

Explanatory Notes

TASB Localized Policy Manual Update 93

District: Wylie ISD-Taylor County
ATTN (LOCAL) POLICY REVIEW

Please note: Unless otherwise noted, references to legislative bills throughout these explanatory notes refer to bills from the 82nd Regular Legislative Session. Bills from the First Called Session of the 82nd Legislature are so noted. All referenced bills have already gone into effect unless otherwise noted.

AIA (LEGAL) ACCOUNTABILITY
ACCREDITATION AND PERFORMANCE INDICATORS

From HB 2135, we have added a provision allowing the commissioner to award a distinction designation to a campus with a significant number of students below grade 9 who perform satisfactorily on an end-of-course assessment. See CAMPUS DESIGNATIONS, beginning on page 4.

As reflected also on page 4, SB 653 created the Texas Juvenile Justice Department to take over the responsibilities previously held by the Texas Youth Commission, which has been abolished.

BBBA (LEGAL) ELECTIONS
REPORTING CAMPAIGN FUNDS

Two existing statutory provisions from the Election Code have been added to this legally referenced policy. The first requires a specific-purpose committee for supporting or opposing a board candidate to file its campaign treasurer appointment with the secretary of the district. The second provision, related to the process used to terminate the campaign treasurer appointment of an inactive candidate or committee, requires the board to define "inactive candidate or political committee" and requires written notice to the affected candidate or committee about the termination.

A new provision from HB 336 includes a requirement for larger districts to post on their Web sites certain campaign reports filed under Election Code Chapter 254. Reports must be posted not later than the fifth business day after the report is filed with the district. See INTERNET POSTING on page 2.

BDAF (LEGAL) OFFICERS AND OFFICIALS
SELECTION AND DUTIES OF CHIEF TAX OFFICIALS

We have made several changes to this legally referenced policy on assessing and collecting taxes, including:

- Deleting an existing statutory provision giving the county appraisal district responsibility for appraising school district property located within the appraisal district, since this text has been moved to CCH.
- At REGISTRATION REQUIREMENTS, updating the name of the licensing agency to the Texas Department of Licensing and Regulation and adding the existing requirement for school district tax officials to satisfy certification requirements. In addition, we have clarified that the board designates the district's tax officials.
- Revising item 4 at DUTIES of the ASSESSOR to reflect new language from HB 843 that allows, by agreement of the assessor and tax payer, electronic delivery of tax bills.
- Reordering provisions so that more general provisions appear first in the policy.

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BDF (LEGAL) BOARD INTERNAL ORGANIZATION CITIZEN ADVISORY COMMITTEES

At COMPOSITION, SB 736 allows a board to appoint representatives of local domestic violence programs to the school health advisory council (SHAC).

BQ (LEGAL) PLANNING AND DECISION-MAKING PROCESS

The elements of the DISTRICT IMPROVEMENT PLAN have been revised as a result of HB 1386. Beginning with the 2012–13 school year, the district improvement plan must include any suicide prevention programs adopted by the district, in accordance with the Health and Safety Code. See item 3 on page 3.

See the explanatory note for FFB.

C (LEGAL) BUSINESS AND SUPPORT SERVICES

We have revised the C section table of contents to rename CDH, now subtitled Public and Private Facilities, and CW, now titled Naming Facilities.

CCG (LEGAL) LOCAL REVENUE SOURCES AD VALOREM TAXES

Beginning on page 10, changes to this legally referenced policy address tax exemptions for DISABLED VETERANS and their surviving spouses.

From SB 516 (approved by voters in November 2011) are new provisions allowing a SURVIVING SPOUSE of a disabled veteran to continue to receive the property tax exemption for a residential homestead after the veteran's death. A homestead will qualify if:

- It received the exemption from property taxes under the disabled veteran's exemption;
- The property was the residence homestead of the surviving spouse when the disabled veteran died;
- The property remains the residence homestead of the surviving spouse; and
- The surviving spouse has not remarried.

A surviving spouse who moves his or her residence homestead and has not remarried since the death of the disabled veteran may also qualify for an exemption on the new residence homestead.

Another provision from SB 201 provides for a PRORATED EXEMPTION based on a veteran's disability if the veteran or a surviving spouse qualified for an exemption for only part of a tax year.

CCH (LEGAL) LOCAL REVENUE SOURCES APPRAISAL DISTRICT

We have moved from BDAF(LEGAL) an existing statutory provision giving the county appraisal district responsibility for appraising school district property located within the appraisal district. See APPRAISAL FUNCTION on page 1.

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A new NEPOTISM provision comes from HB 1887. An individual is ineligible to serve on an appraisal district board of directors if the individual is related within the third degree by consanguinity or second degree by affinity to a member of the appraisal district's board of directors.

An amendment from HB 2702, reflected at EXCEPTION beginning on page 4, permits the local administrative district judge in a county with a population of 550,000 (previously 350,000) that is adjacent to a county with a population of 3.3 million or more to appoint the members of the appraisal review board. This provision is only applicable to Fort Bend County.

