

# Localized Policy Manual

## *Update 85*

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West Orange-Cove CISD

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Localized Update 85 incorporates revised federal regulations for three significant laws: the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and the Family Educational Rights and Privacy Act (FERPA). The Update includes a redeveloped elections policy that has been organized into three main sections to follow the flow of the election process. The Update also addresses numerous other issues, including use of district vehicles and new material from commissioner rules on DAEPs, master teacher grant programs, and criminal history checks of employees who work for entities that contract with the district.

Please bear in mind that the (LEGAL) policies reflect the ever-changing legal context for governance and management of the district. They should NOT be adopted but, rather, should inform local decision making. The (LOCAL) policy recommendations in this update will need close attention by both the administration and the board to ensure that they reflect the practices of the district and the intentions of the board. Board action is needed to adopt, revise, or repeal (LOCAL) policy.

In addition to the updated policies, your Localized Update 85 packet contains:

- **INSTRUCTIONS** . . . providing specific, policy-by-policy directions on how this update, if accepted as prepared, should be incorporated into your Localized Policy Manual.
- **EXPLANATORY NOTES** . . . summarizing changes to the policies in each code. Please note that, where appropriate, the Explanatory Notes ask you to **verify that a particular policy reflects your current practice and to advise us of changes needed** so that our records and your manual accurately track the district's practice.

***Vantage Points—A Board Member's Guide to Update 85*** may be found in the separately wrapped package accompanying this packet. ***Vantage Points*** offers a highly summarized overview of the update and is intended to provide local officials a first glance at the scope of the update—as a prelude to studying the detailed Explanatory Notes and policy text within the packet. **Please distribute the enclosed copies of *Vantage Points* to your board members** at the earliest possible opportunity, preferably with their review copies of this update.

Update 85 policies are so identified in the lower left-hand corner of each policy page. If you have any questions concerning this Update, please call your policy consultant/analyst, Erin Oehler, at 800-580-7529 or 512-467-0222.

## Regarding board action on Update 85 . . .

- Board action on Localized Update 85 must occur within a properly posted, open meeting of the board and may be addressed on the agenda posting as “Policy Update 85, affecting (LOCAL) policies (see attached list).” Policy On Line districts have access to a list of the (LOCAL) policies included in the update through the Local Manual Updates application in myTASB. Other districts may generate a list of the (LOCAL) policy codes added, revised, or deleted (**and the titles/subtitles of those policies**) using the Instruction Sheet as a guide and attach that list to the posting. BoardBook compilers should use “Policy Update 85, affecting (LOCAL) policies” as the agenda item and, as agenda sub-items, the code and name of each of the (LOCAL) policies affected by the update.
- A suggested motion for board action on Localized Update 85 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 85 [with the following changes:]”*
- The board’s action on Localized Update 85 must be reflected in board minutes. The Instruction Sheet—annotated to reflect any changes made by the board—and the Explanatory Notes for the update should be filed with the minutes where they make up the authoritative record of your board’s actions. Include a copy of new, replaced, or rescinded (**LOCAL**) policies.
- In constructing the separate historical record of the manual, the emphasis is on tracking the history of individual policies. For guidance on maintaining this record, please refer to the **Policy Administrator’s Guide** at [http://www.tasb.org/services/policy/mytasb/admin\\_guide/index.aspx](http://www.tasb.org/services/policy/mytasb/admin_guide/index.aspx).

## Regarding manual maintenance and administrative regulations . . .

- **Notify your policy consultant/analyst of any changes made by the board so that Policy Service records—forming the basis for subsequent updating recommendations—exactly mirror your manual.**
- The update should be incorporated into each of the district’s Localized Policy Manuals as soon as practicable. If the district uses *Policy On Line*, you will need to notify us of the board’s action on Update 85 so that your district’s Localized Policy Manual as it appears on TASB’s Web server can be updated. *Policy On Line* staff may be reached by phone (800-580-7529 or 512-467-0222), fax (512-467-3618, using the tan form enclosed), e-mail ([pol-support@tasb.org](mailto:pol-support@tasb.org)), or Internet feedback form (<http://www.tasb.org/policy/pol/private/polfdbk.html>).
- Administrative procedures and documents—including formal (REGULATIONS), handbooks, and guides—that may be affected by Update 85 policy changes should be inspected and revised by the district as needed.

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**PLEASE NOTE:** This Localized Update packet and the Update 85 **Vantage Points** may not be considered as legal advice and are not intended as a substitute for the advice of the board’s own legal counsel.

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# Instruction Sheet

## TASB Localized Policy Manual Update 85

District      West Orange-Cove CISD

<b>Code</b>	<b>Action To Be Taken</b>	<b>Note</b>
B      (LEGAL)	Replace table of contents	Revised table of contents
BBA    (LEGAL)	Replace policy	Revised policy
BBB    (LEGAL)	Replace policy	Revised policy
BBB    (EXHIBIT)	Replace exhibit	Revised exhibit
BBBB   (LEGAL)	ADD policy	See explanatory note
BE      (LEGAL)	Replace policy	Revised policy
BQ      (LEGAL)	Replace policy	Revised policy
C       (LEGAL)	Replace table of contents	Revised table of contents
CH      (LEGAL)	Replace policy	Revised policy
CJA     (LEGAL)	ADD policy	See explanatory note
CL      (LEGAL)	Replace policy	Revised policy
CNA     (LEGAL)	Replace policy	Revised policy
CNB     (LOCAL)	Replace policy	Revised policy
CQ      (LEGAL)	Replace policy	Revised policy
CQ      (LOCAL)	Replace policy	Revised policy
CRE     (LOCAL)	DELETE policy	See explanatory note
CS      (LEGAL)	Replace policy	Revised policy
CV      (LEGAL)	Replace policy	Revised policy
D       (LEGAL)	Replace table of contents	Revised table of contents
DAA     (LEGAL)	Replace policy	Revised policy
DBAA   (LEGAL)	Replace policy	Revised policy
DBB     (LOCAL)	Replace policy	Revised policy
DEA     (LEGAL)	Replace policy	Revised policy
DEAA   (LEGAL)	Replace policy	Revised policy
DEC     (LEGAL)	Replace policy	Revised policy
DECA   (LEGAL)	ADD policy	See explanatory note
DECB   (LEGAL)	ADD policy	See explanatory note
EHBA   (LEGAL)	Replace policy	Revised policy
EHBA   (LEGAL)	Replace policy	Revised policy
EHBA   (LEGAL)	Replace policy	Revised policy
EHBK   (LEGAL)	Replace policy	Revised policy
EKC     (LEGAL)	Replace policy	Revised policy

Instruction Sheet  
TASB Localized Policy Manual Update 85

FB	(LEGAL)	Replace policy	Revised policy
FL	(LEGAL)	Replace policy	Revised policy
FL	(LOCAL)	Replace policy	Revised policy
FOCA	(LEGAL)	Replace policy	Revised policy
GBA	(LEGAL)	Replace policy	Revised policy
GRA	(LOCAL)	Replace policy	Revised policy

# Explanatory Notes

## TASB Localized Policy Manual Update 85

District: West Orange-Cove CISD

B (LEGAL) LOCAL GOVERNANCE

The B section table of contents has been revised to reflect the addition of a new code, BBBB, on election ethics.

BBA (LEGAL) BOARD MEMBERS  
ELIGIBILITY/QUALIFICATIONS

At 'RESIDENCE' DEFINED, newly added text from the Election Code clarifies that a person does not establish residency in a place to which the person comes for temporary purposes without an intention of making that place the person's home. In a new **Note** at the end of that section, we have added a provision from case law, specifying that residency should be determined by a court of law.

BBB (LEGAL) BOARD MEMBERS  
ELECTIONS

In order to better align this policy with the flow of the elections process, provisions have been reorganized into three main sections: Elections Generally, Conducting Elections, and Post-Election Procedures. We have included a table of contents outlining the main topics for ease of use and have added margin notes throughout. While many of the provisions in this policy remain unchanged, revisions and additions are as follows:

- At CHANGING METHOD OF ELECTION, revisions clarify that the board may by resolution order that trustees be elected at-large by position or place.
- A new provision specifies that the board is responsible for the ELECTION ORDER.
- Notice requirements for special elections have been added at ELECTION NOTICE, as well as details about the required NOTICE TO THE COUNTY CLERK and the NOTICE TO THE ELECTION JUDGE.
- At ELECTION JUDGES AND CLERKS, we have added a reference to Chapter 32 of the Election Code, which covers selection and duties of election judges and clerks.
- We have added a general reference to Title 8 of the Election Code, which includes provisions about the selection and use of VOTING SYSTEMS.
- We have also added a general reference to Title 6 of the Election Code, which includes general provisions about CONDUCTING ELECTIONS.
- Finally, at TIE VOTES we have deleted unnecessary detail.

Several provisions addressing election ethics were moved to a new code, BBBB(LEGAL). See the explanatory note for that code below.

BBB (EXHIBIT) BOARD MEMBERS  
ELECTIONS

We have added to this exhibit a link to the Secretary of State Elections Division Web site for information on election forms, calendars, and other school board election resources.

## Explanatory Notes

### TASB Localized Policy Manual Update 85

#### BBBB (LEGAL) BOARD MEMBERS ELECTION ETHICS

We have created this new code to address provisions on ethics and board elections. These provisions were previously at BBB(LEGAL).

#### BE (LEGAL) BOARD MEETINGS

Two recent attorney general opinions have been added to this policy:

- On page 1, GA-689 concluded that changes to the Education Code from the last legislative session did not change majority voting standards. The common-law voting standard still applies to school boards—a motion will pass if a majority of those present and voting, excluding abstentions, votes for the motion.
- At SPECIFICITY OF AGENDA/NOTICE, GA-668 reinforces past attorney general opinions that the agenda must list the topics of a report or update by staff or a member of the board; “superintendent report” and like agenda items are not specific enough to satisfy the Texas Open Meetings Act requirements.

#### BQ (LEGAL) PLANNING AND DECISION-MAKING PROCESS

TEA approved comprehensive new rules on DAEPs, effective December 14, 2008. The rules require a district that participates in a SHARED SERVICES ARRANGEMENT FOR DAEP SERVICES to include the performance of DAEP students in the district- and campus-level improvement plans. The rules identify certain objectives that must be addressed in the plans.

Other provisions from the new rules have been included at FOCA(LEGAL), also included in this update. See the explanatory note below.

#### C (LEGAL) BUSINESS AND SUPPORT SERVICES

The C section table of contents has been revised to reflect the renaming of code CJ to Contracted Services and the addition of a new code, CJA, Contracted Services: Criminal History.

#### CH (LEGAL) PURCHASING AND ACQUISITION

Provisions on CRIMINAL HISTORY have been moved to CJA(LEGAL), a new code addressing criminal history checks of employees who work for entities that contract with the district. [See the explanatory note for CJA(LEGAL), below.]

## Explanatory Notes

### TASB Localized Policy Manual Update 85

#### CJA (LEGAL) CONTRACTED SERVICES CRIMINAL HISTORY

New rules from TEA, effective November 20, 2008, address CRIMINAL HISTORY checks of individuals who work for entities that contract with the district. The new rules and existing provisions on criminal history checks of contractors from CH(LEGAL), CNA(LEGAL), and CV(LEGAL) have been moved to this new code for ease of reference. The rules expand CONTRACTOR RESPONSIBILITIES and DISTRICT RESPONSIBILITIES and add definitions for “continuing duties related to contracted services,” “covered contract employee,” “direct contact with students,” and “service contractors.”

Service contractors:

- Must obtain criminal history information on covered contract employees. As indicated in the policy, different provisions apply depending on when the employee was offered employment. If an employee or applicant has or will have continuing duties related to the contracted services and has or will have direct contact with students, the contractor will need to do a criminal history check.
- Must certify to the school district that the criminal history check was done.
- Must certify that they will take reasonable steps to make sure conditions don't change such that a non-covered employee would become a covered employee during the time contracted services are provided.
- Upon request, must provide the district with information necessary for the district to obtain criminal history information for covered employees.
- May not permit covered contract employees to provide services at a school if the employee has a disqualifying conviction under Education Code 22.085.

School districts:

- May obtain criminal history record information on covered contract employees.
- Must ensure that service contractors have obtained required criminal history record information for covered contract employees.
- May not permit covered contract employees to provide services at a school if the employee has a disqualifying conviction under Education Code 22.085. Districts may adopt stricter standards for disqualification.
- Must notify SBEC if they find out that a certified covered contract employee has a reported criminal history.

#### CL (LEGAL) BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT

Effective December 19, 2008, the Virginia Graeme Baker Pool and Spa Safety Act requires a swimming pool or spa that is open to the public generally to meet certain drain cover standards (see page 4). If you have any questions about whether this Act applies to operation of the district's swimming pool, please contact TASB Legal Services or the district's attorney.

## Explanatory Notes

### TASB Localized Policy Manual Update 85

#### CNA            (LEGAL)            TRANSPORTATION MANAGEMENT STUDENT TRANSPORTATION

Provisions on CRIMINAL HISTORY have been moved to CJA(LEGAL), a new code addressing criminal history checks of employees who work for entities that contract with the district. [See the explanatory note for CJA(LEGAL), above.]

#### CNB            (LOCAL)            TRANSPORTATION MANAGEMENT DISTRICT VEHICLES

We have revised this policy to include an exception that allows the superintendent or designee to authorize use of district vehicles by certain entities in emergencies or disasters.

The superintendent or designee is still required to develop administrative regulations governing SCHOOL-RELATED USE, which should address all school vehicles. We have deleted the provision in your policy addressing who may drive vehicles other than buses. Such details are better suited for administrative regulations.

For sample regulations on district vehicles, see the ***TASB Regulations Resource Manual***, available through myTASB.

If your district allows nonschool use of district vehicles other than in emergency situations, please contact your policy consultant for appropriate text.

#### CQ            (LEGAL)            ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

The Children's Internet Protection Act was amended effective October 10, 2008. The amendments require school districts participating in the E-Rate program to educate students regarding appropriate online behavior on social networking sites and chat rooms and to teach students about cyberbullying. Districts must certify to the FCC that these education requirements are part of their Internet safety policies. [See the explanatory note for CQ(LOCAL), below.]

#### CQ            (LOCAL)            ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

Amendments to the Children's Internet Protection Act now require school districts participating in the E-Rate program to educate students regarding cyberbullying and appropriate online behavior on social networking sites and chat rooms. This new text has been added at INTERNET SAFETY, item 5.

Please review this policy closely to confirm that the provisions accurately reflect the district's practices regarding its electronic communications system. For sample regulations on electronic communication systems, see the ***TASB Regulations Resource Manual***, available through myTASB.

#### CRE            (LOCAL)            INSURANCE AND ANNUITIES MANAGEMENT WORKERS' COMPENSATION

The district's decision to allow an employee on workers' compensation to use available paid leave in partial amounts to supplement workers' compensation wage benefits is already included in DEC(LOCAL), making this policy unnecessary. Please delete this CRE(LOCAL) policy, no longer in use.



## Explanatory Notes

### TASB Localized Policy Manual Update 85

#### CS (LEGAL) FACILITY STANDARDS

Commissioner rules regarding facility standards were amended effective September 24, 2008. As a result, we have updated citations and added existing text listing information that must be included in educational specifications for new school facilities or major space renovations. These requirements as listed on page 2 of the policy are:

- Number of students;
- A list of any specialized classrooms or major support areas, noninstructional support areas, outdoor learning areas, outdoor science discovery centers, living science centers, or external activity spaces;
- A schedule of the estimated number and approximate size of all instructional and instructional support spaces included in the facility;
- Estimated budget for the facility project;
- School administrative organization;
- Provisions for outdoor instruction;
- Hours of operation that include the instructional day, extracurricular activities, and any public access or use;
- The safety of students and staff in instructional programs, such as science and vocational instruction; and
- The overall security of the facility.

