

Explanatory Notes

TASB Localized Policy Manual Update 97

District: Brackett ISD
A25 (INDEX) CROSS-INDEX

The cross-index—shared by all localized policy manuals in districts throughout Texas, the *TASB Policy Reference Manual*, and the *TASB Regulations Resource Manual*—has been updated to reflect new terminology and topic relationships established by changes in law or regulation that have arisen since this document was last updated in August 2012.

Please bear in mind that the cross-index is “generic” and presents a structure that serves all these manuals; your policy manual may not address some of the topics shown and may not include some of the policies indicated. This cross-index is also a key element used in searching Policy On Line.

CMD (LEGAL) EQUIPMENT AND SUPPLIES MANAGEMENT
INSTRUCTIONAL MATERIALS CARE AND ACCOUNTING

Amendments to the Administrative Code, effective July 8 and July 23, 2012, resulted in changes throughout this legally referenced policy, including:

- New text at FUNDING on page 1 providing that the district must code the instructional materials allotment (IMA) as revenue in the manner required by TEA.
- A new provision at NO APPEAL stating that the amount of the IMA determined by the Commissioner is final and may not be appealed.
- New provisions on page 2 addressing how the Commissioner will calculate adjustments to a district's IMA for HIGH ENROLLMENT GROWTH and the procedures a district can follow to request an adjustment for enrollment growth not reflected in the state calculation.
- Clarification, beginning on page 2, that IMA PERMITTED EXPENDITURES include non-adopted instructional materials but not the purchase or installation of the physical conduit for data transmission, purchase of office and school supplies, or payment of travel expenses.
- On page 4, a requirement for the district to determine a VALUE for its instructional materials, as they are considered assets.
- Clarification that DISTRIBUTION of instructional materials may involve providing access to the materials rather than distributing printed materials.
- Beginning on page 5, new provisions addressing requisition of and access to BRAILLE AND LARGE-TYPE MATERIALS for teachers, students, and parents.
- Clarification on page 6 that the CERTIFICATION OF INSTRUCTIONAL MATERIALS must be made prior to the beginning of each school year in a format approved by the Commissioner; be ratified by the board in a public meeting; include supporting documentation, if requested by the Commissioner; and may include consideration of both adopted and non-adopted materials. A district may not submit a requisition request for the following school year until the Commissioner receives the certification for the current school year.
- Existing text on page 7 at RESPONSIBILITY FOR INSTRUCTIONAL MATERIALS AND EQUIPMENT explaining that the board cannot require an employee to pay for materials and equipment that are stolen, misplaced, or not returned by a student.
- New provisions on page 9 making the district responsible for LOST, DAMAGED, OR WORN OUT INSTRUCTIONAL MATERIALS and outlining the procedures the district must follow to dispose of and replace the materials.

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- Beginning on page 9, additional detail on the procedures for the SALE OR DISPOSAL of instructional materials and technological equipment, including a requirement to certify to TEA that new materials purchased from sale proceeds cover the TEKS and a requirement that prior to any disposal the district notify the Commissioner of the instructional materials to be disposed of and the method of disposal.
- Clarification on page 10 that the district's ANNUAL INVENTORY must include adopted and non-adopted instructional materials and technological equipment and must be recorded in the EMAT system.
- Deletion of provisions addressing out-of-adoption instructional materials.

Citations have been adjusted throughout the policy.

CNA (LOCAL) TRANSPORTATION MANAGEMENT
STUDENT TRANSPORTATION

If a district requests funding to transport students who live in hazardous areas within two miles of the school, the TEA Transportation Allotment Handbook requires board policy identifying the hazardous conditions that exist within two miles of the campus as well as the specific hazardous areas.

Policy Service records indicate that your district does not have policy language on this topic. **If your district requests funding to transport students who live in hazardous areas within two miles of the school, please contact your policy consultant about the local board policy requirements.**

CRE (LEGAL) INSURANCE AND ANNUITIES MANAGEMENT
WORKERS' COMPENSATION

An existing statutory provision has been added to this legally referenced policy on workers' compensation, allowing the board to cover as an employee under workers' compensation a board member or paid election worker. See OPTIONAL COVERAGES on page 1.