From HB 896, we have added on page 5 a new provision authorizing the board of directors of an appraisal district to provide for AUXILIARY APPRAISAL REVIEW BOARD MEMBERS to hear taxpayer protests before the appraisal review board and to assist the board in performing its duties.

CDH (LEGAL) OTHER REVENUES PUBLIC AND PRIVATE FACILITIES

This legally referenced policy on public facility corporations and public-private partnerships, previously only included in the *TASB Policy Reference Manual*, is recommended for inclusion in your local policy manual. Existing statutory provisions address the board's authority to create a PUBLIC FACILITIES CORPORATION to finance, refinance, or provide the costs of district public facilities.

New legal provisions at PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE PARTNERSHIPS are from SB 1048, which created Government Code Chapter 2267. Chapter 2267 promotes and supports public-private partnerships to address public need for timely acquisition and development of education facilities, technology and other public infrastructure, and government facilities. The new law authorizes a school district to enter into a partnership with a private entity for this purpose.

CEA (LEGAL) ANNUAL OPERATING BUDGET FINANCIAL EXIGENCY

As authorized by SB 8 (First Called Session), on November 21, 2011, the commissioner published minimum standards a district must meet before the board may declare a financial exigency. In addition to meeting one of the six conditions listed at DECLARING A FINANCIAL EXIGENCY, the board must provide NOTICE TO THE COMMISSIONER within 20 calendar days of the adoption of a resolution declaring or extending a declared financial exigency. The notice must include the date of the resolution and the reason for the financial exigency and must be signed by the board president.

CH (LEGAL) PURCHASING AND ACQUISITION

From SB 760 (approved by voters in November 2011), a new provision permits INTERLOCAL AGREEMENTS between governmental entities to be for a specified number of years rather than renewing annually. See pages 7 and 8.

CQ (LEGAL) TECHNOLOGY RESOURCES

A new provision from SB 1 (First Called Session) prohibits a district from paying a fee or reimbursement to a state agency that donates surplus or salvage data processing equipment to the district. See DONATIONS on page 4.

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HB 300 requires a district that owns or licenses computerized data that includes sensitive personal information to notify any “individual” rather than any “resident of this state” about a breach of system security. See page 5 at SECURITY BREACH NOTIFICATION, TO INDIVIDUALS.

CQA (LEGAL) TECHNOLOGY RESOURCES DISTRICT, CAMPUS, AND CLASSROOM WEB SITES

Two new REQUIRED INTERNET POSTINGS have been added:

- At item 13, HB 1942 requires a district to post the procedure for reporting bullying as established in the district’s local bullying policy; and
- At item 14, HB 336 requires certain larger districts to post a campaign-related report required by Election Code Chapter 254.

CRD (LEGAL) INSURANCE AND ANNUITIES MANAGEMENT HEALTH AND LIFE INSURANCE

SB 155, as reflected at CONTINUATION COVERAGE on page 5, clarifies an employee’s ability to continue health insurance through the summer after the employee has resigned. Previous law provided that an employee who resigns after the last day of instruction could continue health insurance until the first anniversary of the date participation in or coverage in the health insurance was first made available to district employees for the last instructional year.

The new law provides that the employee may continue coverage through the earlier of the date described above or the last calendar day before the first day of instruction of the next school year.

D (LEGAL) PERSONNEL

We have revised the D section table of contents to rename DAB, now subtitled Genetic Nondiscrimination. Provisions on Objective Criteria for Personnel Decisions, previously at DAB, have been moved to DAC.

DAA (LEGAL) EMPLOYMENT OBJECTIVES EQUAL EMPLOYMENT OPPORTUNITY

A cross-reference to DAB has been added next to the reference to genetic information at NONDISCRIMINATION—IN GENERAL. DAB, Genetic Nondiscrimination, is a new code at Update 93 that includes material from the Genetic Information Nondiscrimination Act. See the explanatory note for DAB, below.

At RELIGIOUS DISCRIMINATION, on page 3, we have added an existing statutory provision that prohibits the district from directly or indirectly asking about the religious affiliation of a person applying for employment.

The other changes to this legally referenced policy result from final rules on the Americans with Disabilities Act Amendments Act (ADAAA), effective March 25, 2011. Changes include:

- Reorganization of existing provisions to accommodate new material;

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- At MITIGATING MEASURES beginning on page 4, clarification that “ordinary eyeglasses and contact lenses” as defined in the regulations will be considered in determining whether an impairment substantially limits a major life activity;
- New definitions of ‘PHYSICAL OR MENTAL IMPAIRMENT’ and ‘MAJOR LIFE ACTIVITIES’ on page 5;
- Clarification that the district has no duty to provide REASONABLE ACCOMMODATIONS when an individual meets the definition of disability solely under the “regarded as” prong of the definition (see page 6);
- On page 7, a prohibition on the use of QUALIFICATION STANDARDS that screen out or tend to screen out individuals with disabilities unless the standards are shown to be job related for the position and consistent with business necessity; and
- New references to the legal authority addressing use of SERVICE ANIMALS by employees.