#### CV (LEGAL) FACILITIES CONSTRUCTION

Provisions on CRIMINAL HISTORY have been moved to CJA(LEGAL), a new code addressing criminal history checks of employees who work for entities that contract with the district. [See the explanatory note for CJA(LEGAL), above.]

On page 4, we have added text from the Texas Administrative Code to clarify that only a REGISTERED ARCHITECT may prepare architectural plans or specifications for certain construction projects, even when a registered professional engineer rather than a registered architect is designated as the prime design professional on the construction project.

#### D (LEGAL) PERSONNEL

The D section table of contents has been revised to reflect the addition of two new codes: DECA, on Family and Medical Leave, and DECB, on Military Leave.

# Explanatory Notes

## TASB Localized Policy Manual Update 85

### DAA (LEGAL) EMPLOYMENT OBJECTIVES EQUAL EMPLOYMENT OPPORTUNITY

At NONDISCRIMINATION on page 1, we have added an existing provision from the Texas Labor Code prohibiting discrimination on the basis of genetic information.

Other changes to the policy result from the ADA (Americans with Disabilities Act) Amendments Act of 2008 (ADAAA), which was effective September 25, 2008. For a list of significant changes to the ADA, see [http://www.tasb.org/services/hr\\_services/documents/ADAAA\\_summary\\_of\\_cha.pdf](http://www.tasb.org/services/hr_services/documents/ADAAA_summary_of_cha.pdf). This policy has been revised as follows:

- A new paragraph on page 3, DISABILITY DISCRIMINATION, repeats the prohibition against discrimination on the basis of disability. The new law clarifies that an individual cannot bring a reverse disability discrimination claim—when an individual without a disability alleges he was discriminated against because of his lack of a disability. Also at this margin note is a requirement for each district receiving assistance under the IDEA to make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted by the IDEA.
- On page 4, we have created separate definitions for “disability” and “major life activities” to accommodate the significant changes to both definitions, which expand the number of persons protected from discrimination. The Congressional findings and purposes of the ADAAA reflect Congress’s intent to apply a broad scope of protection to disabled individuals. Congress stated that the focus should be on whether the employer complied with its obligations under the Act and not on an extensive analysis of whether the employee’s impairment constitutes a disability.
- A new paragraph on page 6 prohibits the use of VISION STANDARDS AND TESTS based on a person’s uncorrected vision unless a district can demonstrate that the vision standard is job related and consistent with business necessity.

To review changes to Section 504 of the Rehabilitation Act brought about by the ADAAA, see the explanatory note for FB(LEGAL) below.

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

Districts that are “users” of consumer reports, which include employee criminal background checks obtained from private agencies, must comply with new rules under the Fair and Accurate Credit Transactions Act (FACTA). Under the new rules, consumer reporting agencies must notify districts that are “users” if there is a discrepancy between the address that the consumer reporting agency has on file for the consumer and the address the district provided. The district must have “policies and procedures” to respond to these address discrepancy notices. Because these procedures are administrative, we recommend that they be included in administrative regulations, rather than board adopted local policy. Examples given in the rules of ways the district may confirm that an address is correct include:

- Verifying the address with the consumer;
- Reviewing its own records to verify the address of the consumer;
- Verifying the address through third-party sources; or
- Using other reasonable means.

## Explanatory Notes

### TASB Localized Policy Manual Update 85

#### DBB (LOCAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS MEDICAL EXAMINATIONS AND COMMUNICABLE DISEASES

As mentioned in the explanatory note for DAA(LEGAL) above, the Americans with Disabilities Act was amended by the ADA Amendments Act (ADAAA) of 2008. We have made significant revisions to this policy to reflect the district's obligations under the ADAAA.

As in the current policy, the district may require current employees to undergo a medical examination. The revisions clarify the circumstances under which the superintendent or designee may require an examination—when information from the employee, the employee's supervisor, or other sources indicates the employee has an impairment that interferes with his or her ability to perform essential job functions or poses a direct threat to the health or safety of the employee or others. A communicable disease may constitute a direct threat to health or safety.

Provisions regarding the district's authority to designate the physician and regarding payment for the cost of the examination remain unchanged from the current policy. Revised text now allows the district to place the employee on paid administrative leave while evaluating the results of the examination.

New provisions explain the steps the superintendent or designee should follow upon receiving the results of the examination:

- The superintendent or designee must first determine whether the employee has an impairment and whether the impairment actually interferes with the employee's performance of essential job functions or poses a direct threat to health or safety.
- If so, the superintendent or designee must determine, in accordance with DAA(LEGAL), whether the employee has a disability that requires reasonable accommodation. As reflected in the policy, federal guidelines state that reasonable accommodation may include granting of additional unpaid leave.
- If the superintendent or designee determines that the employee does not have a disability requiring reasonable accommodation, the district must consider eligibility for leave, in accordance with DEC(LOCAL).

We have deleted the provision allowing termination when an employee has used all available leave, as this decision is governed by DEC(LOCAL).

In addition to the changes prompted by the ADAAA, we have revised the provisions concerning PLACEMENT ON TEMPORARY DISABILITY. Separate provisions apply depending on whether the employee requests to be placed on temporary disability leave or the leave is involuntary. In the case of an involuntary placement, the Education Code requires the board to determine whether the condition interferes with the performance of regular duties. So that the board has appropriate information on which to base its decision, the policy requires the superintendent to make a recommendation to the board.

If your district requires new employees to provide evidence of a tuberculosis test, please contact your policy consultant for appropriate policy changes.

**Please note:** We have retained unchanged your locally developed text at OTHER REQUIREMENTS regarding tuberculosis screening and medical examinations for staff and volunteers involved in the Head Start program.

## Explanatory Notes

### TASB Localized Policy Manual Update 85

#### DEA (LEGAL) COMPENSATION AND BENEFITS SALARIES AND WAGES

Under new rules from TEA, eligible employees must annually elect whether to use the SUPPORT STAFF COMPENSATION of \$500 for full-time employees and \$250 for part-time employees as health-care supplementation. The rules clarify that, to be eligible for the supplement, the employee must be a participating member of TRS and must have made a written election. The rules also define “full-time” and “part-time” for purposes of the supplement.

At EXEMPT EMPLOYEES, beginning on page 5, we have added considerable detail from existing law to help districts determine whether ACADEMIC ADMINISTRATIVE PERSONNEL and TEACHERS are exempt employees under the Fair Labor Standards Act (FLSA). In addition, since administrative personnel must meet a salary threshold to be classified as exempt employees, information about how leave resulting in a reduction in pay affects the salary determination has been added to the policy.

#### DEAA (LEGAL) COMPENSATION AND BENEFITS INCENTIVES AND STIPENDS

This policy has been revised to reflect new rules from the commissioner on the District Awards for Teacher Excellence (DATE) program and master teacher grant programs.

With respect to the DATE program, in accordance with the commissioner rules, we have:

- Added a general description of the program on page 2;
- At APPLICATION, added material on submission of the local awards plan and grant application; and
- Added text regarding the EXCLUSION OF CERTAIN TEACHERS and AWARD AMOUNTS, neither of which may be appealed to the commissioner.

The text at MASTER TEACHER GRANT PROGRAMS, beginning on page 3, has been extensively revised based on new commissioner rules effective April 8, 2008. The new rules more closely track the Texas Education Code provisions, including:

- The requirement to pay stipends at the end of the school year;
- Eligibility rules requiring teachers to be certified as master teachers and to mentor other teachers as required by the district; and
- Deletion of the requirement that a district must pay a stipend for two additional consecutive years to certain teachers.

We have also deleted text formerly at REDUCTION OF STIPEND since these provisions reflect duties of the commissioner. Please note, the new commissioner rules on master teacher grant programs do not address master technology teachers.

## Explanatory Notes

### TASB Localized Policy Manual Update 85

#### DEC (LEGAL) COMPENSATION AND BENEFITS LEAVES AND ABSENCES

The Department of Labor (DOL) issued new regulations, effective January 16, 2009, on the Family and Medical Leave Act (FMLA). The new regulations constitute a major overhaul of the previous federal rules. The DOL reorganized the existing regulations, deleted obsolete provisions, made substantive changes, and adopted new military leave provisions. The final rules, including commentary, encompass over 700 pages of material. The impact of these regulations on the policy manual results in significant revisions to the structure of the leaves and absences material. In general, we have split the material previously at DEC(LEGAL) into three codes: DEC(LEGAL), Leaves and Absences; DECA(LEGAL), Family and Medical Leave; and DECB(LEGAL), Military Leave. See the explanatory notes for those policies below.

Changes at DEC include simplification of text at STATE LEAVE and removal of provisions on the FMLA and military leave, as described above.

**Please note:** The new regulations also impact local leave policy. In response, Policy Service has developed a *Starting Points* policy development toolkit on the leaves and absences policy, DEC(LOCAL). The *Leaves and Absences Starting Points* incorporates changes from the new FMLA regulations and includes other revisions to improve the policy. **Even if your district's practices have not changed, it is essential that the district complete the *Leaves and Absences Starting Points* worksheet so that your policy will have up-to-date text.** You may complete the *Starting Points* electronically, which allows an easy method to track changes and insert unique provisions, or you may complete the hard copy included with this update. The electronic version is available through myTASB at [https://www.tasb.org/services/policy/mytasb/starting\\_points/](https://www.tasb.org/services/policy/mytasb/starting_points/).

#### DECA (LEGAL) LEAVES AND ABSENCES FAMILY AND MEDICAL LEAVE

As a result of the new FMLA regulations, we have reworked existing provisions moved from DEC(LEGAL) and added newly enacted provisions. In doing so we have emphasized provisions from the new regulations that are specific to school districts; provided a general framework of the FMLA rules, with reference to the regulations for details; included provisions on frequently misapplied or misunderstood concepts; and included provisions for concepts that appear in the *Leaves and Absences Starting Points*.

For a description of significant changes to the FMLA, see [http://www.tasb.org/services/hr\\_services/documents/FMLA\\_Summary\\_of\\_Chan1.pdf](http://www.tasb.org/services/hr_services/documents/FMLA_Summary_of_Chan1.pdf).

At ELIGIBLE EMPLOYEE on page 2, we have added a note for districts that do not have any eligible employees, and thus only must comply with the GENERAL NOTICE requirements (see page 10) of the FMLA.

Other new provisions are included as follows:

- At QUALIFYING EXIGENCY on page 3, we have placed the exclusive list of events that are considered to be qualifying exigencies for leave eligibility when a family member is called to active duty.
- At AMOUNT OF LEAVE, MILITARY CAREGIVER LEAVE on pages 3 and 4, we have added details to help districts determine how much leave an employee is entitled to when taking leave for an injured service member, including when a husband and wife are both employed by the same district and when military caregiver leave is combined with regular FMLA leave.
- Existing provisions for when a district transfers an employee on intermittent leave to a different position are on page 5 at TRANSFER TO AN ALTERNATIVE POSITION.

## Explanatory Notes

### TASB Localized Policy Manual Update 85

- A new rule on CALCULATING LEAVE USE when an employee is using intermittent leave is on page 5. The rules previously required leave to be deducted based on the smallest increment the payroll system would allow. Now a district may use the smallest increment in which it deducts leave for other reasons, so long as that increment is no larger than one hour.
- An existing provision on an instructional employee's FAILURE TO PROVIDE NOTICE OF FORESEEABLE LEAVE is on page 6. Under this provision, a district may require the employee to take leave of a particular duration, may transfer the employee to an alternative position, or may require the employee to delay taking leave.
- Additional details have been added on pages 6 and 7 to address LEAVE AT THE END OF A SEMESTER by an instructional employee.
- A new provision from the regulations clarifies that if an employee chooses not to substitute paid leave while on unpaid FML, a district may require the employee to do so in accordance with local policy. This provision has been placed at SUBSTITUTION OF PAID LEAVE on pages 7 and 8.
- A significant new provision on page 8 allows a district to count COMPENSATORY TIME against an employee's FMLA leave.
- Additional details have been added to explain the interaction between the FMLA AND WORKERS' COMPENSATION on page 8.
- Detail was added to address the provision of health insurance during FML. See MAINTENANCE OF HEALTH BENEFITS, PAYMENT OF PREMIUMS, and FAILURE TO PAY PREMIUMS on pages 8 and 9.
- The reinstatement provisions, including provisions addressing pay increases while the employee is on FML, have been revised to include more detail. See pages 9 and 10.
- A new provision now allows a district to disqualify an employee from an attendance bonus if the employee failed to meet the bonus standards because of FML. See PAY INCREASES AND BONUSES on page 10.
- The new regulations made significant changes to the notice and certification requirements as reflected on pages 10–16. These changes result in increased communication between employees and the district before, during, and after FML.
- Provisions addressing an employee's return to work after FML were also revised. A district may now require as part of the employee's FITNESS FOR DUTY CERTIFICATION that the employee provide evidence of ability to perform the essential functions of the job. See page 16.
- Consequences of an employee's FAILURE TO PROVIDE CERTIFICATION are on page 16.
- We have added existing provisions regarding a district's obligation to keep RECORDS pertaining to FML, beginning on page 16.

DECB      (LEGAL)      LEAVES AND ABSENCES  
MILITARY LEAVE

Moved to this policy are unaltered provisions on military leave from DEC(LEGAL).

See the explanatory note for DEC(LEGAL) for information on the reorganization of the leaves and absences provisions in the policy manual.

## Explanatory Notes

### TASB Localized Policy Manual Update 85

#### EHBAA (LEGAL) SPECIAL EDUCATION IDENTIFICATION, EVALUATION, AND ELIGIBILITY

On December 1, 2008, the Department of Education issued final regulations under the Individuals with Disabilities Education Act regarding parental CONSENT TO SERVICES. As reflected on page 5 of this policy, the rules specify the district's obligations if the parent:

- Fails to respond to a request for the initial provision of services;
- Refuses to consent to the initial provision of services; or
- Revokes consent in writing for continued provision of services after services have begun.

#### EHBAC (LEGAL) SPECIAL EDUCATION STUDENTS IN NONDISTRICT PLACEMENT

This policy has been revised to correctly reflect statutory language. When a parent places in private school a disabled child who is then referred to the public school district for evaluation, the district must consider whether it can offer the child FAPE. If the district determines that it *can* offer FAPE, it must develop an individualized services plan, but the district is not responsible for providing educational services to the child.

#### EHBAE (LEGAL) SPECIAL EDUCATION PROCEDURAL REQUIREMENTS

More new material from the IDEA regulations has been added at CONSENT, item 3, explaining that if a parent revokes consent after the child has begun receiving special education services, the district is not required to delete references to the services from the student's educational records.

At COMPLAINT PROCEDURES, on page 5, we have added a reference to the TEA rules on due process hearings.

#### EHBK (LEGAL) SPECIAL PROGRAMS OTHER INSTRUCTIONAL INITIATIVES

Provisions on STUDENT ELECTIONS, on page 4, have been moved unaltered from BBB(LEGAL). These provisions allow a district to hold a mock election in conjunction with a regular, special, or primary election for the purpose of teaching students about the election process. The district must follow certain procedures as outlined in this policy, including appointing separate election officers, supervising participating students, and publically announcing the results on election day after polling places close.