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

In April 2012, the Equal Employment Opportunity Commission (EEOC) issued updated guidance regarding the role of arrest and conviction records in employment decisions, available at http://www1.eeoc.gov/laws/guidance/arrest_conviction.cfm?renderforprint=1. The guidance indicates that, even if state law or local policy requires automatic exclusion from employment for a particular offense, a district may not refuse to hire a person who has been convicted of an offense listed in state law or local policy unless the district has determined that its decision is job-related and consistent with business necessity. This local policy is recommended for inclusion in the district's policy manual to address the EEOC guidance.

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The policy text included for your consideration reflects this process by explaining at DISQUALIFYING OFFENSES that all district positions have the potential for contact with students and that the district shall disqualify from employment a person whose criminal history indicates that the person poses a threat to students or employees. This language provides a basis for determining that the exclusion of a candidate for these offenses, which would include the state law offenses that make a person ineligible to work in a school district, are job-related and a business necessity. The policy language also provides that consistent with business necessity the district shall disqualify a person whose criminal history is otherwise inconsistent with the job duties of the position. This provision could apply, for example, if a candidate with a conviction for money laundering applies for a position as the district's chief financial officer.

Reaching the conclusion that a decision to disqualify a candidate is job-related and consistent with business necessity will generally require an INDIVIDUALIZED ASSESSMENT of each final candidate's criminal history, taking into account a variety of factors, as listed in the policy.

The EEOC guidance states that an employment decision based solely on an arrest, without further justification, is not job-related and consistent with business necessity; therefore, the enclosed policy language states that the district shall not disqualify a person based solely on an ARREST. However, as permitted by the guidance, the district may base the employment decision on the conduct underlying the arrest if the conduct makes the person unfit for the job position in question.

Also included in the policy text is a reminder of the legal requirement to provide SBEC NOTIFICATION if a candidate who is certified by SBEC has a reported criminal history.

For further information, TASB Legal Services has published an FAQ addressing Criminal History Reviews of District Employees and Volunteers, including the EEOC guidance, at http://www.tasb.org/services/legal/esource/personnel/pers_emp_requirement.aspx#Criminal_Background_Checks. Corresponding administrative regulations will be included in Update 44 to the *TASB Regulations Resource Manual*, scheduled for release in early July.

CREDIT HISTORY checks as part of the hiring process are also addressed in this policy. A recommended provision explains that the district shall only obtain credit history checks when the person's credit history is related to the position. The district must comply with the Fair Credit Reporting Act before obtaining credit history.

Please note: DH(LOCAL), not included in this update, addresses changes in criminal history for current employees.

DECA (LEGAL) LEAVES AND ABSENCES FAMILY AND MEDICAL LEAVE

Changes to this legally referenced policy addressing the Family and Medical Leave Act (FMLA) are based on revised Department of Labor (DOL) rules, published on February 5, 2013. Provisions were moved within the rules, resulting in several citation changes. In addition, at QUALIFYING EXIGENCY on page 3, the amended rules provide that an employee may take qualifying exigency leave for *parental care*. The DOL has published Frequently Asked Questions, available at http://www.dol.gov/whd/fmla/2013rule/militaryFR_FAQs.htm#3. The FAQs explain that an employee who is a military member can take exigency leave for certain activities related to the care of the employee's parent who is incapable of self-care, such as admitting or transferring a parent to a new care facility or attending meetings with staff at a care facility, if those activities arise from the employee's covered active duty.

Although not detailed in the policy, the rules also revised the definition of *covered servicemember* referred to at QUALIFYING REASONS FOR LEAVE at item 6 on page 3 to include servicemembers who are no longer on active military service, which would include certain veterans. The change applies to military caregiver leave.