For more information on the ADAAA rules, see www.federalregister.gov/articles/2011/03/25/2011-6056/regulations-to-implement-the-equal-employment-provisions-of-the-americans-with-disabilities-act-as.

Please note: Policy Service records reflect that your school district employs 15 or more employees. If this information is no longer correct, contact your policy consultant for appropriate policy provisions.

DAB (LEGAL) EMPLOYMENT OBJECTIVES GENETIC NONDISCRIMINATION

This new legally referenced policy includes information on Title II of the federal Genetic Information Non-discrimination Act (GINA). In general, GINA prohibits discrimination against employees or applicants based on genetic information; restricts districts from requesting, requiring, or purchasing genetic information; and strictly limits the disclosure of genetic information. The Equal Employment Opportunity Commission adopted final regulations, effective January 10, 2011.

As explained in the Note at the beginning of the legally referenced policy, GINA only applies to districts with 15 or more employees. However, this legally referenced policy is recommended for inclusion in all school district policy manuals because of possible fluctuations in a district's number of employees, which could trigger application of the statutory provisions for a district not previously subject to the provisions.

This policy organizes the material into four main sections: definitions, notices, prohibited practices, and confidentiality.

Districts subject to GINA must post a workplace notice with excerpts from the regulation and information about filing a complaint. TASB HR Services has updated its work-site posters, available in the TASB Bookstore at <http://store.tasb.org>, to include the required notification provisions.

The Equal Employment Opportunity Commission has further information on GINA, available at: <http://www.eeoc.gov/laws/types/genetic.cfm>.

DAB (LOCAL) EMPLOYMENT OBJECTIVES GENETIC NONDISCRIMINATION

We have moved material addressing Objective Criteria for Personnel Decisions to DAC. DAB now addresses Genetic Nondiscrimination.

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DAC (LOCAL) EMPLOYMENT OBJECTIVES OBJECTIVE CRITERIA FOR PERSONNEL DECISIONS

This local policy text addressing Objective Criteria for Personnel Decisions has been moved unchanged from DAB to accommodate new material now at that code addressing the Genetic Information Nondiscrimination Act (GINA).

DBAA (LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS CRIMINAL HISTORY AND CREDIT REPORTS

From new State Board for Educator Certification (SBEC) rules, effective December 19, 2011, we have added a definition of “reported criminal history.” SBEC has defined this term to mean information concerning any formal criminal justice system charges and dispositions. See SBEC NOTIFICATION on page 5.

DBB (LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS MEDICAL EXAMINATIONS AND COMMUNICABLE DISEASES

We have added on page 2 a provision from the Genetic Information Nondiscrimination Act (GINA) regulations addressing receipt of GENETIC INFORMATION when a district lawfully requests medical information not related to a request for leave under the Family and Medical Leave Act (FMLA). If the district’s request for medical information includes specific language telling the provider not to include any genetic information, any release of genetic information will be deemed inadvertent.

A similar provision has been added in this update at DECA(LEGAL) to address requests for medical information pursuant to the FMLA.

Please note: Policy Service records reflect that your school district employs 15 or more employees. If this information is no longer correct, contact your policy consultant for appropriate policy provisions.

DECA (LEGAL) LEAVES AND ABSENCES FAMILY AND MEDICAL LEAVE

In Section III on Notices and Medical Certification, we have added to this legally referenced policy a provision from the Genetic Information Nondiscrimination Act (GINA) regulations for districts subject to GINA. [See DAB(LEGAL) for information about the applicability of GINA.] The regulations address receipt of GENETIC INFORMATION when a district lawfully requests medical information pursuant to the Family and Medical Leave Act (FMLA). See page 15. If the district’s request for medical information includes specific language telling the provider not to include any genetic information, any release of genetic information will be deemed inadvertent.

A similar provision has been added in this update at DBB(LEGAL) to address requests for medical information not made pursuant to the FMLA.

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DF (LEGAL) TERMINATION OF EMPLOYMENT

At REPORT TO SBEC OF EDUCATOR MISCONDUCT, beginning on page 4, we have added a new provision from amended State Board for Educator Certification (SBEC) rules, effective December 19, 2011, explaining that a superintendent may notify SBEC of any educator misconduct that the superintendent believes in good faith may be subject to sanctions by SBEC. This new provision has also been added to DH(LEGAL) in Update 93.

The amended rules also affected the definition of "SOLICITATION OF A ROMANTIC RELATIONSHIP," beginning on page 5. The revised definition explains that a romantic relationship is often characterized by a strong emotional or sexual attachment, but does not include relationships that arise out of legitimate contexts, such as familial connections or longtime acquaintance. The list of acts that may constitute evidence that an educator has solicited a romantic relationship must be considered in context and now includes creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images and requesting sexual contact, or any activity intended for the sexual gratification of the educator.

