluation scoring from each campus in the district, in addition to the district's choice of appraisal system.
- A district must provide each teacher with an annual review of the district's teacher appraisal policy and of Administrative Code provisions addressing teacher appraisal.
- A campus administrator who is a certified PDAS appraiser must conduct an appraisal, not necessarily "the teacher's supervisor."

Existing Administrative Code rules have also been added addressing development of an intervention plan for a teacher identified as a "teacher in need of assistance."

**Students**

**Admissions**

We have revised the text at FD(LEGAL) to better match the holding of the U.S. Supreme Court case *Plyler v. Doe* that denying enrollment "based upon immigration status" to children who are not legally admitted into the U.S. violates the Equal Protection Clause. We have also added a link to the authorization agreement form issued by the Texas Department of Family and Protective Services, which parents may use to authorize nonparent relatives to make decisions and perform certain acts in regard to their child.

**Attendance**

Revisions at FEA(LEGAL) and FEB(LEGAL) reflect Administrative Code changes addressing allowable travel for certain excused absences. A student who is absent to complete paperwork regarding citizenship proceedings, to participate in a naturalization oath ceremony, or to serve as an election clerk is allowed one day of excused absence for traveling to the site and one day of excused absence for traveling from the site.

Also reflected at FEB(LEGAL), Administrative Code changes now require a student to be enrolled for at least two hours "of instruction" to be considered in attendance for one-half day, and for at least four hours "of instruction" to be considered in attendance for one full day.



**Communicable Diseases**

In accordance with revised Administrative Code rules, a local school authority, defined as the superintendent or superintendent’s designee, must report a child who is attending school and is suspected, based on medical evidence, of having a sexually transmitted disease or who is an HIV-exposed infant. This change is reflected at FFAD(LEGAL).

At that same code, we have added existing Administrative Code rules providing that, for purposes of readmittance, an advanced nurse practitioner or physician assistant may make a certification of a student’s health. We have also added a link to the DSHS Communicable Disease Chart for Schools and Child-Care Centers.

**DAEP**

At FOC(LEGAL), we have added an existing Education Code provision that requires a board or educator to recommend DAEP placement for a student who commits the misdemeanor offense of being a member of, pledging to become a member of, or soliciting another person to join a public school fraternity, sorority, secret society, or gang.

**Public Information**

At GBA(LEGAL), we have incorporated a provision from HB 3544, from the 81<sup>st</sup> Texas Legislature, which creates an exception to the rule that e-mail addresses used by members of the public to communicate with the district are confidential. The exception allows that an e-mail address provided to the district for the purpose of receiving decisions from the district or to comment on or receive notices related to an application for a license is not confidential.

We have revised GBAA(LEGAL) to include additional information from several relevant attorney general opinions addressing a district’s response to a request for public information when either:

- the district has previously requested and received a determination from the attorney general concerning exactly the same information, or
- the requested information falls within a *category* of information about which the attorney general has issued a previous determination.

**Colleges and Universities**

GNC(LEGAL) has been reorganized and expanded to consolidate into one policy the relevant statutory text addressing various relationships with colleges and universities.

**District Operations**

Changes relating to the business and operations of the district include the following:

- At CCG(LEGAL), a cite to a new Administrative Code provision addresses the duration of a tax exemption for a homestead that has

been rendered uninhabitable or unusable. We have also added an existing Tax Code provision that allows the board to designate an area that is entirely within the territory of the school district as a reinvestment zone in certain circumstances.

- In *United States v. Texas* (2010), the Fifth Circuit Court of Appeals held that some districts are now exempt from Civil Order 5281, which requires certain districts to notify the Commissioner when real property is sold, leased, or otherwise conveyed. This ruling is reflected at CDB(LEGAL).
- At CFA(LEGAL), amendments to the Administrative Code prompted changes to the public hearing and notice requirements for the annual financial management report.
- New Administrative Code provisions regarding instructional materials resulted in changes at CMD(LEGAL), as follows:
  - The district will be responsible for the amount that exceeds the reduced state maximum cost set by SBOE for nonconforming instructional materials.
  - Several changes have been incorporated regarding the district's required certification to the SBOE.
  - A district is only eligible for a textbook credit in the first year of implementation.
  - The district must provide notification to TEA of how the district used the textbook credit.
- Based on recent amendments to Administrative Code provisions, we have revised the text on reporting leaks of LP-gas systems at CS(LEGAL). If an employee of a school district performs the initial test, the rules prohibit a school employee from performing the subsequent test.

**More  
Information**

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