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In addition to the changes from the DOL rules, we have made a correction at INTERMITTENT OR REDUCED LEAVE SCHEDULE on page 6 and added a provision on page 19 at RECORDS explaining that records and documents created for FML purposes that contain family medical history or genetic information must be maintained in accordance with the confidentiality requirements of the Genetic Information Nondiscrimination Act (GINA).

**DFAB (EXHIBIT) PROBATIONARY CONTRACTS
TERMINATION AT END OF YEAR**

This exhibit addresses notice of the board's decision to terminate an employee's probationary contract at the end of the contract period. The recommended revision to this exhibit adds a form for district staff to document how the notice of termination was delivered to the employee, in accordance with legal provisions requiring an attempt at hand delivery.

**DPB (LOCAL) PERSONNEL POSITIONS
SUBSTITUTE, TEMPORARY, AND PART-TIME POSITIONS**

This local policy is recommended for deletion from the district's policy manual as it no longer matches the practices of many districts. The district HR staff is usually responsible for accepting applications from substitutes and handling the other administrative details of employment, such as ensuring that the district has the correct documents on file. In addition, many districts use an electronic system to track and call substitutes for assignments. Pay for substitutes should be addressed along with pay for other employees in the compensation plans adopted by the board, as described in DEA(LOCAL), which is not included in this update.

E (LEGAL) INSTRUCTION

We have changed the title of EKBA to English Language Learners/LEP Students to reflect new terminology from state rules.

See the explanatory note for EKBA below for further information.

**EHBE (LEGAL) SPECIAL PROGRAMS
BILINGUAL EDUCATION/ESL**

Amendments effective March 14, 2013, moved Administrative Code rules addressing LEP STUDENTS AND STATE ASSESSMENTS, reflected on page 10, from Subchapter A to Subchapter AA in 19 TAC Chapter 101.

**EHBI (LEGAL) SPECIAL PROGRAMS
ADULT AND COMMUNITY EDUCATION**

An amendment to the Administrative Code effective February 28, 2013, explains that a district shall not charge TUITION AND FEES for adult education unless statutorily authorized to do so. See page 2.

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EHDE (LEGAL) ALTERNATIVE METHODS FOR EARNING CREDIT DISTANCE LEARNING

Extensive revisions to this legally referenced policy on distance learning are from new Administrative Code rules on the Texas Virtual School Network (TxVSN), effective February 27, 2013.

The rules clarify that the TxVSN is comprised of two components—the online school (OLS) program and the statewide course catalog.

The rules provide detail for a school district to operate an ONLINE SCHOOL PROGRAM, which is a full-time, virtual instructional program for students in grades 3–12.

Provisions have been added at PROVIDER DISTRICTS beginning on page 2 to specify eligibility standards for a school district to serve as an OLS or as a statewide course catalog provider and to explain GENERAL REQUIREMENTS for both types of provider districts.

On page 4, new text reflects that an OLS may offer PROVISIONAL ENROLLMENT to a student for ten school days under certain circumstances.

Beginning on page 5, we have added provisions addressing student ENROLLMENT, ADVANCEMENT, AND WITHDRAWAL and explaining COMPULSORY ATTENDANCE for students taking an electronic course in an OLS program or the statewide course catalog.

A new provision at STUDENT ASSESSMENT on page 8 clarifies that districts participating in the OLS program are included in the state's academic accountability system.

At COURSE COST, the rules clarify when a district may charge students the *course cost* rather than a *fee*, and specify that the nominal fee that may be charged in certain circumstances may not exceed \$50.00. The provider district will receive no more than 70 percent of the course cost prior to the student successfully completing the course and the remaining 30 percent after the student successfully completes the course.

The rules also add considerable detail on the requirements for EDUCATORS OF ELECTRONIC COURSES and the standards for REVOCATION of a district's right to participate in the TxVSN, beginning on page 9.

EIF (LEGAL) ACADEMIC ACHIEVEMENT GRADUATION

Amendments to the Administrative Code effective May 29, 2012, and March 14, 2013, resulted in a revision on page 1 to refer to successful completion of *state-required* rather than *exit-level* assessments.