DFE (LEGAL) TERMINATION OF EMPLOYMENT RESIGNATION

Amended State Board for Educator Certification (SBEC) rules, effective December 19, 2011, addressing SANCTIONS FOR ABANDONMENT OF CONTRACT have been added, beginning on page 1. Previously the deadline for the board to submit a written complaint to SBEC was within 30 calendar days after the educator submitted a written resignation. Under the amended rules, a board must file the complaint within 30 days of the effective date of the separation. Unless there is a written agreement to the contrary, the effective date of separation is the first day that the educator fails to appear for work without permission. A former provision allowing the district to designate an effective date not later than 14 days after the educator fails to report for duty has been deleted.

The amended rules also list the documents that must be attached to the written complaint, which include the resignation letter, if any; any agreement regarding the effective date of separation from employment; the educator's contract; and board meeting minutes indicating that the board found no good cause for the resignation. If the board does not meet within 30 calendar days of the separation from employment, the minutes may be submitted within 10 calendar days of the next board meeting.

DH (LEGAL) EMPLOYEE STANDARDS OF CONDUCT

Revisions to this legally referenced policy are from amended State Board for Educator Certification (SBEC) rules, effective December 19, 2011, and include:

- A new definition of "reported criminal history" to mean information concerning any formal criminal justice system charges and dispositions;
- Reordering of the list of circumstances a superintendent must report to match the order in the rules; and
- A new provision explaining that a superintendent may notify SBEC of any educator misconduct that the superintendent believes in good faith may be subject to sanctions by SBEC.

On page 2, we have also added an existing statutory provision requiring a superintendent to provide NOTICE to the board and the educator that the superintendent has filed a written report with SBEC.

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DH (LOCAL) EMPLOYEE STANDARDS OF CONDUCT

Recommended changes at ARRESTS, INDICTMENTS, CONVICTIONS, AND OTHER ADJUDICATIONS, item 4, reflect revisions to the drug and alcohol related offenses described in Administrative Code Chapter 19, section 249.16(b). As revised, crimes involving moral turpitude include conspiracy to possess a controlled substance or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute a controlled substance. In addition, felony driving while intoxicated (DWI) is listed as a crime involving moral turpitude, replacing previous text that included acts constituting public intoxication, operating a vehicle under the influence, or disorderly conduct. An act constituting neglect under the Family Code is also a crime involving moral turpitude.

Minor stylistic revisions have been made throughout the policy.

DH (EXHIBIT) EMPLOYEE STANDARDS OF CONDUCT

Based on amended State Board for Educator Certification (SBEC) rules, effective December 19, 2011, we have revised the heading of this exhibit to read EDUCATORS' CODE OF ETHICS.

We have also revised Standards 3.6 and 3.9 to better match Administrative Code language:

- Standard 3.6 now prohibits an educator from soliciting or engaging in sexual conduct or a romantic relationship with a student "or minor."
- Standard 3.9 has been adjusted to clarify that the list of electronic communications an educator should not engage in with a student or minor is not an exhaustive list. The list of factors that may be considered in assessing whether a communication is inappropriate is also not exhaustive.

EB (LEGAL) SCHOOL YEAR

HB 1555 creates an EXCEPTION from the general prohibition on scheduling the first day of instruction before the fourth Monday in August. A district may schedule the first day of school on or after the *first* Monday in August at a campus, or at not more than 20 percent of the district's campuses, if the district enrolls 190,000 or more students and the district funds supplemental days of instruction in addition to the statutorily required days of instruction at each campus. Each campus must be undergoing comprehensive reform as determined by the board, and a majority of the students on each campus must be educationally disadvantaged. Currently this exception only applies to Houston ISD.

EEM (LEGAL) INSTRUCTIONAL ARRANGEMENTS JUVENILE RESIDENTIAL FACILITIES

As reflected on page 1 at DEFINITIONS, SB 653 created the Texas Juvenile Justice Department to take over the responsibilities previously held by the Texas Youth Commission, which has been abolished.

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EFA (LOCAL) INSTRUCTIONAL RESOURCES INSTRUCTIONAL MATERIALS

SB 6 (First Called Session) made significant revisions to the law on instructional materials, including replacing the term “textbooks” with “instructional materials.” As a result, we recommend changes to this local policy at OBJECTIVES and at INFORMAL RECONSIDERATION, item 3, to refer to *instructional materials*.

At APPEAL, recommended changes:

- Direct the complainant to file an appeal with the appropriate administrator, rather than a specific level, under the district’s grievance policies; and
- Clarify the documentation that the complainant must include with the appeal, including documentation of the informal reconsideration process, if any, and the Request for Reconsideration of Instructional Materials.

Other recommended changes include:

- Clarifying that the SELECTION CRITERIA apply to the selection of all instructional resources;
- Adding principal *or designee* throughout at INFORMAL RECONSIDERATION; and
- Replacing the specific list of individuals who may raise an objection with the more general term “a complainant” at GUIDING PRINCIPLES.

EHBC (LEGAL) SPECIAL PROGRAMS COMPENSATORY/ACCELERATED SERVICES

HB 3708 and SB 975 establish a new type of PUBLIC JUNIOR COLLEGE PARTNERSHIP PROGRAM. See page 4. Beginning September 1, 2012, a school district may partner with a community college district in which the school district is located to provide a dropout recovery program on the community college campus for students to successfully complete and receive a high school diploma from the school district. See the explanatory note for GNC, below.