# Explanatory Notes

## TASB Localized Policy Manual Update 85

### EKC (LEGAL) TESTING PROGRAM READING ASSESSMENT

Districts are required to administer a diagnostic reading instrument to a SEVENTH GRADE student who did not pass the sixth grade state reading assessment. New commissioner rules, effective on October 14, 2008, specify the test to administer—the Texas Middle School Fluency Assessment—and provide criteria for alternate tests.

### FB (LEGAL) EQUAL EDUCATIONAL OPPORTUNITY

The ADA Amendments Act of 2008 (ADAAA), effective September 25, 2008, significantly revised and broadened the definitions of a “disability” and “major life activity” as used in the employment context and incorporated the same definitions into the Rehabilitation Act to be used with students.

For changes to the employment policies as a result of the ADAAA, see the explanatory note for DAA(LEGAL) above.

### FL (LEGAL) STUDENT RECORDS

The U.S. Department of Education issued new rules, effective January 8, 2009, on the Family Educational Rights and Privacy Act (FERPA). The rules make several significant changes to existing regulations issued under the Act, as reflected in this policy.

- On page 2, the definition of “education records” was revised to clarify that records of an alumni that are not related to the individual’s attendance as a student are not “education records.” In addition, the rules incorporated U.S. Supreme Court case law holding that a grade on a student’s paper that is graded by another student is not an education record until the grade is collected and recorded by a teacher. We have also added an existing provision from FERPA regarding records maintained by professionals in connection with the treatment of a student.
- On page 4, we have added DEFINITIONS for “attendance,” which now specifies that a student does not need to be physically present to be in attendance, “disclosure,” which now clarifies that release of student records to the entity that originally provided the records to the district is not a disclosure, and “personally identifiable information,” which now includes biometric records.
- A new provision at ACCESS BY STUDENT on page 5 describes when a district may provide a parent access to student records without the student’s consent after the student has turned 18 years old.
- On pages 5 and 6, the new rules clarify that outside individuals and businesses that are working on behalf of the district can, in certain situations, be considered “school officials” for purposes of access to student records.
- A district may disclose a student’s educational records without consent to OFFICIALS OF OTHER SCHOOLS where the student is already enrolled if the disclosure is for purposes related to a student’s enrollment or transfer.
- Extensive provisions were added on pages 7 and 8 specifying when a district may disclose education records to ORGANIZATIONS CONDUCTING STUDIES for or on behalf of a district.
- Details on disclosure of education records in a HEALTH OR SAFETY EMERGENCY of the student or another person were added on page 8.



## Explanatory Notes

### TASB Localized Policy Manual Update 85

- New provisions on SUBPOENAED RECORDS were added on page 9.
- In certain circumstances, a district may disclose personally identifiable information without consent if the disclosure concerns SEX OFFENDERS. This material is on page 9.
- Districts may release education records without consent if all personally identifiable information has been removed and the student's identity will not be revealed. These DE-IDENTIFIED records may be released for educational research if certain procedures are followed. See pages 9 and 10.
- As reflected on page 10, districts are now required to use reasonable methods to identify and authenticate the identity of individuals to whom the district discloses records. See AUTHENTICATING REQUESTORS' IDENTITIES.
- New requirements regarding the RECORD OF ACCESS TO STUDENT RECORDS are placed on pages 11 and 12. If a district releases an education record in a health or safety emergency, the district must record information concerning the circumstances of the emergency. Districts do not have to record requests or access by a party receiving records because of a subpoena.
- The new regulations require additional information to be included in the ANNUAL NOTIFICATION OF RIGHTS (see pages 13 and 14). Districts must now include the criteria for determining who is a school official and what constitutes a legitimate educational interest.
- The new rules clarify that a district may not list social security numbers as DIRECTORY INFORMATION. The rules also allow a district to designate and disclose student identification numbers and other unique personal identifiers as directory information if the number cannot be used by itself to gain access to education records. For example, if a student must enter the ID number and a password or personal identification number (PIN) to access his or her records, the district could list student ID numbers as directory information. If a student or other person could access student records using only the ID number, then the district could not list student ID numbers as directory information. (See pages 14 and 15.)
- Two additional provisions on directory information are on page 15. Even if a parent or student opts out of directory information disclosures, a district may disclose the student's name, identifier or district e-mail address in the student's class. For former students, districts must continue to honor an opt-out request made while the student was in attendance unless the student rescinds the opt-out request.

For an extensive discussion of the changes to FERPA, see <http://www.ed.gov/policy/gen/guid/fpco/pdf/ht12-17-08-att.pdf>.

#### FL (LOCAL) STUDENT RECORDS

New FERPA regulations as described above [see the explanatory note for FL(LEGAL)] prompt changes to this (LOCAL) policy.

- A new requirement for districts to use reasonable procedures to identify and authenticate the identity of individuals to whom the district discloses records is reflected at COMPREHENSIVE SYSTEM.
- In response to questions about whether grievance records are education records, we have added these to the list of TYPES OF EDUCATION RECORDS at item 15.

## Explanatory Notes

### TASB Localized Policy Manual Update 85

- Provisions on ACCESS BY PARENTS have been reworked and reordered. This section now begins with an affirmative statement that the district will make a student's records available to the parents as permitted by law. The records custodian must now use reasonable procedures to verify the parent's identity. Minor revisions were made to the provisions about in-person review of records to clarify that such review is without charge and that the records custodian or a designee will be available, rather than present, to explain records and answer questions. If the parent requests copies, the request must be in writing and the parent must pay for the copies in advance, unless the student qualifies for free or reduced-price lunch, in which case one copy of the records will be provided at no charge.
- Because the new regulations expanded the circumstances in which a parent may have access to student records after the student has turned 18 years old or is attending an institution of postsecondary education, we have deleted the specific provisions here in favor of a reference to the legal provisions.
- Provisions on ACCESS BY SCHOOL OFFICIALS have been revised. This section now begins with a general statement explaining that a school official will be allowed access to student records if he or she has a legitimate educational interest in the records. The definition of "school official" incorporates a new provision from the regulations and includes an employee, trustee, or agent of the district, including an attorney, a consultant, a contractor, a volunteer, and any other outside service provider used by the district to perform institutional services. Another added provision, requiring contractors to follow the same rules as employees regarding the privacy of student records and requiring contractors to return records upon completion of the assignment, is also from the new rules.
- Changes from the new rules reflected at TRANSCRIPTS AND TRANSFERS OF RECORDS require a district to forward records to another school system in which the student intends to enroll or enrolls when those records are needed for a student's enrollment or transfer. Another new provision allows a district to return an educational record of an enrolling or transferring student to the school district that provided the record. This may be necessary if the district has a question about the content or authenticity of the record.
- Time lines at PROCEDURE TO AMEND RECORDS have been changed from "school days" to "District business days" to match the grievance policies.
- As noted above, a district may designate student identification numbers and other unique personal identifiers as DIRECTORY INFORMATION if the number cannot be used by itself to gain access to education records. If your district wishes to include student identification numbers in its list of directory information, please contact your policy consultant for appropriate text. The district may also include enrollment status in its list of directory information. If enrollment status is not currently listed and your district wishes to include it as directory information, please contact your policy consultant. Also, check to make sure the directory information listed in your policy matches the directory information listed in the notice to parents that is included in your student handbook.

FOCA      (LEGAL)      PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION  
SETTING  
DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM  
OPERATIONS

TEA approved comprehensive new rules on DAEPs, effective December 14, 2008. We have incorporated these new rules and reordered existing provisions as appropriate:

- On page 1, new text was placed at JOINT/CONTRACTED DAEP allowing districts to contract with third parties for DAEP services and requiring district cooperation with government agencies and community organizations that provide services in the district to students in DAEP.

## Explanatory Notes

### TASB Localized Policy Manual Update 85

- At LOCATION, the new rules specify that the school district determines by local policy whether a student is classified as elementary or secondary. The rules also clarify that in summer programs districts may serve DAEP students together with students not assigned to DAEP, also as determined by local policy. Students in JJAEP, however, must be kept separate from students in DAEP.\*
- Provisions from the rules on student SAFETY have been added. In addition to a broad statement that districts are responsible for the safety and supervision of DAEP students, the new rules require each district to establish a board-approved policy addressing unsafe behavior and discipline.\*
- New STAFFING provisions require a teacher-to-student ratio of 15-to-1 and mandatory teacher training.
- Detailed requirements for ENTRANCE PROCEDURES are included on pages 2 and 3. The procedures each district must develop for students entering a DAEP must include a written contract between parents, students, and the DAEP addressing expectations and the student's plan for success.
- ACADEMIC requirements are included on page 3. A student's graduation plan (minimum, recommended, or distinguished achievement-advanced) may not be altered when a student is assigned to a DAEP. The rules clarify which courses must be offered by stating that a student must be given an opportunity to complete "a foundation curriculum course in which the student was enrolled at the time of removal." The law previously just referred to an opportunity to complete "coursework."
- For accountability purposes, the student's locally assigned campus is the relevant campus, even if the district contracts with a third party for DAEP services.
- New provisions on TRANSITION SERVICES are included on page 4. When a student exits a DAEP, the district must establish a time line for the transition to the local campus and ensure communication from the DAEP staff to the staff at the local campus regarding the student's performance at the DAEP.

Administrative rules addressing TEA's evaluation of DAEPs were repealed and have been deleted from the policy.

\* (These policy requirements can be met through the district's board-adopted Student Code of Conduct. Appropriate provisions will be included in the **TASB Model Student Code of Conduct**, to be released this summer.)

GBA            (LEGAL)            PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

We have reworded the text at EVALUATIONS on page 3 to better reflect the statute.

GRA            (LOCAL)            RELATIONS WITH GOVERNMENTAL ENTITIES  
LOCAL GOVERNMENTAL AUTHORITIES

This policy has been amended at CHILD ABUSE INVESTIGATION to change the name of the Department of Protective and Regulatory Services to the Department of Family and Protective Services. In addition, we have reordered the paragraphs to emphasize that when a student is interviewed or questioned at school as part of a child abuse investigation, the district follows different procedures than in other types of investigations.

Explanatory Notes  
TASB Localized Policy Manual Update 85

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

## SECTION B: LOCAL GOVERNANCE

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

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

## SECTION B: LOCAL GOVERNANCE

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

BOARD MEMBERS  
ELIGIBILITY/QUALIFICATIONS

BBA  
(LEGAL)

ELIGIBILITY

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

1. Be a United States citizen.
2. Be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable.
3. Have not been determined by a final judgment of a court exercising probate jurisdiction to be:
  - a. Totally mentally incapacitated and the person's mental capacity has not subsequently been completely restored by a final judgment of a court exercising probate jurisdiction; or
  - b. Partially mentally incapacitated without the right to vote and the person's guardianship has not been modified to include the right to vote or the person's mental capacity has not been completely restored by a subsequent final judgment of a court exercising probate jurisdiction.
4. Have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities. *Atty. Gen. Op. LO 96-114 (1996)*
5. Be a resident of Texas and the District for the period of time described at CANDIDATE'S RESIDENCY TERM, below. *Tex. Const. Art. XVI, Sec. 14*

*Election Code 1.020, 141.001(a); Brown v. Patterson, 609 S.W.2d 287 (Tex. Civ. App.—Dallas 1980, no writ)*

QUALIFIED VOTER

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

"Qualified voter" means a person who:

1. Is 18 years of age or older;
2. Is a United States citizen;
3. Has not been determined by a final judgment of a court exercising probate jurisdiction to be:
  - a. Totally mentally incapacitated and the person's mental capacity has not subsequently been completely restored by a final judgment of a court exercising probate jurisdiction; or

BOARD MEMBERS  
ELIGIBILITY/QUALIFICATIONS

BBA  
(LEGAL)

- b. Partially mentally incapacitated without the right to vote and the person's guardianship has not been modified to include the right to vote or the person's mental capacity has not been completely restored by a subsequent final judgment of a court exercising probate jurisdiction;
- 4. Has not been finally convicted of a felony or, if so convicted:
  - a. Has fully discharged his or her sentence, including any term of incarceration, parole, or supervision;
  - b. Has completed a period of probation ordered by any court; or
  - c. Has been pardoned or otherwise released from the resulting disability to vote;
- 5. Is a resident of this state; and
- 6. Is a registered voter.

*Election Code 1.020, 11.002*

OFFICIAL OATHS	After each election or appointment, the elected or appointed Board member shall file the official oath with the Board President. <i>Education Code 11.061(a)</i>
COMPENSATION	Trustees serve without compensation. <i>Education Code 11.061(d)</i>
CANDIDATE'S RESIDENCY TERM PREFILED CANDIDACY	An individual seeking election to the office of Trustee by having his or her name placed on the ballot must have been a resident of the state for 12 months, and a resident of the District for six months, prior to the last date on which the candidate could file to be listed on the ballot.
WRITE-IN CANDIDACY	An individual seeking election to the office of Trustee by write-in vote must have been a resident of the state for 12 months, and a resident of the District for six months, prior to the day of the election.
APPOINTMENT TO OFFICE	An individual appointed to the office of Trustee must have been a resident of the state for 12 months, and a resident of the District for six months, prior to the day on which the appointment is made.  <i>Election Code 141.001(a)(5)</i>
'RESIDENCE' DEFINED	"Residence" shall mean domicile, one's home and fixed place of habitation to which one intends to return after any temporary absence; one does not lose one's residence status by leaving to go to another place for temporary purposes only. A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place



BOARD MEMBERS  
ELIGIBILITY/QUALIFICATIONS

BBA  
(LEGAL)

the person's home. Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by the Election Code. *Election Code 1.015*

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

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BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

This introductory page outlines the contents of the elections policy.  
See the following sections for statutory provisions on:

SECTION I

Elections Generally

1. Membership and terms
2. General election date
3. Joint elections
4. Method of election
5. Boundary change notice
6. Preclearance
7. Voting rights hotline

SECTION II

Conducting Elections

1. Election order and notices
2. Filing information
3. Election of unopposed candidate
4. Ballot
5. Election judges and clerks
6. Polling places
7. Bilingual materials
8. Voting systems
9. Early voting
10. Conducting elections

SECTION III

Post-Election Procedures

1. Determination of results
2. Canvass returns
3. Certificate of election
4. Certificate of election for unopposed candidate
5. Officer's statement
6. Oath of office

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

**SECTION I: ELECTIONS GENERALLY**

MEMBERSHIP AND  
TERMS

The Board consists of seven Trustees serving terms of three years, with elections held annually. The terms of one-third of the Trustees, or as near to one-third as possible, expire each year. *Education Code 11.051(b), 11.059*

Board policy shall state the schedule on which specific terms expire. *Education Code 11.059* [See BBB(LOCAL)]

GENERAL ELECTION  
DATE

Election of Trustees of the District shall be on the May uniform election date. *Election Code 41.001*

JOINT ELECTIONS  
REQUIRED

A District Trustee election shall be held on the same date as:

1. The election for the members of the governing body of a municipality located in the District; or
2. The general election for state and county officers.

Elections held on the same date as the election for the members of the governing body of a municipality located in the District or the same date as the general election for state and county officers shall be held as a joint election under Election Code Chapter 271.

The voters of a joint election under this section shall be served by common polling places consistent with Election Code 271.003(b).

The Board shall adjust the terms of office of its members to conform to the new election date if the election date is changed to comply with Education Code 11.0581.

