

# Vantage Points

## A Board Member's Guide to Update 95

Vantage Points is an executive summary prepared specifically for board members of the TASB Localized Boards. The topic-by-topic outline and the financial disclosures focus attention on key areas 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, detailed specific Explanatory Notes and the policies within the localized update packet.

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

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## Vantage Points

A Board Member's Guide to Update 95

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Update 95 addresses several employment-related issues, including termination and nonrenewal, probationary status, and resignation, and incorporates changes to the recommended local policies concerning employee, student/parent, and public complaints and grievances. In addition, recent Administrative Code changes regarding student curriculum and graduation requirements, bilingual education, retention and promotion, and tuition for transfer students have also been incorporated at this update, along with statutory provisions providing the official name of the district and provisions concerning competitive bidding for facilities construction.

## **Employment Issues**

### **Termination and Nonrenewal**

Several new exhibits issued at Update 95 are recommended for inclusion in districts' policy manuals and provide sample notices that can be used when a district is terminating or nonrenewing an employment contract under Chapter 21 of the Education Code:

- A new DF(EXHIBIT) includes forms to notify an employee when the board has proposed termination of the employee's probationary, term, or continuing contract during the contract term and when the board has taken final action to terminate the contract.
- A new form at DFAB(EXHIBIT) provides an employee notice when the board chooses to terminate the employee's probationary contract at the end of the contract period.
- And a new exhibit at DFFA includes forms to provide notice when the board has proposed termination of an employee's probationary or term contract during the contract term due to financial exigency and when the board has taken final action to terminate the contract.

Recommended revisions to DFBB(EXHIBIT) simplify the existing notice of proposed term contract nonrenewal and include a new form for documenting how the notice of proposed nonrenewal was delivered to the employee, including an attempt at hand delivery in accordance with provisions from the last legislative session, and a new form providing notice to the employee when the board has taken final action to nonrenew the contract.

At DFBB(LEGAL), provisions have been revised to better reflect statutory structure, and the policy now reflects all options available to districts regarding who conducts a nonrenewal hearing.

### **DFBB(LOCAL) POLICY CONSIDERATIONS**

Recommended provisions have been clarified and cross-references have been updated in this local policy on nonrenewal hearings. Now that DFBB(LEGAL) includes all of the district's options regarding who conducts a nonrenewal hearing, make sure the district's practice is accurately reflected in this (LOCAL) policy.

### **Probationary Status**

Legally referenced provisions at DFAC(LEGAL) have been revised to better match statutory language and to outline the two circumstances under which a district may return an employee to a probationary contract status:

- A district may give an employee a probationary contract if the employee voluntarily accepts an assignment to a new professional capacity that requires a different class of certificate from the employee's previous assignment. This provision is repeated at DCA(LEGAL), also issued in this update.
- A district may also return an employee to probationary contract status in lieu of discharge, termination, or nonrenewal.

### **Resignation**

### **DFE(LOCAL) POLICY CONSIDERATIONS**

Recommended language has been added to this local policy to clarify that, when an employee resigns effective at the end of the school year or submits a resignation after the last day of the school year and before the penalty-free resignation date, the district need not take action to accept the resignation because the resignation is considered to be automatically accepted upon receipt.

Revised language is also recommended to give the superintendent *or other person designated by board action* the authority to accept resignations at any other time. This change is based on a recent Commissioner of Education proposal for decision indicating that although the Education Code allows the board to delegate to one or more individuals the authority to consent to a resignation during the school year, it does not allow the board to grant to the superintendent the authority to further delegate that responsibility to another employee.

**Work Load** New text at DL(LEGAL) reflects a Commissioner of Education decision clarifying that teachers' planning and preparation time must occur during the time students are receiving instruction, not before or after the school day, while another new provision incorporates an attorney general opinion stating that teachers may not be required to spend their 30-minute duty-free lunch break on school property.

**Staff Development** At DMA(LEGAL), we have incorporated language, from House Bill 1942 passed during the 82nd Legislative Session and effective with the 2012–13 school year, providing that staff development may include training related to bullying.

**Complaints and Grievances**

**DGBA, FNG, AND GF(LOCAL) POLICY CONSIDERATIONS**

Recommended changes to the local policies at DGBA (employee complaints), FNG (student and parent complaints), and GF (public complaints) clarify the types of complaints to which these policies apply. Some types of complaints must be filed in accordance with another policy rather than these complaint policies; other complaints must be filed initially in accordance with another policy and then may proceed to DGBA(LOCAL), FNG(LOCAL), or GF(LOCAL) for further appeal. To provide better direction to other relevant policies, we have moved provisions regarding other complaint processes to the beginning of each of these three (LOCAL) policies.