Information on MAXIMUM ALLOWABLE INDIRECT COST has also been added to this legally referenced policy, beginning on page 9. As revised by the State Board of Education in November 2011, for the 2011–12 school year the indirect cost allotments increased for compensatory, special, bilingual, and career and technical education. Indirect cost allotments for gifted and talented programs were not changed.

Beginning with the 2012–13 school year, a district may choose to use a greater indirect cost allotment than specified to the extent the district receives less funding per weighted student in maintenance and operations revenue than in the 2011–12 school year.

EHL (LEGAL) SPECIAL PROGRAMS HIGH SCHOOL EQUIVALENCY

As reflected throughout this legally referenced policy, SB 653 created the Texas Juvenile Justice Department to take over the responsibilities previously held by the Texas Youth Commission, which has been abolished.

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FDB (LEGAL) ADMISSIONS
INTRADISTRICT TRANSFERS AND CLASSROOM ASSIGN-
MENTS

Applicable with the 2012–13 school year, HB 1942 provides new options for a school district to transfer STUDENTS WHO ENGAGE IN BULLYING, as reflected on page 2.

Districts are currently permitted to transfer a victim of bullying. The new law now allows a board to transfer a student who has engaged in bullying to another classroom within the same campus. The decision to transfer a student receiving special education services must be made by an ARD committee.

HB 1942 also established a new definition of bullying, as referenced in this policy and included in FFI(LEGAL), also issued at this update. See the explanatory note for FFI.

FDB (LOCAL) ADMISSIONS
INTRADISTRICT TRANSFERS AND CLASSROOM ASSIGN-
MENTS

As explained above, beginning with the 2012–13 school year, HB 1942 allows a board to transfer a student who engaged in bullying in addition to a student who was a victim of bullying. As a result, we recommend a change to the Note in this local policy to refer to transfers of victims of bullying or students “who engaged in bullying.”

Other minor revisions to the text are recommended for consistency with policy style.

FEB (LEGAL) ATTENDANCE
ATTENDANCE ACCOUNTING

As added by HB 3708 and SB 975, effective September 1, 2012, a student who is not on campus when attendance is taken may be considered in attendance if the student is participating in a DROPOUT RECOVERY EDUCATION PROGRAM operated by a public junior college under Education Code 29.402. See page 4.

See also the explanatory note for GNC.

FFB (LEGAL) STUDENT WELFARE
CRISIS INTERVENTION

This new legally referenced policy addressing crisis intervention includes new provisions from HB 1386 on early mental health intervention and suicide prevention programs.

HB 1386 requires that the Texas Department of State Health Services (TDSHS) and TEA provide a list of recommended early mental health intervention and suicide prevention programs for implementation in public schools within the general education setting. Each school district may select a program or programs from the list to implement.

The board may adopt a POLICY concerning early mental health intervention and suicide prevention that:

- Establishes procedures for providing notice to the student’s parent or guardian within a reasonable amount of time after identification of the early warning signs;
- Includes a reporting mechanism;

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- Permits the district to designate at least one person to act as a liaison officer for purposes of identifying students in need of early mental health intervention or suicide prevention;
- Sets out available counseling alternatives; and
- Prohibits the use of medical screening to identify a student without prior consent of the student's parent or guardian.

The policy and procedures must be included in the student handbook and district improvement plan. See the explanatory note for BQ(LEGAL).

District policy and procedures are not intended to give a school district the authority to prescribe medications. All medical decisions are to be made by the student's parent or guardian.

TASB Policy Service has developed sample language for districts that wish to adopt a local policy on this topic. If you would like to see the sample text for this optional policy, please contact your policy consultant at 800-580-7529.

FFB (LOCAL) STUDENT WELFARE
CRISIS INTERVENTION

As mentioned above, TASB Policy Service has developed sample language for districts that wish to adopt a local policy on early mental health intervention and suicide prevention programs. If you would like to see the sample text for this optional policy, please contact your policy consultant at 800-580-7529.

FFF (LEGAL) STUDENT WELFARE
STUDENT SAFETY

This new legally referenced policy includes material from SB 407 on programs addressing visual material depicting minors. By January 1, 2012, the Texas School Safety Center (TxSSC) and the attorney general must develop programs for use by school districts that address:

- The legal consequences and penalties of sharing visual material depicting a minor engaged in sexual conduct;
- Other consequences such as negative effects on relationships, loss of educational and employment opportunities, and possible removal from school programs and extracurricular activities;
- The characteristics of the Internet and other networks that might affect visual material such as replication and distribution to a worldwide audience;
- The prevention of, identification of, response to, and reporting of incidents of bullying; and
- The connection between bullying, cyberbullying, harassment, and a minor sharing visual material depicting a minor engaged in sexual conduct.

The TxSSC Web site on SB 407 is available at <http://www.txssc.txstate.edu/K12/sexting>; the Sexting Prevention Educational Program is available at <http://beforeyoutext.com/>.