*Education Code 11.0581*

ADMINISTRATOR

The District may seek to create the position of joint elections administrator under Election Code Chapter 31, Subchapter F. *Election Code 31.152*

METHOD OF  
ELECTION

Election of Trustees is at large in accordance with Texas law. *Education Code 11.057(b)*

AT LARGE

CHANGING  
METHOD OF  
ELECTION

The Board may by resolution order that trustees be elected at-large by position or place in accordance with Education Code 11.058. *Education Code 11.058*

In accordance with Education Code 11.052, the Board may decide, on the Board's motion or by voter petition, to change its method of election to single member districts. *Education Code 11.052*

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

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**Note:** For additional information regarding the legal requirements of changing the method of election, see this policy code in the **TASB Policy Reference Manual**.

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BOUNDARY CHANGE  
NOTICE

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

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

*Election Code 42.0615*

PRECLEARANCE

The Board, being subject to the Voting Rights Act of 1965, shall submit any changes that affect elections to the U.S. Justice Department for preclearance and shall implement such changes unless the justice department interposes an objection within 60 days after the date of submission. *42 U.S.C. 1973c; 28 CFR 51.6; Garcia v. Gates, 482 F. Supp. 1211 (D.C. Tex. 1980)*

NOTICE OF VOTING  
RIGHTS HOTLINE

A notice of voter's rights, in the form prescribed by the secretary of state and including information required by the secretary of state, shall be publicized as provided by the secretary of state. The notice shall, in part, inform voters of the telephone number and purpose of the secretary of state's toll-free hotline for reporting existing or potential abuse of voting rights. *Election Code 31.0055, 62.0115*

**SECTION II: CONDUCTING ELECTIONS**

ELECTION ORDER

A call for an election shall be made not later than the 62nd day before election day, except that for an election to be held on the date of the general election for state and county officers, the election shall be called not later than the 70th day before the election day. The Board shall order the election. *Election Code 3.004-.005*

Each election order must state the date of the election, the offices or measures to be voted on, the location of the main early voting polling place, the dates and hours for early voting, the dates and hours of any Saturday and Sunday early voting, and the early voting clerk's official mailing address. The Board shall retain the election order for at least 22 months after election day. *Election Code 3.006, 3.008, 66.058(a), 83.010, 85.004, 85.007*

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

FAILURE TO ORDER AN ELECTION	Failure to order a general election does not affect the validity of the election. <i>Election Code 3.007</i>
ELECTION NOTICE	<p>Notice of the election shall be published at least once, not earlier than the 30th day or later than the tenth day before election day, in a newspaper published within the District's boundaries or in a newspaper of general circulation in the District if none is published within the District's boundaries. <i>Election Code 4.003(a)(1), (c)</i></p> <p>The notice shall state the nature and date of the election, the location of each polling place, the hours the polls will be open, the location of the main early voting polling place, the dates and hours for early voting, the dates and hours of any Saturday and Sunday early voting, and the early voting clerk's official mailing address. The notice of a special election must also state each office to be filled or the proposition stating each measure to be voted on, unless the notice regards an election on a proposed constitutional amendment. The Board shall retain a copy of the published notice that contains the name of the newspaper and the date of publication and shall preserve that copy for at least 22 months after election day. <i>Election Code 4.004, 4.005, 66.058(a), 83.010, 85.004, 85.007</i></p>
POSTING	In addition to the notice described above, the District shall, not later than the 21st day before election day, post a copy of the notice on the bulletin board used for posting notices of the meetings of the Board. The notice must include the location of each polling place. The person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the Board after the last posting is made. <i>Election Code 4.003(b), 4.005</i>
NOTICE TO COUNTY CLERK	The Board shall also deliver notice of the election to the county clerk of each county in which the District is located not later than the 60th day before election day. <i>Election Code 4.008</i>
NOTICE TO ELECTION JUDGE	<p>Not later than the 15th day before election day or the seventh day after the date the election is ordered, whichever is later, the Board shall deliver to the presiding judge of each election precinct in which the election is to be held in the District a written notice of:</p> <ol style="list-style-type: none"><li>1. The nature and date of the election;</li><li>2. The location of the polling place for the precinct served by the judge;</li><li>3. The hours that the polls will be open;</li><li>4. The judge's duty to hold the election in the precinct specified by the notice; and</li></ol>

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

5. The maximum number of clerks that the judge may appoint for the election.

*Election Code 4.007*

FAILURE TO GIVE  
NOTICE OF  
ELECTION

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

FILING INFORMATION  
GENERAL  
ELECTION

An application may not be filed earlier than the 30th day before the date of the filing deadline.

An application of a candidate for a place on the ballot must be filed not later than 5:00 p.m. of the 62nd day before election day, except for an election to be held on the general election date for state and county officers, when the day of the filing deadline is the 70th day before election day.

*Education Code 11.055(a), (c); Election Code 144.005*

SPECIAL ELECTION

An application may not be filed before the election is ordered.

A candidate's application for a place on a special election ballot must be filed not later than:

1. 5:00 p.m. of the 67th day before election day if election day is on or after the 70th day after the election is ordered;
2. 5:00 p.m. of the 31st day before election day, if election day is on or after the 36th day and before the 70th day after the date the election is ordered; or
3. 5:00 p.m. of a day fixed by the authority ordering the election, which day must be not earlier than the fifth day after the date the election is ordered and not later than the 20th day before election day, if election day is before the 36th day after the date the election is ordered.

EXCEPTION

For a special election to be held on the date of the general election for state and county officers, the day of the filing deadline is the 67th day before election day.

*Election Code 201.054(a), (d), (f)*

WRITE-IN  
CANDIDACY

A declaration of write-in candidacy must be filed no later than 5:00 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed, except for an election to be held on the general election date for state and county officers, when the day of the filing deadline is the 67th day before election day. *Education Code 11.056(b), (e)*

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

APPLICATION	The application shall include all statutorily required information, including that found at Election Code 141.031 and 141.039, such as an oath and a statement that the candidate is aware of the nepotism law [see BBBB]. <i>Election Code 31.0021, 141.031, 141.039</i>
ELECTION OF UNOPPOSED CANDIDATE	<p>The Board may declare each unopposed candidate elected to the office if:</p> <ol style="list-style-type: none"><li>1. Each candidate for an office that is to appear on the ballot is unopposed; and</li><li>2. No proposition is to appear on the ballot.</li></ol> <p><i>Election Code 2.051</i></p> <p>The Board may declare each unopposed candidate elected to the office upon receipt of certification from the authority responsible for having the official ballot prepared. The certification must state that if the election were held, only the votes cast for that candidate in the election for that office may be counted. If the Board makes such a declaration, the election is not held. A copy of the order or ordinance must be posted on election day at each polling place that would have been used in the election. <i>Election Code 2.052, 2.053(a), (b)</i></p>
BALLOT	The ballot shall be printed in the form required by law. <i>Election Code 52.061-.064, 52.069, 52.093-.094; Education Code 11.058(g)</i>
BALLOT POSITION	Except as otherwise provided by law, for an election at which the names of more than one candidate for the same office are to appear on the ballot in an independent column or are to appear on a general or special election ballot that does not contain a party nominee, the order of the candidates' names shall be determined by a drawing consistent with the requirements of Election Code 52.094. <i>Election Code 52.094</i>
ELECTION JUDGES AND CLERKS	The Board shall appoint election judges and set the maximum number of election clerks. The judges and clerks shall be selected and serve in accordance with Election Code Chapter 32. <i>Election Code Chapter 32</i>
POLLING PLACES	<p>The Board shall designate polling places. Each polling place shall be accessible to and usable by the elderly and physically handicapped. <i>Election Code 43.004, 43.034</i></p> <p>If the District holds an election on the November uniform election date, the District shall follow procedures from the secretary of state and designate as the polling places for the election the regular county polling places in the county election precincts that contain</p>



BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

	territory from the District. <i>Election Code 42.002(a)(5), 42.0621, 43.004(b)</i>
POSTING SIGNS PROHIBITED	A person other than an election officer commits an offense if the person posts a sign, card, poster, or similar material at a polling place, including the area within 100 feet of an outside door through which a voter may enter the building in which the polling place is located. <i>Election Code 62.013(b)</i>
USE OF CERTAIN DEVICES PROHIBITED	A person may not use a wireless communication device or any mechanical or electronic means of recording images or sound within 100 feet of a voting station.
EXCEPTION	<p>The prohibition does not apply to:</p> <ol style="list-style-type: none"><li>1. An election officer in conducting the officer's official duties; or</li><li>2. The use of election equipment necessary for the conduct of the election.</li></ol> <p><i>Election Code 61.013</i></p>
BILINGUAL MATERIALS	<p>The District shall provide bilingual election materials, as specified by law, when the director of the federal census determines that:</p> <ol style="list-style-type: none"><li>1. More than five percent of the citizens of voting age of the District are members of a single language minority and are limited-English proficient, or more than 10,000 of the citizens of voting age of the District are members of a single-language minority and are limited-English proficient; and</li><li>2. The illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate, illiteracy defined as the failure to complete the fifth primary grade.</li></ol> <p>The term "limited-English proficient" means unable to speak or understand English adequately enough to participate in the electoral process.</p> <p>The term "language minorities" or "language minority group" means people who are American Indian, Asian American, Alaskan natives, or of Spanish heritage.</p> <p><i>42 U.S.C. 1973aa-1a</i></p> <p>Except as provided by Election Code 272.003, bilingual election materials shall be used in each election precinct situated wholly or partly in a county in which five percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census that may be officially recognized or acted upon by the state or political subdivisions.</p>

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

An election precinct may be exempt from the bilingual requirement if official census information or other information indicates that persons of Spanish origin or descent comprise less than five percent of the precinct's inhabitants.

*Election Code 272.002, 272.003*

VOTING SYSTEMS

Effective January 1, 2006, a voting system shall be selected and utilized in accordance with Election Code Title 8. *Election Code Title 8*

VOTING MACHINES  
AND PUNCH-CARD  
BALLOTS

Effective January 1, 2006, a voting system may not be used in an election if the system uses mechanical voting machines or a punch-card ballot or similar form of tabulating card. *Election Code 122.001(d)*

VOTERS WITH  
DISABILITIES

ACCESSIBLE  
VOTING  
STATIONS

Each polling place in an election of the District must provide at least one voting station that complies with Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments, Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments, and the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) and its subsequent amendments, and that provides a practical and effective means for voters with physical disabilities to cast a secret ballot. *Election Code 61.012(a)*

ELECTRONIC  
VOTING  
SYSTEMS

Upon providing the notice detailed in Election Code 61.013(d), the District is not required to meet the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) and its subsequent amendments if the District's election is not held jointly with another election in which a federal office appears on the ballot and if the District is located in a county:

1. With a population of less than 2,000;
2. With a population of 2,000 or more but less than 5,000, and the District provides at least one voting station that meets the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) on election day;
3. With a population of 5,000 or more but less than 10,000, and the District provides at least one voting station that meets the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) on election day and during the period for early voting by personal appearance;
4. With a population of 10,000 or more but less than 20,000, and the District:

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

- a. Makes a showing in the manner provided by Election Code 61.103(c) that compliance with Section 61.012(a)(1)(C) constitutes an undue burden on the county;
- b. Provides at least one voting station that meets the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) on election day and during the period for early voting by personal appearance; and
- c. Provides a mobile voting station that meets the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) that during the period for early voting by personal appearance is deployed at least once at each polling place used for early voting by personal appearance.

For purposes of the above requirement, a district located in more than one county may choose:

- a. To be considered located in the county that contains the greatest number of registered voters of the District; or
- b. For each portion of the District located in a different county, to be considered a separate political subdivision.

*Election Code 61.013*

MULTIPLE VOTING SYSTEMS PERMITTED	The District may use more than one type of voting system in a single polling place in order to provide a person with physical disabilities with a method of casting a secret ballot. 1 TAC 81.55 [See GA]
VOTING SYSTEM MALFUNCTION	If no private vendor supports the District's voting system, the District must give notice to the secretary of state within 24 hours of a malfunction of the District's voting system software or equipment in an election. The notice may be verbal or in writing. 1 TAC 81.64
EARLY VOTING	The Board shall provide for early voting in Board elections by personal appearance at an early voting polling place and by mail in accordance with Election Code Title 7. <i>Election Code 81.001</i>
CONDUCTING ELECTIONS	Elections shall be conducted in accordance with Election Code Title 6. <i>Election Code Title 6</i>

**SECTION III: POST-ELECTION PROCEDURES**

DETERMINATION OF RESULTS  PLURALITY	To be elected to a public office, a candidate must receive a plurality of votes, more votes than any other candidate, except as otherwise provided by law. <i>Election Code 2.001</i>
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BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

AT-LARGE	The candidates receiving the highest number of votes shall fill the positions the terms of which are normally expiring. <i>Education Code 11.057</i>
WRITE-IN VOTING	A write-in vote may not be counted for a person who has not filed a declaration of write-in candidacy with the Secretary of the Board in the manner provided for write-in candidates in a general election for state and county officers. To the extent practicable and in accordance with rules adopted by the secretary of state, Election Code Chapter 146, Subchapter B, shall govern write-in voting in Trustee elections. <i>Education Code 11.056</i>
TIE VOTES	In accordance with Election Code 2.002, if two or more candidates for the same office tie for the number of votes required to be elected, a second election to fill the office shall be held, unless the candidates agree to cast lots, one candidate withdraws, or an automatic recount resolves the tie. <i>Election Code 2.002</i>
CANVASS RETURNS	<p>Except as provided below, the Board shall canvass the returns at the time set by the presiding officer not earlier than the eighth day or later than the 11th day after election day.</p> <p>For an election held on the uniform election date in May, the local canvass must occur not later than the 11th day after election day and not earlier than the later of:</p> <ol style="list-style-type: none"><li>1. The third day after election day;</li><li>2. The date on which the early voting ballot board has verified and counted all provisional ballots, if a provisional ballot has been cast in the election; or</li><li>3. The date on which all timely received ballots cast from addresses outside of the United States are counted, if a ballot to be voted by mail in the election was provided to a person outside of the United States.</li></ol> <p>Two members of the Board constitute a quorum for purposes of canvassing an election.</p> <p><i>Election Code 67.003, 67.004</i></p>
CERTIFICATE OF ELECTION	<p>After the completion of a canvass, the presiding officer shall prepare a certificate of election for each candidate who is elected to an office for which the official result is determined by that authority's canvass. A certificate of election must contain:</p> <ol style="list-style-type: none"><li>1. The candidate's name;</li><li>2. The office to which the candidate is elected;</li><li>3. A statement of election to an unexpired term, if applicable;</li></ol>

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

4. The date of the election;
5. The signature of the officer preparing the certificate; and
6. Any seal used by the officer preparing the certificate to authenticate documents that the officer executes or certifies.

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

A recount petition shall delay the issuance of a certificate of election and qualification for the office involved in the recount pending completion of the recount. A candidate may not qualify for an office involved in a recount before completion of the recount. A candidate who has received a certificate of election and qualified for an office before the submission of a recount petition shall not be affected by the recount petition.

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

The presiding officer of the canvass shall also prepare a report of the precinct results as contained in the election register and shall deliver the report to the secretary of state as required by law.