**Instruction**

**Curriculum Requirements**

Amendments to the Administrative Code, effective May 30, 2012, prompted several changes to provisions regarding graduation and curriculum requirements. At EIF(LEGAL), graduation requirements have been updated for each of the three graduation programs beginning with students entering grade 9 in the 2012–13 school year, while at EHAC(LEGAL), the list of required course offerings for grades 9–12 has been revised: A district must now offer at least two additional science courses from the list in addition to Integrated Physics and Chemistry, Biology, Chemistry, and Physics, as well as at least four of the listed technology applications courses. Economics is now listed as a required course under social studies, a change which is also reflected in the list of required curriculum for all grade levels at EHAA(LEGAL). Health Education has been deleted from the list of courses a district must offer in grades 9–12.

New Administrative Code provisions at EHAC(LEGAL) also require a district to teach each course required for graduation at least once in any two consecutive years, and a district must teach a course with an end-of-course as-

assessment each year or use alternate delivery methods so students can earn credit for those courses.

**Bilingual Education**

Numerous revisions regarding bilingual education have been incorporated at EHBE(LEGAL) to reflect changes to the Administrative Code effective May 28, 2012, including a requirement that bilingual and English as a second language (ESL) programs be selected from one of the program models outlined in the Administrative Code, and a new rule allowing a district under some circumstances to identify, exit, or place a student in a bilingual or ESL program without written approval of the student's parent or guardian. In addition, new Administrative Code rules clarify that a dual language immersion program (DLIP) is part of bilingual education; therefore, provisions regarding DLIP have been moved from EGA(LEGAL) to EHBE, the code addressing bilingual education and ESL programs. The Administrative Code continues to require a district implementing a DLIP to have a local policy addressing enrollment and continuation for students in the program.

**Promotion and Retention**

As reflected at EIE(LEGAL), recent amendments to the Administrative Code clarify that a student in grade 5 or 8 may not be denied promotion to the next grade level because the student failed to perform satisfactorily on a reading or mathematics assessment intended for use above the student's grade level.

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

Recommended revisions to this local policy correspond with changes to EIE(LEGAL) to highlight the exception to grade advancement testing requirements when a student in grade 5 or 8 is assessed in reading or mathematics above his or her enrolled grade level.

To better reflect requirements regarding accelerated instruction, an additional recommended revision clarifies that accelerated instruction will be provided for any student, not just a student in grades 3–8, who fails a state-mandated assessment.

Other recommended changes include replacing detailed provisions regarding specific student populations with a statement that the district will comply with state and federal requirements when determining methods for students with disabilities and English language learners to demonstrate mastery of the curriculum.

**District Operations Tuition** Changes to the Administrative Code, effective April 22, 2012, affect the calculation of tuition charged by the receiving district to the home district to educate students in grade levels not taught in the home district. These changes are reflected at FDA(LEGAL).

**District Improvement Plan** A change to the statutory provisions at FNC(LEGAL) addresses the contents of the discipline management program that must be included in the district improvement plan. While the program is still required to provide for prevention and education about unwanted physical or verbal aggression and sexual harassment, HB 1942 from the 82nd Legislative Session deleted the language requiring the program to include education about other forms of bullying.

**District Name** The recommended legally referenced policy at AB(LEGAL) includes existing statutory provisions that provide authority for a board to change the name of the district by a resolution, which must be sent to the Commissioner of Education.

***AB(LOCAL) POLICY CONSIDERATIONS***

This recommended local policy provides the official name of the district as determined by the board and provides a basis for use of "the District" throughout the manual, consistent with policy style.

**Bids for Public Work Contracts** Since Government Code Chapter 2267 prevails over other law relating to public work contracts and since section 2267.059 of that Code requires all public work bids and proposals to be sealed, Education Code provisions allowing a district to receive public work bids or proposals through electronic transmission, which are not required to be sealed, have been deleted from CV(LEGAL).

***CVA(LOCAL) AND CVB(LOCAL) POLICY CONSIDERATIONS***

For those districts whose CVA(LOCAL) and CVB(LOCAL) authorized the district to receive public work bids through electronic transmission, which are not required to be sealed, we recommend deletion of those provisions to correspond to changes made at CV(LEGAL).

**Conflict of Interest**

We have made minor revisions to the forms at BBFA(EXHIBIT) and DBD(EXHIBIT), addressing conflict of interest disclosures by board members and district employees, respectively, to update outdated language and simplify the portions of the affidavits to be completed by a notary public.

**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 localized update packet.