Annually and beginning with the 2012–13 school year, each district is required to provide information on these educational programs to parents and students at an appropriate grade level.

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FFH (LOCAL) STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RE-
TALIATION

Special Note About Adoption of FFH(LOCAL) and FFI(LOCAL): Many of the Update 93 recommendations regarding FFH(LOCAL) and FFI(LOCAL) are based on HB 1942, which is effective beginning with the 2012–13 school year. Based on the effective date of HB 1942, some districts may want to implement the Update 93 policy recommendations for FFH(LOCAL) and FFI(LOCAL) effective with the 2012–13 school year so that any current (LOCAL) policies at FFH and FFI are not affected until then. The Update 93 policy recommendations are being provided at this time so districts can begin development of next year's student handbooks and codes of conduct. Policy Service will release the 2012–2013 *Model Student Handbook* and 2012 *Model Student Code of Conduct* on March 20.

If you wish to delay the effective date of the Update 93 recommendations for FFH(LOCAL) and FFI(LOCAL), the board may indicate in the motion for action that the Update 93 changes to FFH(LOCAL) and FFI(LOCAL) are adopted effective on a future date. A suggested motion for board action on Localized Update 93 is as follows:

*"I move that the board add, revise, or delete (LOCAL) policies as recommended by TASB Policy Service and according to the Instruction Sheet for TASB Localized Policy Manual Update 93 [with the following changes:]. **FFH(LOCAL) and FFI(LOCAL) are adopted effective [insert specific date, not school year].**"*

Most of the recommended revisions to this local policy are to coordinate the district's response when alleged conduct could constitute prohibited conduct, as defined at FFH (discrimination, harassment, and dating violence), and/or bullying, as defined at FFI. As indicated in the Note on page 1, the district will need to use FFH and FFI in conjunction in these circumstances, since the district may have additional notification obligations if the conduct also constitutes bullying.

Recommended changes at INVESTIGATION OF THE REPORT specify that if the district official determines that the alleged conduct *would not* constitute prohibited conduct as defined by the policy, the district official will then refer the complaint for consideration under FFI so that the district may consider whether the alleged conduct constitutes bullying. When the district official determines that the alleged conduct *could* constitute prohibited conduct and thus proceeds with an investigation under FFH, the district official must also determine whether the allegations constitute bullying. If appropriate, the district must take interim action to address prohibited conduct or bullying during the investigation.

At CONCLUDING THE INVESTIGATION, new recommended text requires the investigation report to include a determination of whether prohibited conduct or bullying occurred since the DISTRICT ACTION will depend on what type of conduct the investigation reveals.

- If PROHIBITED CONDUCT occurred, the district will take appropriate disciplinary action and may take corrective action reasonably calculated to address the conduct. Examples of CORRECTIVE ACTION are included in the policy.
- If BULLYING occurred, the district will refer to FFI for appropriate notice to parents and district action and to FDB for transfer provisions.
- If IMPROPER CONDUCT occurred that did not rise to the level of prohibited conduct or bullying, the policy clarifies that the district may still take disciplinary or other corrective action to address the conduct.

Other recommended changes to the policy include:

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- The addition of a definition and examples of GENDER-BASED HARASSMENT, which includes harassment of a non-sexual nature based on the student's gender or gender stereotyping, including the failure to conform to stereotypical notions of masculinity or femininity. Although this recommended local policy has always prohibited harassment based on gender, the federal Office for Civil Rights (OCR) has recently been emphasizing a need for districts to define and provide examples of gender-based harassment in local policy.
- Clarification that retaliation is *prohibited* at STATEMENT OF NONDISCRIMINATION and that the district prohibits RETALIATION *by a student or district employee* against a student involved in an incident or report of prohibited conduct. The EXAMPLES of retaliation have been updated accordingly.
- The addition of *humiliating conduct* in the EXAMPLES of prohibited harassment on page 1, since this is often listed as an example by the OCR.
- Reordering of the provisions addressing FALSE CLAIMS, STUDENT REPORTS, and EMPLOYEE REPORTS for better flow. The employee reporting standard has also been broadened to require a report if the employee *suspects* prohibited conduct occurred.
- Revising the paragraph on ACCESS TO POLICY AND PROCEDURES to match the new legal requirements for bullying policies and procedures, as described at FFI.

FFI (LEGAL) STUDENT WELFARE FREEDOM FROM BULLYING

This new legally referenced policy on bullying includes material from HB 1942, effective with the 2012–13 school year.

As mentioned above, HB 1942 established a new DEFINITION of bullying. The definition retains much of the previous definition, but clarifies that bullying includes engaging in expression through electronic means. It removes language stating that the existence of bullying is determined by the board or designee. Behavior is considered bullying if the conduct exploits an imbalance of power between the students involved through written or verbal expression or physical conduct and interferes with a student's education or substantially disrupts the operation of a school.