*Election Code 67.016, 67.017, 212.0331*

CERTIFICATE OF  
ELECTION FOR  
UNOPPOSED  
CANDIDATE

A certificate of election shall be issued to each unopposed candidate in the same manner and at the same time as provided for a candidate elected at the election. The candidate must qualify for the office in the same manner as provided for a candidate elected at the election. *Election Code 2.053(c)*

OFFICER'S  
STATEMENT

Newly elected and appointed Trustees, before taking the oath or affirmation of office and entering upon the duties of office, shall sign the required officer's statement. The statement shall be retained with the official records of the office. *Tex. Const. Art. XVI, Sec. 1(b)* [See BBB(EXHIBIT)]

OATH OF OFFICE

After the officer's statement has been signed and certificates of election have been issued, but before entering upon the duties of the office, the Trustee shall take the oath or affirmation of office and shall file it with the President of the Board. *Tex. Const. Art. XVI, Sec. 1(a); Education Code 11.061* [See BBB(EXHIBIT)]

The oath may be administered and a certificate of the fact given by:

1. A judge, retired judge, or clerk of a municipal court.

BOARD MEMBERS  
ELECTIONS

BBB  
(LEGAL)

2. A judge, retired judge, senior judge, clerk, or commissioner of a court of record.
3. A notary public.
4. A justice of the peace or clerk of a justice court.
5. The Texas secretary of state.
6. The speaker of the house of representatives.
7. The lieutenant governor of Texas.
8. The governor of Texas.
9. A legislator or retired legislator.
10. The attorney general.

*Gov't Code 602.002, 602.006*

BOARD MEMBERS  
ELECTIONS

BBB  
(EXHIBIT)

OFFICER'S STATEMENT

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God."

*Tex. Const. Art. XVI, Sec. 1(b)*

OATH OF OFFICE

"I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of School Board Trustee for the \_\_\_\_\_ School District of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this state, so help me God."

*Tex. Const. Art. XVI, Sec. 1(a)*

OTHER ELECTION INFORMATION: For election forms, calendars, and other election resources, see the Secretary of State Elections Division Web site at <http://www.sos.state.tx.us/elections/laws/schoollaws.shtml>.





BOARD MEMBERS  
ELECTION ETHICS

BBBB  
(LEGAL)

ELECTIONEERING	The Board may not use state or local funds or other resources of the District to electioneer for or against any candidate, measure, or political party. <i>Education Code 11.169</i>
POLITICAL ADVERTISING	No officer or employee of the District shall expend or authorize the expenditure of District funds for the purpose of political advertising. Funds may be expended, however, for advertising that describes the factual reasons for a measure and does not advocate the passage or defeat of such measure. <i>Election Code 255.003</i> [See CPAB]
NEWSLETTERS	<p>A newsletter of a public officer of the District is not political advertising if:</p> <ol style="list-style-type: none"><li>1. It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;</li><li>2. It includes no more than eight personally phrased references on a page that is 8 1/2" x 11" or larger, with a reasonable reduction in the number of such personally phrased references in pages smaller than 8 1/2" x 11"; and</li><li>3. When viewed as a whole and in the proper context:<ol style="list-style-type: none"><li>a. Is informational rather than self promotional;</li><li>b. Does not advocate passage or defeat of a measure; and</li><li>c. Does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.</li></ol></li></ol> <p><i>1 TAC 26.2</i></p>
NEPOTISM	A candidate shall not take affirmative action to influence a District employee or current Trustee regarding the appointment, reappointment, employment, confirmation, reemployment, change in status, compensation, or dismissal of a person related to the candidate within a prohibited degree of relationship under the nepotism law. [See DBE(EXHIBIT)] However, this prohibition does not apply to a candidate's actions taken with respect to a bona fide class or category of employees or prospective employees. <i>Gov't Code 573.042</i>



BOARD MEETINGS

BE  
(LEGAL)

	<p>The Board may act only by majority vote of the members present at a meeting held in compliance with Chapter 551, Government Code, at which a quorum of the Board is present and voting. A majority vote is generally determined from a majority of those present and voting, excluding abstentions, assuming a quorum is present. <i>Education Code 11.051(a-1); Atty. Gen. Op. GA-689 (2009)</i></p>
DEFINITIONS	
‘MEETING’	<p>“Meeting” means a deliberation among a quorum of the Board, or between a quorum of the Board and another person, during which public business or public policy over which the Board has supervision or control is discussed or considered, or during which the Board takes formal action. “Meeting” also means a gathering:</p> <ol style="list-style-type: none"><li>1. That is conducted by the Board or for which the Board is responsible;</li><li>2. At which a quorum of members of the Board is present;</li><li>3. That has been called by the Board; and</li><li>4. At which Board members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the District, about the public business or public policy over which the Board has supervision or control.</li></ol> <p><i>Gov’t Code 551.001(4)</i></p>
‘DELIBERATION’	<p>“Deliberation” means a verbal exchange during a meeting among a quorum of the Board, or between a quorum of the Board and another person, concerning any issue within the jurisdiction of the Board or any public business. <i>Gov’t Code 551.001(2)</i></p>
SOCIAL FUNCTION OR CONVENTION	<p>The term “meeting” does not include the gathering of a quorum of the Board at a social function unrelated to the public business that is conducted by the Board, or the attendance by a quorum of the Board at a regional, state, or national convention or workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, or press conference. <i>Gov’t Code 551.001(4)</i></p>
LEGISLATIVE COMMITTEE OR AGENCY MEETING	<p>The attendance by a quorum of the Board at a meeting of a committee or agency of the legislature is not considered to be a meeting of the Board if the deliberations at the meeting by the Board members consist only of publicly testifying, publicly commenting, and publicly responding to a question asked by a member of the legislative committee or agency. <i>Gov’t Code 551.0035</i></p>

BOARD MEETINGS

BE  
(LEGAL)

SUPERINTENDENT PARTICIPATION	The Board shall provide the Superintendent an opportunity to present at a meeting an oral or written recommendation to the Board on any item that is voted on by the Board at the meeting. <i>Education Code 11.051(a-1)</i>
OPEN TO PUBLIC	Every meeting of the Board shall be open to the public. The Board may, however, exclude a witness from a hearing during the examination of another witness in a matter being investigated and may enter into a closed meeting, as provided by law. <i>Gov't Code 551.002, 551.084, Ch. 551, Subch. D, Subch. E</i> [See BDB and BEC]
PARENTAL ACCESS	A parent, as defined in Education Code 26.002, is entitled to complete access to any meeting of the Board, other than a closed meeting held in compliance with the Open Meetings Act. <i>Education Code 26.007(a)</i>
RECORDING	All or any part of an open meeting may be recorded by any person in attendance by means of a tape recorder, video camera, or any other means of aural or visual reproduction. The Board may adopt reasonable rules to maintain order at a meeting, including rules related to the location of recording equipment and the manner in which the recording is conducted. These rules shall not prevent or unreasonably impair a person from exercising the right to record a meeting that is open to the public. <i>Gov't Code 551.023</i>
MINUTES	The Board shall prepare and keep minutes or make a tape recording of each open meeting. The minutes shall state the subject matter of each deliberation and indicate each vote, order, decision, or other action taken. <i>Gov't Code 551.021</i>
BOARD MEMBER ATTENDANCE	The minutes or recording, as applicable, of a regular or special meeting of the Board must reflect each member's attendance at or absence from the meeting. <i>Education Code 11.0621</i>
AVAILABILITY	The minutes and tapes are public records and shall be available for public inspection and copying on request to the Superintendent or designee. <i>Gov't Code 551.022; Education Code 11.0621</i>
NOTICE REQUIRED	The Board shall give written notice of the date, hour, place, and subject(s) of each meeting it holds. <i>Gov't Code 551.041</i>
CONTINUED MEETING	If the Board recesses an open meeting to the following regular business day, the Board is not required to post notice of the continued meeting if the action is taken in good faith and not to circumvent Government Code Chapter 551. If an open meeting is continued to the following regular business day and, on that following day, the Board continues the meeting to another day, the Board must give the required written notice of the meeting continued to that other day. <i>Gov't Code 551.0411(a)</i>

BOARD MEETINGS

BE  
(LEGAL)

INQUIRY DURING  
MEETING

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

LOCATION

The Board must hold each public meeting within the boundaries of the District, except:

1. As otherwise required by law; or
2. To hold a joint meeting with another district or with another governmental entity if the boundaries of the governmental entity are in whole or in part within the boundaries of the District.

*Education Code 26.007(b)*

TIME OF NOTICE AND  
ACCESSIBILITY

Notice of a Board meeting shall be posted on a bulletin board at a place convenient to the public in the central administration office for at least 72 hours before the scheduled time of the meeting. That notice or a notice posted at another Board-designated place shall at all times be readily accessible to the public for at least 72 hours before the scheduled time of the meeting. *Gov't Code 551.043(a), 551.051; City of San Antonio v. Fourth Court of Appeals, 820 S.W. 2d 762 (Tex. 1991)*

If the District is required to post notice of a meeting on the Internet, the District satisfies the requirement that the notice must be posted in a place readily accessible to the general public at all times by making a good-faith attempt to continuously post the notice on the Internet during the prescribed period.

The District must still comply with the duty to physically post the notice in the central administration office and if the District makes a good-faith attempt to continuously post the notice on the Internet during the prescribed period, the physically posted notice must be readily accessible to the general public during normal business hours.

*Gov't Code 551.043(b)*

INTERNET POSTING

If the District maintains an Internet Web site, in addition to the other place at which notice is required to be posted, the Board must also concurrently post notice of a meeting on the Internet Web site.

A district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more

BOARD MEETINGS

BE  
(LEGAL)

must also, concurrently with the notice, post on the District's Internet Web site the agenda for a Board meeting, if the agenda differs from the posted notice.

The validity of a posting of a district that made a good-faith attempt to comply with the Internet posting requirements is not affected by a failure to comply that is due to a technical problem beyond the control of the District.

*Gov't Code 551.056*

SPECIFICITY OF  
AGENDA / NOTICE

Agendas for all meetings shall be sufficiently specific to inform the public of the subjects to be deliberated at the meeting, setting out any special or unusual matters to be considered or any matter in which the public has a particular interest. Deliberations or actions pertaining to the Superintendent and principals are of particular public interest, and notice of those subjects must be worded with such clarity that the public will understand what the Board proposes to discuss or accomplish. Cox Enterprises, Inc. v. Austin Indep. Sch. Dist., 706 S.W.2d 956 (Tex. 1986); Point Isabel Indep. Sch. Dist. v. Hinojosa, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied); *Atty. Gen. Ops. M-494 (1969), H-419 (1974), H-662 (1975), H-1045 (1977)*

The terms "employee briefing" or "staff briefing" do not give adequate notice of the subject matter to be presented to the Board by employees or staff members. *Atty. Gen. Op. JC-169 (2000)*

The subject of a report or update by District staff or a member of the Board must be set out in the notice in a manner that informs a reader about the subjects to be addressed. *Atty. Gen. Op. GA-668 (2008)*

EMERGENCY  
MEETING OR  
EMERGENCY  
ADDITION TO AGENDA

In an emergency or when there is an urgent public necessity, the notice of a meeting or the supplemental notice of a subject added to an agenda posted in accordance with law is sufficient if it is posted for at least two hours before the meeting is convened.

An emergency or urgent public necessity exists only if immediate action is required because of an imminent threat to public health and safety or a reasonably unforeseeable situation. The Board shall clearly identify the emergency or urgent public necessity for each item in the notice of an emergency meeting and each item added in a supplemental notice.

The sudden relocation of a large number of residents from the area of a declared disaster to the District's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation. Notice of an emergency meeting or supplemental notice of an emergency item added to the agenda of

BOARD MEETINGS

BE  
(LEGAL)

a meeting to address a situation described by this subsection must be given to members of the news media as provided by Education Code 551.047 not later than one hour before the meeting.

*Gov't Code 551.045*

CATASTROPHE

A board prevented from convening an open meeting that was otherwise properly posted under Government Code Section 551.041 because of a catastrophe may convene the meeting in a convenient location within 72 hours pursuant to Government Code Section 551.045 if the action is taken in good faith and not to circumvent Government Code Chapter 551. If the Board is unable to convene the open meeting within those 72 hours, the Board may subsequently convene the meeting only if the Board gives the required written notice of the meeting.

"Catastrophe" means a condition or occurrence that interferes physically with the ability of the Board to conduct a meeting, including:

1. Fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
2. Power failure, transportation failure, or interruption of communication facilities;
3. Epidemic; or
4. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

*Gov't Code 541.0411(b), (c)*

SPECIAL NOTICE TO  
NEWS MEDIA

The District shall provide special notice of each meeting by telephone, facsimile transmission, or electronic mail to any news media that has requested it and agreed to reimburse the District for the cost of providing the special notice. When an emergency meeting is called or an emergency item added to an agenda, the Board President shall notify by telephone, facsimile transmission, or electronic mail any news media who have previously requested special notice of all meetings. *Gov't Code 551.047, 551.052*

QUORUM

A majority of the Board (e.g., four members of a seven-member board or five members of a nine-member board, regardless of the number of vacancies) constitutes a quorum for meetings of the Board. *Gov't Code 551.001(6), 311.013(b)*

DISASTER

Notwithstanding any other law, a quorum is not required for the Board to act if:

BOARD MEETINGS

BE  
(LEGAL)

1. The District's jurisdiction is wholly or partly located in the area of a disaster declared by the president of the United States or the governor; and
2. A majority of the members of the Board are unable to be present at a Board meeting as a result of the disaster.

*Gov't Code 418.112*

SECRET BALLOT

No vote shall be taken by secret ballot. *Atty. Gen. Op. H-1163 (1978)*

MEETING BY  
CONFERENCE CALL

The Board may hold a meeting by telephone conference call if an emergency or public necessity exists within the meaning of Government Code 551.045 and the convening at one location of a quorum of the Board is difficult or impossible, or if the meeting is held by an advisory board.

Each part of the telephone conference call meeting that is required to be open shall be audible to the public at the location specified in the notice of the meeting. The location designated in the notice as the location of the meeting shall provide two-way communication during the entire telephone conference call meeting and the identification of each party to the telephone conference shall be clearly stated prior to speaking.

NOTICE

The telephone conference call meeting is subject to the notice requirements applicable to other meetings. The notice must specify as the location of the meeting, the location where meetings of the governmental body are usually held.

RECORDING

The conference call meeting shall be tape-recorded and made available to the public.

*Gov't Code 551.125*

MEETING BY  
VIDEOCONFERENCE  
CALL

If the District does not extend into three or more counties, a meeting may be held by videoconference call only if a quorum of the Board is physically present at one location of the meeting. If the District extends into three or more counties, a meeting may be held by videoconference call if a majority of the quorum is physically present at one location of the meeting. A meeting held by videoconference call is subject to the notice requirements applicable to other meetings in addition to the notice requirements applicable to meetings by videoconference call.

NOTICE OF  
LOCATIONS

The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum of the Board will be physically present and specify the intent to have a quorum present at that location, except that the notice of a meeting



BOARD MEETINGS

BE  
(LEGAL)

to be held by videoconference call by a board in a district that extends into three or more counties must specify as a location of the meeting each location where a majority of the quorum of the Board will be physically present and specify the intent to have a majority of the quorum of the Board present at that location.

In addition, the notice of the meeting must specify as a location of the meeting each other location where a Board member who will participate in the meeting will be physically present during the meeting. Each of the locations shall be open to the public during the open portions of the meeting.

RECORDING

The Board shall make at least an audio recording of the meeting. The recording shall be made available to the public.

QUALITY OF AUDIO  
AND VIDEO SIGNALS

Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at each location specified in the notice.