On page 2, the rule amendments clarify that to receive a high school diploma, a student receiving SPECIAL EDUCATION services must successfully complete the requirements of his or her IEP, including performance on a state assessment required for graduation. However, a student's ARD committee shall determine if the student must meet satisfactory performance on an assessment for graduation.

Citations have been updated throughout.

EKB (LEGAL) TESTING PROGRAMS STATE ASSESSMENT

Amendments to the Administrative Code effective March 14, 2013, resulted in multiple changes to this legally referenced policy on state assessment. Significant substantive changes include:

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- Modification of the superintendent's duties regarding test ADMINISTRATION on page 2.
- Clarification of the EXCEPTION from state testing requirements for a student in grades 3–8 who is enrolled in a course above the student's enrolled grade level. See page 4.
- Additional provisions beginning on page 5 addressing END-OF-COURSE ASSESSMENTS for students enrolled in the MINIMUM or RECOMMENDED OR ADVANCED/DISTINGUISHED ACHIEVEMENT HIGH SCHOOL PROGRAM, EXCEPTIONS to end-of-course (EOC) requirements for students who received credit for a course with an EOC assessment prior to enrollment in a Texas district or who completed a course with an EOC assessment prior to the 2011–12 spring administration, and testing requirements for STUDENTS ENROLLED BELOW HIGH SCHOOL LEVEL.
- At SATISFACTORY PERFORMANCE beginning on page 6, additional detail on calculating the CUMULATIVE SCORE and the effect of a student receiving the MINIMUM SCORE.
- Additional provisions on EOC assessment requirements when a student received course credit through credit by examination or is participating in a distance learning, correspondence, or dual-credit course. See ALTERNATIVE METHODS FOR EARNING CREDIT on page 7.
- Additional provisions explaining testing requirements for students receiving SPECIAL EDUCATION services and application of the 15 percent course grade requirement when a student is administered an alternate form of an EOC assessment.
- Clarification of the 15 percent course grade requirement at IMPACT ON GRADES on page 8.
- Clarification that an EOC assessment RETAKE will count toward the cumulative score only if the retake is higher than the student's previous assessment score and that a student is not required to retake an assessment if the student failed the course but achieved at least a minimum score on the assessment.
- An additional provision on student REQUESTS TO TAKE AN EOC ASSESSMENT on page 9.
- Deletion of a provision exempting foreign exchange students from exit-level testing requirements if the student has no intention of receiving a Texas high school diploma.
- Reorganization and updating of the provisions on EXIT-LEVEL ASSESSMENTS.

A new Administrative Code rule effective March 26, 2012, adds detail on test SECURITY, clarifies that viewing a test before, during, or after an assessment when not authorized to do so is a violation of TEA's Test Security Supplement, and adds new provisions referring to the criminal PENALTIES that could result from release or disclosure of confidential test content and the SBEC's authority to take action against an educator who fails to cooperate with a TEA investigation. See pages 11–13.

Citations have been updated throughout.

EKBA	(LEGAL)	STATE ASSESSMENT ENGLISH LANGUAGE LEARNERS/LEP STUDENTS
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This legally referenced policy addressing English language learners has been reworked as a result of rule changes effective December 22, 2011, and March 27, 2013. The changes include:

- Throughout the policy, the text has been adjusted to reflect the terminology in the rules, which use both English language learner and student of limited English proficiency (LEP).
- Updated DOCUMENTATION requirements for the Language Proficiency Assessment Committee (LPAC) now include the decisions and justifications related to assessments.