HB 1942 also requires a board to adopt a POLICY, and any necessary procedures, that:

- Prohibits bullying of a student;
- Prohibits retaliation against any person who in good faith provided information concerning an incident of bullying, including a victim or witness;
- Establishes a procedure to provide notice of an incident of bullying to the parents of the victim and the bully within a reasonable amount of time after the incident;
- Establishes actions a student should take to obtain assistance and intervention in response to bullying;
- Sets out the available counseling options for a victim of or witness to bullying, or a student who engages in bullying;
- Establishes a procedure for reporting incidents of bullying, investigating reported incidents, and determining whether the reported incident occurred;
- Prohibits the discipline of a student who reasonably uses self-defense in a bullying incident and is found to have been the victim in the incident; and

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- Requires that any discipline of a student with disabilities found to have engaged in bullying comply with applicable requirements of federal law, including the IDEA.

The policy and procedures adopted by the board must be included in student and employee handbooks on an annual basis and in the district improvement plan. The procedures for reporting bullying must be posted on a district's Web site "to the extent practicable."

FFI (LOCAL) STUDENT WELFARE
FREEDOM FROM BULLYING

Special Note About Adoption of FFH(LOCAL) and FFI(LOCAL): Many of the Update 93 recommendations regarding FFH(LOCAL) and FFI(LOCAL) are based on HB 1942, which is effective beginning with the 2012–13 school year. Based on the effective date of HB 1942, some districts may want to implement the Update 93 policy recommendations for FFH(LOCAL) and FFI(LOCAL) effective with the 2012–13 school year so that any current (LOCAL) policies at FFH and FFI are not affected until then. The Update 93 policy recommendations are being provided at this time so districts can begin development of next year's student handbooks and codes of conduct. Policy Service will release the 2012–2013 *Model Student Handbook* and 2012 *Model Student Code of Conduct* on March 20.

If you wish to delay the effective date of the Update 93 recommendations for FFH(LOCAL) and FFI(LOCAL), the board may indicate in the motion for action that the Update 93 changes to FFH(LOCAL) and FFI(LOCAL) are adopted effective on a future date. A suggested motion for board action on Localized Update 93 is as follows:

"I move that the board add, revise, or delete (LOCAL) policies as recommended by TASB Policy Service and according to the Instruction Sheet for TASB Localized Policy Manual Update 93 [with the following changes:]. FFH(LOCAL) and FFI(LOCAL) are adopted effective [insert specific date, not school year]."

Recommended changes to this policy reflect the new local policy requirements added by HB 1942, as explained above:

- Conduct that is reported to the district as alleged bullying may also constitute prohibited conduct (discrimination, harassment, and dating violence), as defined at FFH; therefore, the Note on page 1 requires the consideration of both FFH and FFI when an allegation is made.
- The DEFINITION of bullying has been revised to match the statutory definition.
- We have added a new provision prohibiting RETALIATION by a student or district employee against any person who reports bullying, serves as a witness, or otherwise participates in an investigation. EXAMPLES of retaliation have also been included.
- At STUDENT REPORT, we have added text to clarify that the purpose of the report is for the student to obtain assistance and intervention.
- New provisions at PROHIBITED CONDUCT emphasize that alleged bullying may also constitute prohibited conduct, as defined at FFH (discrimination, harassment, and dating violence). If the principal determines that the allegations would constitute prohibited conduct, the investigation will proceed under FFH and that investigation will need to include a determination on both prohibited conduct and bullying.

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- At CONCLUDING THE INVESTIGATION, we have added a requirement that the investigation report include a determination of whether the victim used reasonable self-defense. This is based on the new law, which states that a student who is a victim of bullying and who used reasonable self-defense in response to the bullying cannot be subject to disciplinary action. See also DISCIPLINE.
- If BULLYING occurred, the district shall take appropriate disciplinary action, may take corrective action reasonably calculated to address the conduct, and shall refer to FDB for TRANSFER provisions. Examples of CORRECTIVE ACTION are included in the policy. As stated in the new law, the discipline of a student with a disability is subject to state and federal law. In addition, the principal must notify the victim, the student who engaged in bullying, and any students who witnessed the bullying of available COUNSELING options.
- If IMPROPER CONDUCT occurred that did not rise to the level of prohibited conduct or bullying, the policy clarifies that the district may still take disciplinary or other corrective action to address the conduct.
- New requirements govern publication of the policy and any accompanying procedures. These must be distributed annually in the employee and student handbooks and posted on the district's Web site to the extent practicable. The policy continues to require that the materials be available at each campus and the district's administrative offices.

Other recommended changes to the policy include:

- Reordering of the provisions addressing student FALSE CLAIMS and REPORT FORMAT for better flow.
- Broadening of the employee reporting standard to require a report if the employee *suspects* bullying occurred, whether of a single student or a group of students.

If your district has a designated staff member who coordinates districtwide anti-bullying programs and you would like to include that person's contact information in the district's bullying policy, please contact your policy consultant for sample policy text.