Each location specified in the notice shall have two-way communication with each other location during the entire meeting. Each participant in the videoconference call, while speaking, shall be clearly visible and audible to each other participant and, during the open portion of the meeting, to the members of the public in attendance at a location of the meeting.

The quality of the audio and video signals perceptible at each location of the meeting must meet or exceed standards specified by the Department of Information Resources. The quality of the audio and video signals perceptible by members of the public at each location of the meeting must:

1. Meet or exceed the quality of the audio and video signals perceptible by the Board members participating in the meeting; and
2. Be of sufficient quality so that members of the public at each location of the meeting can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

REMOTE  
PARTICIPATION

The Board may allow a member of the public to testify at a meeting from a remote location by videoconference call even if a Board member is not participating in the meeting from a remote location.

*Gov't Code 551.127; 1 TAC 209.10-.12*

INTERNET  
BROADCAST

The Board may broadcast an open meeting over the Internet. If the Board broadcasts a meeting over the Internet, it shall establish an Internet site and provide access to the broadcast from that site.

BOARD MEETINGS

BE  
(LEGAL)

The Board shall provide on the Internet site the same notice of the meeting, within the time required for posting that notice, that the Board is required to post under the Open Meetings Act. *Gov't Code 551.128*

ATTORNEY  
CONSULTATION

The Board may use a telephone conference call, videoconference call, or communications over the Internet to conduct a public consultation with its attorney in an open meeting of the Board or a private consultation with its attorney in a closed meeting of the Board. [See BEC]

Each part of a public consultation by the Board with its attorney in an open meeting must be audible to the public at the location specified in the notice of the meeting as the location of the meeting.

EXCEPTION

This does not apply to a consultation with an attorney who is an employee of the District. An attorney who receives compensation for legal services performed, from which employment taxes are deducted by the District, is an employee of the District.

*Gov't Code 551.129*

HEARING-IMPAIRED  
PERSONS

In a proceeding before the Board in which the legal rights, duties, or privileges of a party are to be determined by the Board after an adjudicative hearing, the Board shall supply for a party who is deaf or hearing impaired an interpreter who has qualifications approved by the Texas Department of Assistive and Rehabilitative Services.

For purposes of this requirement, "deaf or hearing impaired" means having a hearing impairment, regardless of the existence of a speech impairment, that inhibits comprehension of a proceeding or inhibits communication with others.

*Gov't Code 558.001, 558.003*

PLANNING AND DECISION-MAKING PROCESS

BQ  
(LEGAL)

REQUIRED PLANS

The Board shall ensure that a District improvement plan and improvement plans for each campus are developed, reviewed, and revised annually for the purpose of improving the performance of all students. The Board shall annually approve District and campus performance objectives and shall ensure that the District and campus plans:

1. Are mutually supportive to accomplish the identified objectives; and
2. At a minimum, support the state goals and objectives under Education Code Chapter 4.

*Education Code 11.251(a)*

DISTRICT  
IMPROVEMENT  
PLAN

The District shall have a District improvement plan that is developed, evaluated, and revised annually, in accordance with District policy, by the Superintendent with the assistance of the District-level committee. The purpose of the District improvement plan is to guide District and campus staff in the improvement of student performance for all student groups in order to attain state standards in respect to the academic excellence indicators. [See GND]

The District improvement plan must include provisions for:

1. A comprehensive needs assessment addressing District student performance on the academic excellence indicators, and other appropriate measures of performance, that are disaggregated by all student groups served by the District, including categories of ethnicity, socioeconomic status, sex, and populations served by special programs, including students in special education programs under Education Code Chapter 29, Subchapter A.
2. Measurable District performance objectives for all appropriate academic excellence indicators for all student populations, including students in special education programs under Education Code Chapter 29, Subchapter A, and other measures of student performance that may be identified through the comprehensive needs assessment.
3. Strategies for improvement of student performance that include:
  - a. Instructional methods for addressing the needs of student groups not achieving their full potential.
  - b. Methods for addressing the needs of students for special programs, such as suicide prevention, conflict resolution, violence prevention, or dyslexia treatment programs.

PLANNING AND DECISION-MAKING PROCESS

BQ  
(LEGAL)

- c. Dropout reduction.
  - d. Integration of technology in instructional and administrative programs.
  - e. Discipline management.
  - f. Staff development for professional staff of the District.
  - g. Career education to assist students in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities.
  - h. Accelerated education.
4. Strategies for providing to middle school, junior high school, and high school students, those students' teachers and counselors, and those students' parents information about:
- a. Higher education admissions and financial aid opportunities.
  - b. The TEXAS grant program and the Teach for Texas grant program.
  - c. The need for students to make informed curriculum choices to be prepared for success beyond high school.
  - d. Sources of information on higher education admissions and financial aid.
5. Resources needed to implement identified strategies.
6. Staff responsible for ensuring the accomplishment of each strategy.
7. Time lines for ongoing monitoring of the implementation of each improvement strategy.
8. Formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of student performance.

*Education Code 11.252(a)*

9. A discipline management program providing for prevention of and education concerning unwanted physical or verbal aggression, sexual harassment, and other forms of bullying in schools, on school grounds, and in school vehicles. *Education Code 37.083(a)* [See FNC]
10. A dating violence policy that must:

PLANNING AND DECISION-MAKING PROCESS

BQ  
(LEGAL)

- a. Include a definition of dating violence that includes the intentional use of physical, sexual, verbal, or emotional abuse by a person to harm, threaten, intimidate, or control another person in a dating relationship, as defined by Family Code 71.0021; and
- b. Address safety planning, enforcement of protective orders, school-based alternatives to protective orders, training for teachers and administrators, counseling for affected students, and awareness education for students and parents.

*Education Code 37.0831 [See FFH]*

The District's plan for the improvement of student performance is not filed with TEA, but the District must make the plan available to TEA on request. *Education Code 11.252(b)*

CAMPUS-LEVEL  
PLAN

Each school year, the principal of each school campus, with the assistance of the campus-level committee, shall develop, review, and revise the campus improvement plan for the purpose of improving student performance for all student populations, including students in special education programs under Education Code Chapter 29, Subchapter A, with respect to the academic excellence indicators and any other appropriate performance measures for special needs populations.

Each campus improvement plan must:

1. Assess the academic achievement for each student in the school using the academic excellence indicator system.
2. Set the campus performance objectives based on the academic excellence indicator system, including objectives for special needs populations, including students in special education programs under Education Code Chapter 29, Subchapter A.
3. Identify how the campus goals will be met for each student.
4. Determine the resources needed to implement the plan.
5. Identify staff needed to implement the plan.
6. Set time lines for reaching the goals.
7. Measure progress toward the performance objectives periodically to ensure that the plan is resulting in academic improvement.
8. Provide for a program to encourage parental involvement at the campus.

PLANNING AND DECISION-MAKING PROCESS

BQ  
(LEGAL)

9. Include goals and methods for violence prevention and intervention on campus.

*Education Code 11.253(c), (d)*

SHARED SERVICES  
ARRANGEMENT  
FOR DAEP  
SERVICES

Each District participating in a shared services arrangement (SSA) for disciplinary alternative education program (DAEP) services shall ensure that the District improvement plan and each campus-level plan include the performance of the DAEP student group for the respective District. The identified objectives for the improvement plans shall include:

1. Student groups served, including overrepresentation of students from economically disadvantaged families, with ethnic and racial representations, and with a disability who receive special education and limited English proficiency services;
2. Attendance rates;
3. Pre- and post-assessment results;
4. Dropout rates;
5. Graduation rates; and
6. Recidivism rates.

*19 TAC 103.1201(b)*

EVALUATION

At least every two years, the District shall evaluate the effectiveness of the District's decision-making and planning policies, procedures, and staff development activities related to District- and campus-level decision making and planning to ensure that they are effectively structured to positively impact student performance.

*Education Code 11.252(d)*

PLANNING AND  
DECISION-MAKING  
PROCESS

The Board shall adopt a policy to establish a District- and campus-level planning and decision-making process that will involve the professional staff of the District, parents of students enrolled in the District, business representatives, and community members in establishing and reviewing the District's and campuses' educational plans, goals, performance objectives, and major classroom instructional programs. *Education Code 11.251(b)*

ADMINISTRATIVE  
PROCEDURE

The Board shall ensure that an administrative procedure is provided to clearly define the respective roles and responsibilities of the Superintendent, central office staff, principals, teachers, District-level committee members, and campus-level committee members in the areas of planning, budgeting, curriculum, staffing patterns, staff development, and school organization. The Board shall also ensure that the District-level planning and decision-making

PLANNING AND DECISION-MAKING PROCESS

BQ  
(LEGAL)

REQUIREMENTS

committee will be actively involved in establishing the administrative procedure that defines the respective roles and responsibilities pertaining to planning and decision making at the District and campus levels. *Education Code 11.251(d)*

The District policy must provide that all pertinent federal planning requirements are addressed through the District- and campus-level planning process. *Education Code 11.251(f)*

The planning and decision-making requirements do not:

1. Prohibit the Board from conducting meetings with teachers or groups of teachers other than the District-level committee meetings.
2. Prohibit the Board from establishing policies providing avenues for input from others, including students or paraprofessional staff, in District- or campus-level planning and decision making.
3. Limit or affect the power of the Board to govern the public schools.
4. Create a new cause of action or require collective bargaining.

*Education Code 11.251(g)*





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

## **SECTION C: BUSINESS AND SUPPORT SERVICES**

CA	FISCAL MANAGEMENT GOALS AND OBJECTIVES
CAA	Financial Ethics
CB	STATE AND FEDERAL REVENUE SOURCES
CBA	State
CBB	Federal
CC	LOCAL REVENUE SOURCES
CCA	Bond Issues
CCB	Time Warrants
CCC	Certificates of Indebtedness
CCD	Recreational Facilities Bonds
CCE	Athletic Stadium Authority
CCF	Loans and Notes
CCG	Ad Valorem Taxes
CCH	Appraisal District
CD	OTHER REVENUES
CDA	Investments
CDB	Sale, Lease, or Exchange of School-Owned Property
CDBA	Revenue Bonds From Proceeds
CDC	Grants From Private Sources
CDD	Rentals and Service Charges
CDE	Shop Sales
CDF	Royalties
CDG	Gate Receipts, Concessions
CDH	Public Facilities Corporations
CE	ANNUAL OPERATING BUDGET
CF	ACCOUNTING
CFA	Financial Reports and Statements
CFB	Inventories
CFC	Audits
CFD	Activity Funds Management
CFE	Payroll Procedures
CFEA	Salary Deductions and Reductions
CFF	Checking Accounts
CFG	Cash in School Buildings
CG	BONDED EMPLOYEES AND OFFICERS

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

## **SECTION C: BUSINESS AND SUPPORT SERVICES**

CH	PURCHASING AND ACQUISITION
CHB	Petty Cash Account
CHD	Purchasing Procedures
CHE	Vendor Relations
CHF	Payment Procedures
CHG	Real Property and Improvements
CHH	Financing Personal Property Purchases
CI	SCHOOL PROPERTIES DISPOSAL
CJ	CONTRACTED SERVICES
CJA	Criminal History
CK	SAFETY PROGRAM/RISK MANAGEMENT
CKA	Inspections
CKB	Accident Prevention and Reports
CKC	Emergency Plans
CKD	Emergency Medical Equipment and Procedures
CKE	Security Personnel/Peace Officers
CL	BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT
CLA	Security
CLB	Maintenance
CLC	Traffic and Parking Controls
CLD	Records and Reports
CLE	Flag Displays
CM	EQUIPMENT AND SUPPLIES MANAGEMENT
CMA	Receiving and Warehousing
CMB	Authorized Uses of Equipment and Supplies
CMD	Instructional Materials Care and Accounting
CN	TRANSPORTATION MANAGEMENT
CNA	Student Transportation
CNB	District Vehicles
CNBA	Bus Maintenance
CNC	Transportation Safety
CO	FOOD SERVICES MANAGEMENT
COA	Food Purchasing
COB	Free and Reduced-Price Food Program
COC	Vending Machines

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

## **SECTION C: BUSINESS AND SUPPORT SERVICES**

CP	OFFICE MANAGEMENT
CPA	Office Communications
CPAA	Printing and Duplicating
CPAB	Mail and Delivery
CPAC	Telephone
CPC	Records Management
CQ	ELECTRONIC COMMUNICATION AND DATA MANAGEMENT
CR	INSURANCE AND ANNUITIES MANAGEMENT
CRA	Property Insurance
CRB	Liability Insurance
CRD	Health and Life Insurance
CRE	Workers' Compensation
CRF	Unemployment Insurance
CRG	Deferred Compensation and Annuities
CS	FACILITY STANDARDS
CT	FACILITIES PLANNING
CV	FACILITIES CONSTRUCTION
CVA	Competitive Bidding
CVB	Competitive Sealed Proposals
CVC	Design-Build Contracts
CVD	Construction Manager-Agent
CVE	Construction Manager-At-Risk
CVF	Job Order Contracts
CW	NEW FACILITIES
CX	RENTING OR LEASING FACILITIES FROM OTHERS



PURCHASING AND ACQUISITION

CH  
(LEGAL)

BOARD AUTHORITY	The Board may adopt rules and procedures for the acquisition of goods and services. <i>Education Code 44.031(d)</i>
DELEGATION OF AUTHORITY	<p>The Board may delegate its authority regarding an action authorized or required to be taken by the District by Education Code Chapter 44, Subchapter B, to a designated person, representative, or committee.</p> <p>The Board may not delegate the authority to act regarding an action authorized or required to be taken by the Board by Education Code Chapter 44, Subchapter B.</p> <p><i>Education Code 44.0312</i></p>
INJUNCTION	A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which the District is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court. <i>Education Code 44.032(f)</i>
PURCHASES VALUED AT OR ABOVE \$25,000	<p>All District contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$25,000 or more in the aggregate for each 12-month period, shall be made by the method that provides the best value for the District:</p> <ol style="list-style-type: none"><li>1. Competitive bidding.</li><li>2. Competitive sealed proposals.</li><li>3. A request for proposals for services other than construction services.</li><li>4. An interlocal contract.</li><li>5. The reverse auction procedure as defined by Government Code 2155.062(d).</li><li>6. The formation of a political subdivision corporation under Local Government Code 304.001.</li></ol> <p><i>Education Code 44.031(a)</i></p> <hr/> <p><b>Note:</b> Regarding construction of school facilities, see CV generally; CVA for competitive bidding; CVB for competitive sealed proposals; CVC for design/build contracts; CVD, CVE for contracts using a construction manager; and CVF for job order contracts for minor repairs/alterations.</p> <hr/>
FACTORS	In awarding a contract, the District shall consider:

PURCHASING AND ACQUISITION

CH  
(LEGAL)

1. Purchase price.
2. The reputation of the vendor and of the vendor's goods and services.
3. The quality of the vendor's goods or services.
4. The extent to which the goods or services meet the District's needs.
5. The vendor's past relationship with the District.
6. The impact on the ability of the District to comply with laws relating to historically underutilized businesses.
7. The total long-term cost to the District to acquire the goods or services.
8. Any other relevant factor specifically listed in the request for bids or proposals.

*Education Code 44.031(b)*

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code 271.9051. This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

*Education Code 44.031(b-1)*

The factors listed above are the only criteria that may be considered by the District in its decision to award a contract. R.G.V. Vending v. Weslaco Indep. Sch. Dist., 995 S.W.2d 897 (Tex. App.—Corpus Christi 1999, no pet.).