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- DEFINITIONS have been grouped at the beginning of the policy, beginning on page 1, and the definition of “immigrant” has been deleted.
- New details on TESTING IN GRADES 3–8 include when a student may be administered the Spanish-version assessment or the linguistically accommodated English version of the math, science, or social studies assessments. Certain unschooled asylees or refugees shall be granted an assessment exemption from testing in grades 3–8 during the first school year the student is enrolled in a U.S. public school. See page 3.
- New detail has been added on exemptions for English language learners regarding END-OF-COURSE ASSESSMENTS.
- On page 4 is a new requirement for the LPAC to document in the student’s permanent record the reason an English language learner was granted a POSTPONEMENT from exit-level testing.
- English language learners who had inadequate schooling outside the United States continue to be eligible for LIMITED LEP EXEMPTIONS. During a student’s second and third years of enrollment, the student may be granted an exemption if the LPAC determines that the student lacks sufficient English proficiency for the assessment to measure academic progress.
- The LPAC may still administer a Spanish assessment to NON-LEP STUDENTS enrolled in a bilingual program if the LPAC determines that the assessment is the most appropriate measure of academic progress. However, the rules deleted the previous statement that the student could not be administered the Spanish assessment for longer than three years.
- On page 6, text at SPECIAL EDUCATION clarifies that the ARD committee, in conjunction with the LPAC, shall determine and document allowable testing accommodations and whether the student qualifies to be administered an alternate assessment instrument.
- Certain English language learners receiving special education services who also meet the definition of an unschooled asylee or refugee shall be granted an assessment exemption from testing in grades 3–8 during the first school year the student is enrolled in a U.S. public school.

FD (LEGAL) ADMISSIONS

At STUDENTS IN FOSTER CARE on page 5, we have added a provision from the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, which addresses educational stability for students in foster care, specifically when there are changes in placement. One of the requirements of the Act, as added to this legally referenced policy, is for the Department of Family and Protective Services to coordinate with the school district to ensure that the child remains in the school in which the child is enrolled at the time of placement, if remaining is in the child’s best interest.

Under Texas law, students in grades 9–12 who are placed in foster care must be allowed to finish high school at the school where the child was enrolled at the time of the placement without payment of tuition. Students in other grades who move out of the district due to foster care placement will be required to submit a transfer request to remain in the original district. For districts that wish to give special consideration to these transfer requests in an effort to maintain educational stability of the student, TASB Policy Service has sample policy text available. If you would like to review the sample policy provisions, please contact your policy consultant.

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FFAB (LEGAL) WELLNESS AND HEALTH SERVICES
IMMUNIZATIONS

At the Note on page 1, we have replaced the link to the chart of *Texas Minimum State Vaccine Requirements for Students Grades K–12* with a link to the Texas Department of State Health Services web page on immunization requirements, which provides additional information for districts.

FFAD (LEGAL) WELLNESS AND HEALTH SERVICES
COMMUNICABLE DISEASES

Provisions on student EXCLUSION from attendance for communicable conditions and diseases have been revised to better reflect Administrative Code rules, which require a principal to exclude a child having or suspected of having a COMMUNICABLE CONDITION, as listed in the Administrative Code, or a COMMUNICABLE DISEASE, as designated by the Commissioner of Health. A principal may not readmit a student who has been excluded because of a communicable disease until the listed readmission criteria are met.

Citations throughout this legally referenced policy and the link to the Department of State Health Services information on communicable diseases in the Note on page 2 have been updated based on amended Administrative Code rules, effective December 20, 2012.

FL (LEGAL) STUDENT RECORDS

Two items have been added to the list of persons to whom a district may release student personally identifiable information without parental consent at ACCESS BY OTHER PERSONS, beginning on page 7:

- Item 9, on page 10, is an existing statutory provision that allows release to the Secretary of Agriculture or representatives from the Food and Nutrition Service for the purpose of conducting program monitoring, evaluations, and performance measurements of districts under the National School Lunch Act or the Child Nutrition Act.
- Item 10 comes from the Uninterrupted Scholars Act of 2013, effective January 14, 2013. The Act amends FERPA and, as reflected in the policy text, allows a district to release information to certain individuals when a state agency has responsibility for the care and protection of the student. In this situation, release can be made to a caseworker or other state or local child welfare agency representative who has the right of access to a student's case plan.

Also from the Uninterrupted Scholars Act is a new provision on page 12 allowing a district to release SUBPOENAED RECORDS without notifying the parent if the parent is party to a court proceeding involving child abuse and neglect or dependency, and the court order is issued as a result of those proceedings.