FL (LEGAL) STUDENT RECORDS

New Family Educational Rights and Privacy Act (FERPA) regulations, effective January 3, 2012, resulted in several changes to this legally referenced policy, including:

- New definitions of 'AUTHORIZED REPRESENTATIVE' and 'EDUCATION PROGRAM,' on page 6.
- Beginning on page 9, a new provision clarifying that ORGANIZATIONS CONDUCTING STUDIES for or on behalf of districts must destroy personally identifiable information when no longer needed. These organizations are no longer permitted to return the information to the district in lieu of destroying the information. Another new provision at this margin note provides that a district may redisclose personally identifiable information from education records as part of an agreement with an organization conducting a study for or on behalf of the district.
- On page 17, the new rules clarify that a district may designate as DIRECTORY INFORMATION student ID numbers or other unique personal identifiers displayed on a student ID badge if the number or identifier cannot be used by itself without a PIN, password, or other factor to gain access to education records. If a student or other person could access student records using only the ID number or identifier, then the district could not list the student ID number or identifier as directory information.

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FNA (LEGAL) STUDENT EXPRESSION DISTRIBUTION OF NONSCHOOL LITERATURE

We have added to this legally referenced policy on distribution of nonschool literature, at NO VIEWPOINT DISCRIMINATION, the recent Fifth Circuit Court of Appeals case *Morgan v. Swanson*. In this case, the Fifth Circuit recognized that private, non-disruptive, student-to-student speech expressing a religious viewpoint is protected speech under the First Amendment and a district may not discriminate against a student based on that speech.

At TIME, PLACE, AND MANNER LIMITATIONS, we have revised the text to refer to permissible viewpoint-neutral regulations and have added a citation to the Fifth Circuit Court of Appeals case *Canady v. Bossier Parish School Board*.

FO (LEGAL) STUDENT DISCIPLINE

As mentioned above, HB 1942, effective with the 2012–13 school year, adopts a new definition of bullying. As a result, we have revised item 7 on page 1 to explain that the definition of bullying has the meaning provided by Education Code 37.0832 as included in FFI.

FOC (EXHIBIT) STUDENT DISCIPLINE PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING

As reflected in this exhibit, at Penal Code Section 20A.02, HB 260 changed the felony offense of “trafficking of persons” to “smuggling of persons.”

FOD (LEGAL) STUDENT DISCIPLINE EXPULSION

HB 968 revises the provisions addressing permissive expulsion for persistent misbehavior in DAEP to permit expulsion when a student engages in documented SERIOUS MISBEHAVIOR IN DAEP despite documented behavioral interventions. See page 4. These changes apply beginning with the 2012–13 school year.

“Serious misbehavior” is defined to include deliberate violent behavior that poses a direct threat to the health or safety of others; extortion; coercion; and conduct that constitutes the offense of public lewdness, indecent exposure, criminal mischief, hazing, or harassment of a student or district employee. Previous language permitting removal for “persistent misbehavior” has been deleted.

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FODA (LEGAL) EXPULSION JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM

As explained above, HB 968 revises the provisions addressing permissive expulsion for persistent misbehavior in a DAEP to permit expulsion when a student engages in documented serious misbehavior despite documented behavioral interventions. A MEMORANDUM OF UNDERSTANDING between a district and a county juvenile board regarding the establishment and operation of a JJAEP must now establish, consistent with HB 968, that a student may be placed in the JJAEP if the student engages in “serious misbehavior” as defined by Education Code 37.007(c). See page 5.

G (LEGAL) COMMUNITY AND GOVERNMENTAL RELATIONS

We have revised the G section table of contents to add the new code GC, Public Notices.

GC (LEGAL) PUBLIC NOTICES

This new legally referenced policy includes provisions from HB 1812 that govern newspaper publication of notices when the law does not specify the manner of publication, including the number of times the notice must be published or the period during which the notice must be published.

If a district is required to publish notice in a county with a population between 30,000 and 36,000 that borders the Red River or in a county that does not have a newspaper meeting the requirements for regular newspaper publication, the district may select a newspaper for publication with less stringent requirements. See SELECTION OF NEWSPAPER IN CERTAIN COUNTIES on page 2.

The legal RATE FOR PUBLICATION is defined as the newspaper’s lowest published rate for classified advertising. If no newspaper in the district or county will publish the notice at or below the legal rate, a district may publish the notice using an alternate method of publication, as specified in the policy.

GNC (LEGAL) RELATIONS WITH EDUCATIONAL ENTITIES COLLEGES AND UNIVERSITIES

HB 3708 and SB 975 establish a new type of DROPOUT RECOVERY PROGRAM. Beginning September 1, 2012, a school district may partner with a community college district in which the school district is located to provide a dropout recovery program on the community college campus for students to successfully complete and receive a high school diploma from the school district. The APPLICABILITY requirements for colleges and school districts to participate in the program are included on page 3 and limit which colleges and districts may enter into such an agreement. These applicability provisions expire September 1, 2013.

To be eligible to enroll in the program, a student must be under 26 years of age and either: (1) lack no more than three course credits to graduate or (2) have failed to perform satisfactorily on state assessments needed to graduate.

As reflected at FUNDING, the school district must pay the college district a negotiated amount for each enrolled student, not to exceed a certain amount. The student is included in the school district’s ADA.