CONTRACT WITH  
PERSON INDEBTED  
TO DISTRICT

The Board may, by resolution, establish regulations permitting the District to refuse to enter into a contract or other transaction with a person indebted to the District. The District may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the District.

The term "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that seeks to enter into a contract or other transaction with the District requiring Board approval.

*Education Code 44.044*

PURCHASING AND ACQUISITION

CH  
(LEGAL)

NOTICE  
PUBLICATION

Notice of when and where bids or proposals or the responses to a request for qualifications will be received and opened shall be published in the county where the District's central administrative office is located, once a week for at least two weeks prior to the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is no newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the District's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g)*

PERSONAL PROPERTY  
PURCHASES VALUED  
\$10,000 TO \$25,000

When the District seeks to purchase personal property of a value of at least \$10,000 but less than \$25,000, in the aggregate, for a 12-month period, the District may either purchase those items in accordance with Education Code 44.031(a) and (b) described above or follow the vendor list procedures described below. *Education Code 44.033(a)*

NOTICE

For each 12-month period, the District shall publish a notice in two successive issues of any newspaper of general circulation in the county in which the school is located. If there is no newspaper in the county in which the school is located, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the school is located, specifying the categories of personal property to be purchased and soliciting the names, addresses, and telephone numbers of vendors that are interested in supplying any of the categories to the District. *Education Code 44.033(b)*

VENDOR LIST

For each category, the District shall create a vendor list consisting of each vendor that responds to the published notice and any additional vendors the District elects to include. Before the District makes a purchase from a category of personal property, it must obtain written or telephone price quotations from at least three vendors from the list for that category. If fewer than three vendors are on the list, the District shall contact each vendor. Whenever possible, telephone quotes should be confirmed in writing by mail or facsimile. The bidding records shall be retained with the District's competitive bid records and are subject to audit. Purchases shall be made from the lowest responsible bidder, except as provided by Education Code 44.033(f). *Education Code 44.033(b), (c)*

LOCATION OF  
BIDDER

In awarding a contract by competitive sealed bid under Education Code 44.033, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner pro-

PURCHASING AND ACQUISITION

CH  
(LEGAL)

vided by Local Government Code 271.9051. This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153. *Education Code 44.033(f)*

PRODUCE OR FUEL  
PURCHASES

When the District purchases produce or fuel valued at \$10,000 or more in the aggregate, for a 12-month period, the District must either purchase those items in accordance with Education Code 44.031(a) and (b) described above or follow the vendor list procedures described immediately above. *Education Code 44.033(a), (d)*

PROFESSIONAL  
SERVICES

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect, attorney, or fiscal agent.

The District may contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031.

*Education Code 44.031(f)*

Competitive bids shall not be solicited for professional services of any licensed or registered certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse. Contracts for these professional services shall be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.002, 2254.003(a)*

An interlocal contract between the District and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

[See also CV]

EMERGENCY DAMAGE  
OR DESTRUCTION

If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the Board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. *Education Code 44.031(h)*



PURCHASING AND ACQUISITION

CH  
(LEGAL)

COMPUTERS	The District may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts with the DIR in accordance with Government Code Chapter 2054 or 2157. <i>Education Code 44.031(i)</i>
AUTOMATED INFORMATION SYSTEM	The District may purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method listed above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. <i>Gov't Code 2157.006; 34 TAC 20.391</i>
AUTOMATED EXTERNAL DEFIBRILLATORS	A school that purchases or leases an automated external defibrillator, as defined by Health and Safety Code 779.001, shall ensure that the defibrillator meets standards established by the federal Food and Drug Administration. <i>Education Code 44.047</i>
SOLE SOURCE	<p>Compliance with Education Code 44.031 is not required for purchases that are available from only one source, including:</p> <ol style="list-style-type: none"><li>1. An item for which competition is precluded because of a patent, copyright, secret process, or monopoly.</li><li>2. A film, manuscript, or book.</li><li>3. A utility service, including electricity, gas, or water.</li><li>4. A captive replacement part or component for equipment.</li></ol> <p>The sole source exception shall not apply to mainframe data processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.</p> <p><i>Education Code 44.031(j), (k)</i></p>
IMPERMISSIBLE PRACTICES	<p>A Trustee, employee, or agent shall not, with criminal negligence, make or authorize separate, sequential, or component purchases to avoid the purchasing requirements set out in Education Code 44.031. An officer or employee shall not knowingly violate Education Code 44.031 in any other manner.</p> <p>“Component purchases” means purchases of the component parts of an item that in normal purchasing practices would be made in one purchase. “Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be made in one purchase. “Sequential purchases” means purchases, over a period, of items that in normal purchasing practices would be made in one purchase.</p>

PURCHASING AND ACQUISITION

CH  
(LEGAL)

Violation of this provision is a Class B misdemeanor and an offense involving moral turpitude, conviction of which shall result in removal from office or dismissal from employment. A Trustee who is convicted of a violation of this provision is considered to have committed official misconduct and for four years after the date of final conviction, the removed person is ineligible to be appointed or elected to public office in Texas, is ineligible to be employed by or act as an agent for the state or a political subdivision, and is ineligible to receive any compensation through a contract with the state or a political subdivision. [See BBC]

*Education Code 44.032*

INSURANCE

A contract for the purchase of insurance is a contract for the purchase of personal property and shall be made in accordance with Education Code 44.031 or 44.033. *Education Code 44.031, 44.033; Atty. Gen. Op. DM-347 (1995)*

MULTIYEAR  
CONTRACTS

The District may execute an insurance contract for a period longer than 12 months, if the contract contains either or both of the provisions described at COMMITMENT OF CURRENT REVENUE, below. If the District executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the District will be executing a new insurance contract. *Atty. Gen. Op. DM-418 (1996)*

COMPETITIVE  
BIDDING

If the District receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, it shall select only one bidder from the identical bids.

If only one of the bidders submitting identical bids is a resident of the District, that bidder shall be selected. If two or more such bidders are residents of the District, one shall be selected by the casting of lots. In all other cases, one of the identical bids shall be selected by the casting of lots.

The Board shall prescribe the manner of casting lots and shall be present when the lots are cast. All qualified bidders or their representatives may be present at the casting of lots.

*Local Gov't Code 271.901*

REVERSE AUCTION

A district that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the District and fair to vendors. *Local Gov't Code 271.906(b)*

Reverse auction procedure means:

PURCHASING AND ACQUISITION

CH  
(LEGAL)

1. A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or
2. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

*Gov't Code 2155.062(d)*

OUT-OF-STATE  
BIDDERS

The Board shall not award a contract for general construction, improvements, services, or public works projects or for purchase of supplies, materials, or equipment to a bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. *Gov't Code 2252.001, 2252.002*

This requirement shall not apply to a contract involving federal funds. The District shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003, 2252.004*

INTERLOCAL  
AGREEMENTS

To increase efficiency and effectiveness, the District may contract or agree with other local governments and with state agencies, including the comptroller, to perform some of its purchasing functions. *Gov't Code 791.001, 791.011, 791.025*

An interlocal contract must be authorized by the Board and the governing body of each contracting party; must state the purpose, terms, rights, and duties of the contracting parties; and must specify that each party paying for the performance of governmental functions or services shall make those payments from current revenues available to the paying party.

An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. The contract may be renewed annually.

*Gov't Code 791.011(d)–(f)*

The District may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a

PURCHASING AND ACQUISITION

CH  
(LEGAL)

state agency, including the comptroller, to purchase goods and services reasonably required for the installation, operation, or maintenance of the goods. Such an agreement may not, however, apply to services provided by firefighters, police officers, or emergency medical personnel.

A district that purchases goods and services by agreement with another local government or with the state or state agency satisfies the requirement to seek competitive bids for the purchase of goods and services.

*Gov't Code 791.025(b), (c); Atty. Gen. Op. JC-37 (1999)*

STATE PURCHASING  
PROGRAM

Purchasing services performed for the District by the comptroller shall include:

1. The extension of state contract prices to the District when the comptroller considers it feasible.
2. Solicitation of bids on items desired by the District if the solicitation is considered feasible by the comptroller and is desired by the District.
3. Provision of information and technical assistance to the District about the purchasing program.

The comptroller may charge the District its actual costs in providing purchasing services.

*Local Gov't Code 271.082*

DISTRICT  
REQUIREMENTS

The District may participate in the purchasing program, including participation in purchases that use the reverse auction procedure, by filing with the BPC a resolution adopted by the Board requesting that the District be allowed to participate on a voluntary basis, to the extent the BPC deems feasible, and stating that the Board shall:

1. Designate an official to act for the District in all matters relating to the program, including the purchase of items from the vendor under any contract.
2. Direct the decisions of its representative.
3. Be responsible for:
  - a. Submitting requisitions to the commission under contract(s) and for payment directly to the vendor; and
  - b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse

PURCHASING AND ACQUISITION

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(LEGAL)

auction purchase, and electronically sending the BPC reports on actual purchases.

4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

A purchase made through participation in this program meets any state requirement to seek competitive bids for the purchase of the item.

ELECTRONIC  
MARKETPLACE

If the District has the ability to electronically send purchase orders and information, it may participate in the Department of Information Resources' electronic procurement system, as described in Government Code Chapter 2177.

*Local Gov't Code 271.083*

MULTIPLE AWARD  
CONTRACT  
SCHEDULE

The BPC shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government or any other governmental entity in any state.

The District may purchase goods or services directly from a vendor under a contract listed on a schedule. An authorized purchase satisfies any requirement of state law relating to competitive bids or proposals and satisfies any applicable requirements of Government Code 2157.

The price listed for a good or service under a multiple award contract is a maximum price. The District may negotiate a lower price for goods or services under a contract listed on a schedule.

*Gov't Code 2155, Subch. 1*

COOPERATIVE  
PURCHASING  
PROGRAM

The District may participate in a cooperative purchasing program with another local government or a local cooperative organization. If the District does so, it may sign an agreement with another participating local government or a local cooperative stating that the District will:

1. Designate a person to act on behalf of the District in all matters relating to the program.
2. Make payments to another participating local government or local cooperative organization or directly under a contract, as provided in the agreement.
3. Be responsible for the vendor's compliance.

If the District participates in a cooperative purchasing program, it satisfies any law requiring it to seek competitive bids.

*Local Gov't Code 271.102; Atty. Gen. Op. JC-37 (1999)*

PURCHASING AND ACQUISITION

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CONTRACT-RELATED  
FEE

A district that enters into a purchasing contract valued at \$25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Subchapter F, Chapter 271, Local Government Code (cooperative purchasing program), or under any other cooperative purchasing program authorized for school districts by law shall document any contract-related fee, including any management fee, and the purpose of each fee under the contract.

The amount, purpose, and disposition of any fee described above must be presented in a written report and submitted annually in an open meeting of the Board. The written report must appear as an agenda item. The Commissioner of Education may audit the written report.

*Education Code 44.0331*

STATE COUNCIL ON  
COMPETITIVE  
GOVERNMENT

As approved by the State Council on Competitive Government, the District may voluntarily participate in a contract awarded by the council or a state agency under Government Code 2162. A district that purchases goods or services under this type of contract is considered to have satisfied any state law requiring competitive purchasing. *Gov't Code 2162.102(d)*

COMMITMENT OF  
CURRENT REVENUE

A contract for the acquisition, including lease, of real or personal property is a commitment of the District's current revenue only, provided the contract contains either or both of the following provisions:

1. Retains to the Board the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.
2. Is conditioned on a best efforts attempt by the Board to obtain and appropriate funds for payment of the contract.

*Local Gov't Code 271.903*

ENERGY OR WATER  
CONSERVATION  
MEASURES

The District may contract for energy or water conservation measures. Such a contract shall be let according to the procedures established for professional services by Government Code 2254.004.

The Board shall establish a goal to reduce the District's annual electric consumption by five percent each year for six years, beginning September 1, 2007.

*Education Code 44.901* [See policy CL for legal requirements pertaining to such contracts]

RECYCLED  
PRODUCTS

The District shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. The District shall regularly review and

PURCHASING AND ACQUISITION

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(LEGAL)

revise its purchasing procedures and specifications for purchase of goods, supplies, equipment, and materials in order to:

1. Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials.
2. Encourage the use of products made of recycled materials.
3. Ensure to the maximum extent economically feasible that the District purchase products that may be recycled when they have served their intended use.

The District may seek an exemption from compliance if it has a population of less than 5,000 within its geographic boundaries and demonstrates to the Water Commission that compliance would work a hardship on the District.

*Health and Safety Code 361.426*

AGRICULTURAL  
PRODUCTS

If the cost and quality are equal, the District shall give preference in purchasing to agricultural products, including textiles and other similar products, that are produced, processed, or grown in Texas. "Processed" means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form. If Texas agricultural products are not equal in cost and quality to other agricultural products, the District shall give preference in purchasing to agricultural products produced, processed, or grown in the United States, if the cost and quality of the U.S. and foreign products are equal.

The District may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in Texas.

VEGETATION FOR  
LANDSCAPING

If cost is equal and the quality is not inferior, the District shall give preference to Texas vegetation when it purchases vegetation for landscaping purposes.

*Education Code 44.042*

BUS PURCHASE OR  
LEASE

Each contract proposed for the purchase or lease of one or more school buses, including a lease with an option to purchase, shall be submitted to competitive bidding when the contract is valued at \$20,000 or more. *Education Code 44.031(l)* [See CNB]

RIGHT TO WORK

While engaged in procuring goods and services or awarding a contract, the District:

1. May not consider whether a vendor is a member of or has another relationship with any organization; and

PURCHASING AND ACQUISITION

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(LEGAL)

2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

*Education Code 44.043*

LOBBYING  
RESTRICTION:  
TOBACCO EDUCATION  
GRANT FUNDS

The District may not spend grant funds it receives from the Permanent Fund for Tobacco Education and Enforcement to pay:

1. Lobbying expenses incurred by the District;
2. A person or entity that is required under Government Code Chapter 305 to register as a lobbyist with the Texas Ethics Commission.
3. Any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity of a registered lobbyist (as described in item 2);
4. A person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.

*Gov't Code 403.1067*

CRIMINAL HISTORY

For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).



CONTRACTED SERVICES  
CRIMINAL HISTORY

CJA  
(LEGAL)

CRIMINAL HISTORY —  
IN GENERAL

Before entering into a contract with the District, a person or business must give notice to the District if the person or an owner or operator of the business has been convicted of a felony. The District may terminate a contract with a person or business if the District determines that the person or business failed to give such notice or misrepresented the conduct resulting in the conviction. The District must compensate the person for services performed before the contract terminated. *Education Code 44.034*

DEFINITIONS

'CONTINUING  
DUTIES RELATED  
TO CONTRACTED  
SERVICES'

"Continuing duties related to contracted services" are work duties that are performed pursuant to a contract to provide services to the District on a regular, repeated basis rather than infrequently or one-time only.

'COVERED  
CONTRACT  
EMPLOYEE'

A "covered contract employee" is an individual who:

1. Is employed or offered employment by a service contractor or a subcontractor of a service contractor, is an individual independent contractor of the District, or is an individual subcontractor of a service contractor;
2. Has or will have continuing duties related to the contracted services;
3. Has or will have direct contact with students; and
4. Is not a student of (or enrolled in) the District for which the services are performed.

'DIRECT CONTACT  
WITH STUDENTS'

"Direct contact with students" is the contact that results from activities that provide substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional District employee. Contact with students that results from services that do not provide substantial opportunity for unsupervised interaction with a student or students, such as addressing an assembly, officiating a sports contest, or judging an extracurricular event, is not, by itself, direct contact with students. However, direct contact with students does result from any activity that provides substantial opportunity for unsupervised contact with students, which might include, without limitation, the provision of coaching, tutoring, or other services to students.

'SERVICE  
CONTRACTOR'

A "service contractor" is an entity, including a government entity and an individual independent contractor, that contracts or agrees with the District by written agreement or verbal understanding to provide services through individuals who receive compensation. However, when conducting an investigation or intervention regarding an alleged crime or act of child abuse on a school campus, a law enforcement agency or the Department of Family and Protec-

CONTRACTED SERVICES  
CRIMINAL HISTORY

CJA  
(LEGAL)

tive Services is not a service contractor, and the investigator or intervener is not a covered contract employee.

*19 TAC 153.1101(2), (3), (7), (10)*

CONTRACTOR  
RESPONSIBILITIES

EMPLOYED  
BEFORE  
JANUARY 1, 2008

An entity that contracts with the District to provide services shall obtain from any law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to an employee of the entity who is employed before January 1, 2008, and who is not subject to a national criminal history record information review under Education Code 22.0834(b) if:

1. The employee has continuing duties related to the contracted services; and
2. The employee has direct contact with students.

EMPLOYMENT  
OFFERED ON OR  
AFTER JANUARY 1,  
2008

A person who, on or after January 1, 2008, is offered employment by an entity that contracts with the District must submit to a national criminal history record information review if:

1. The employee or applicant has or will have continuing duties related to the contracted services; and
2. The employee or applicant has or will have direct contact with students.

The person must submit to the review before being employed or serving in a capacity described above.

An entity contracting with the District shall obtain all criminal history record information that relates to a person described above through the criminal history clearinghouse as provided by Government Code 411.0845.

CERTIFICATION TO  
DISTRICT

The entity shall certify to the District that it received all of the criminal history record information required above. The service contractor shall also certify that it will take reasonable steps to ensure that the conditions or precautions that have resulted in a determination that any person is not a covered contract employee continue to exist throughout the time that the contracted services are provided.

A service contractor shall provide the District, at its request, the information necessary for the District to obtain criminal history record information for all covered contract employees.

DISQUALIFYING  
CONVICTION

A service contractor shall not permit a covered contract employee to provide services at the District if the employee has a disqualifying conviction under Education Code 22.085.

CONTRACTED SERVICES  
CRIMINAL HISTORY

CJA  
(LEGAL)

DISTRICT RESPONSIBILITIES	The District may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person described above at CONTRACTOR RESPONSIBILITIES—EMPLOYED BEFORE JANUARY 1, 2008.
EMPLOYED BEFORE JANUARY 1, 2008	
EMPLOYMENT OFFERED ON OR AFTER JANUARY 1, 2008	The District may obtain the criminal history record information of a person described above at CONTRACTOR RESPONSIBILITIES—EMPLOYMENT OFFERED ON OR AFTER JANUARY 1, 2008, through the criminal history clearinghouse as provided by Government Code 411.0845.
CERTIFICATION FROM CONTRACTOR	The District shall ensure that each of its service contractors certify that the service contractor has obtained all required criminal history record information for covered contract employees.
DISQUALIFYING CONVICTION	The District may not allow a covered contract employee to serve at the District if the District obtains information through a criminal history record information review that the covered contract employee has a disqualifying conviction under Education Code 22.085. The District may adopt a stricter standard.
SBEC NOTIFICATION	<p>Pursuant to 19 TAC 249.14(d)(1), if the District obtains information that a covered contract employee who holds a certificate issued by the State Board for Educator Certification (SBEC) has a reported criminal history, the Superintendent or the Superintendent's designee shall notify SBEC of that criminal history within seven calendar days of the date that information is obtained.</p> <p><i>Education Code 22.0834; 19 TAC 153.1117(b), (c)</i></p>
EMERGENCY EXCEPTION TO CRIMINAL HISTORY CHECK	<p>In the event of an emergency, the District may allow a covered contract employee to enter District property without the required criminal history record information review if the person is accompanied by a District employee. The District may adopt rules regarding an emergency situation. <i>Education Code 22.0834(f); 19 TAC 153.1117(b)(2)</i></p> <p>[See DBAA for definitions and provisions regarding confidentiality, consumer credit reports, records retention, and criminal history record checks of employees.]</p>
CONTRACTORS PROVIDING TRANSPORTATION SERVICES	In addition to the requirements described above at CRIMINAL HISTORY—IN GENERAL, if the District contracts with a person for transportation services, the District shall obtain criminal history record information from any law enforcement or criminal justice agency relating to a person employed by the person as a bus driver or a person the person intends to employ as a bus driver. A person who contracts with the District to provide transportation services shall submit to the District the name and other identification data

CONTRACTED SERVICES  
CRIMINAL HISTORY

CJA  
(LEGAL)

required to obtain the criminal history record information of such persons. If the District obtains information that such a person has been convicted of a felony or a misdemeanor involving moral turpitude, the District shall inform the chief personnel officer of the person with whom the District has contracted, and the person may not employ that person to drive a bus on which students are transported without the permission of the Board. *Education Code 22.084(a), (b)*

Criminal history record information obtained by the District shall not be released or disclosed to any person, other than the individual who is the subject of the information, the Texas Education Agency, SBEC, or the chief personnel officer of a public or commercial transportation company with which the District contracts to provide transportation services to students. *Gov't Code 411.097*

COMMERCIAL  
TRANSPORTATION  
COMPANY

In addition to the requirements described above at CRIMINAL HISTORY — IN GENERAL, if the District contracts with a commercial transportation company for transportation services, the company may obtain all criminal history record information that relates to a person employed by the company as a bus driver, bus monitor, or bus aide, or a person the company intends to employ in one of these positions. If the company obtains criminal history record information indicating that a person it employs or intends to employ has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not, without the permission of the board, employ that person to drive or to serve as a bus monitor or bus aide on a bus on which students are transported. If the commercial transportation company obtains the criminal history record information, the District is not required to do the same. *Education Code 22.084(c), (d)*

BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT

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(LEGAL)

REDUCTION OF  
ENERGY  
CONSUMPTION

The Board shall establish a goal to reduce the District's annual electric consumption by five percent each year for six years, beginning September 1, 2007. *Education Code 44.901–44.902*

ENERGY OR WATER  
CONSERVATION  
MEASURES

The Board may enter into an energy savings performance contract for energy or water conservation measures to reduce energy or water consumption or operating costs of school facilities.

An energy savings performance contract includes a contract for the installation or implementation of:

1. Insulation of a building structure and systems within the building;
2. Storm windows or doors, caulking or weatherstripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
3. Automatic energy control systems, including computer software and technical data licenses;
4. Heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;
5. Lighting fixtures that increase energy efficiency;
6. Energy recovery systems;
7. Electric systems improvements;
8. Water-conserving fixtures, appliances, and equipment or the substitution of nonwater-using fixtures, appliances, and equipment;
9. Water-conserving landscape irrigation equipment;
10. Landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
  - a. Landscape contouring, including the use of berms, swales, and terraces; and
  - b. The use of soil amendments that increase the water-holding capacity of the soil, including compost;
11. Rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
12. Equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT

CL  
(LEGAL)

13. Equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;
14. Metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or
15. Other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

Each energy or water conservation measure shall comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding the list above, an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

The Board may enter into energy savings performance contracts only with persons who are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

PERFORMANCE  
BOND

Before entering an energy savings performance contract, the Board shall require the provider of the energy or water conservation measures to file a payment and performance bond relating to the installation of the measures in accordance with Government Code Chapter 2253. The Board may also require a separate bond to cover the value of the guaranteed savings on the contract.

FINANCING

An energy savings performance contract may be financed:

1. Under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing.
2. With the proceeds of bonds.
3. Under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

An energy savings performance contract for energy or water conservation measures shall contain provisions requiring the provider

BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT

CL  
(LEGAL)

of the energy or water conservation measures to guarantee the amount of the savings to be realized by the District under the contract. If the term of an energy savings performance contract exceeds one year, the District's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures as determined by the District, divided by the number of years in the contract term.

CONTRACT  
PROCUREMENT

An energy savings performance contract for energy or water conservation measures shall be let according to the procedures established for professional services by Government Code 2254.004. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

COST SAVINGS  
REVIEW

Before entering an energy savings performance contract, the Board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract.

*Education Code 44.901*

ENERGY USAGE  
REPORT

The District shall record in an electronic repository the District's metered amount of electricity, water, or natural gas consumed for which it is responsible to pay and the aggregate costs for those utility services. The District shall report the recorded information on a publicly accessible Internet Web site with an interface designed for ease of navigation if available, or at another publicly accessible location. *Gov't Code 2264.001*

LIGHT BULBS

The District shall purchase for use in each type of light fixture in an instructional facility the commercially available model of light bulb that:

1. Uses the fewest watts for the necessary luminous flux or light output;
2. Is compatible with the light fixture; and

BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT

CL  
(LEGAL)

3. Is the most cost-effective, considering the factors described above.

*Education Code 44.903*

[See CS for energy conservation measures related to outdoor lighting fixtures]

RECYCLING  
PROGRAM

In cooperation with the comptroller or the Texas Commission on Environmental Quality (TCEQ), the District shall establish a program for the separation and collection of all recyclable materials generated by the District's operations, including at a minimum, aluminum, steel containers, aseptic packaging, polycoated paper-board cartons, high-grade office paper, and corrugated cardboard. "Recyclable materials" includes materials in the District's possession that have been abandoned or disposed of by the District's officers or employees or by any other person.

The District shall also:

1. Provide procedures for collecting and storing recyclable materials, provide containers for recyclable materials, and provide procedures for making contractual or other arrangements with buyers of recyclable materials.
2. Evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled.
3. Establish educational and incentive programs to encourage maximum employee participation.

The District may seek an exemption from compliance if it has a population of less than 5,000 within its geographic boundaries and demonstrates to the TCEQ that compliance would work a hardship on the District.

*Health and Safety Code 361.425*

CERTIFICATE OF  
MOLD REMEDIATION

When the District sells property, the District shall provide to the buyer a copy of any certificate of mold remediation that has been issued for the property. *Occupations Code 1958.154(b); 25 TAC 295.327(d)*

POOL DRAINS

Each public pool and spa shall comply with the drain cover standards found at 15 U.S.C. Section 8003. "Public pool and spa" means a swimming pool or spa that is open to the public generally, whether for a fee or free of charge. *15 U.S.C. 8003*



TRANSPORTATION MANAGEMENT  
STUDENT TRANSPORTATION

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(LEGAL)

DEFINITIONS

For purposes of this policy:

1. "Bus" means a motor vehicle used to transport persons and designed to accommodate more than ten persons, including the driver.
2. "Passenger car" refers to a motor vehicle, other than a motor-cycle, used to transport persons and designed to accommodate ten or fewer passengers.
3. "Passenger van" means a motor vehicle, other than a motor-cycle or passenger car, used to transport persons and designed to transport 15 or fewer passengers, including the driver.
4. "School activity bus" means a bus designed to accommodate more than 15 passengers, including the operator, that is owned, operated, rented, or leased by the District and is used to transport public school students on a school-related activity trip, other than on routes to and from school. The term does not include a chartered bus, a bus operated by a mass transit authority, or a school bus.
5. "School bus" means a motor vehicle that was manufactured in compliance with the federal motor vehicle safety standards for school buses in effect on the date of manufacture and that is used to transport preprimary, primary, or secondary students to and from school or on a school-related activity trip other than on routes to and from school. The term does not include a school-chartered bus or a bus operated by a mass transit authority.
6. "Motor bus" means a vehicle designed to transport more than 15 passengers, including the driver.

*Education Code 34.003; Trans. Code 541.201*

AUTHORITY

The District may establish and operate an economical public school transportation system in the District or outside the District, if the District enters into an interlocal contract as provided by Government Code Chapter 791. For that part of the system that the District operates directly, it shall employ bus drivers certified by the Department of Public Safety. *Education Code 34.007*

TRANSPORTATION  
FUNDING FOR  
ELIGIBLE STUDENTS

If the District operates a transportation system, the District is entitled to a state transportation allotment. The allotted funds are based on the cost of providing transportation services to students who live two or more miles from the school they attend. The Commissioner of Education cannot reduce the allotment because the District provides transportation for an eligible student to and from a child-care facility instead of the student's residence, if the

TRANSPORTATION MANAGEMENT  
STUDENT TRANSPORTATION

CNA  
(LEGAL)

transportation is provided within the approved routes of the District for the school the student attends. *Education Code 42.155*

The Board may require payment of a reasonable fee for transportation to and from school of a student who lives within two miles of the school the student attends. However, the Board may not charge a fee for transportation for which the District receives a transportation allotment under Education Code 42.155(d). *Education Code 11.158.*

HAZARDOUS  
CONDITIONS

The District may apply to the Commissioner of Education for an additional amount of up to ten percent of its regular transportation allotment to be used for the transportation of students living within two miles of the school they attend who would be subject to hazardous traffic conditions if they walked to school. The Board shall provide to the Commissioner the definition of hazardous conditions applicable to the District and shall identify the specific hazardous areas for which the allocation is requested. A hazardous condition exists where no walkway is provided and students must walk along or cross a freeway or expressway, an underpass, an overpass or a bridge, an uncontrolled major traffic artery, an industrial or commercial area, or another comparable condition. *Education Code 42.155(d)*

BUS OPERATION

A person may not operate a school bus if:

1. The door of the school bus is open; or
2. The number of passengers on the bus is greater than the manufacturer's design capacity for the bus.

*Trans. Code 545.426*

TRANSPORTING  
STUDENTS TO  
SCHOOL

School buses or mass transit authority buses shall be used for the transportation of students to and from schools on routes having ten or more students. Passenger cars may be used on routes having fewer than ten students. *Education Code 34.003(a)*

DESIGNATION OF  
CHILD-CARE  
FACILITY OR  
GRANDPARENT'S  
RESIDENCE

The Board, after determining eligibility for transportation services, shall allow a parent to designate a child-care facility or the residence of a grandparent of the child instead of the child's residence as the regular location for purposes of obtaining transportation under the system to and from the child's school. Either designated location must be an approved stop on an approved route. *Education Code 34.007(b)(2)*

"Child-care facility" means a facility licensed, certified, or registered by the Department of Family and Protective Services to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adop-

TRANSPORTATION MANAGEMENT  
STUDENT TRANSPORTATION

CNA  
(LEGAL)

tion to the owner or operator of the facility for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers. *Human Resources Code 42.002(3)*

TRANSPORTATION  
TO A HIGHER  
PERFORMING  
SCHOOL

The District shall provide or pay for the transportation of a student to a higher-performing public school operated by another district, if the District is identified for corrective action, or to another public school within the District if the student's school:

1. Has been identified for school improvement;
2. Has failed to make adequate yearly progress by the end of the first full school year after identification for school improvement;
3. Has had corrective action implemented by the District for failure to make adequate yearly progress by the end of the second full school year after identification for school improvement; or
4. Has failed to make adequate yearly progress after one full school year of corrective action.

*No Child Left Behind Act of 2001, 20 U.S.C. 6316(b)(9)*

TRANSPORTATION  
OF HOMELESS  
STUDENTS

As a condition of receiving funds under the McKinney-Vento Homeless Education Assistance Improvements Act, the District shall adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, at the request of the homeless liaison) to and from the school of origin, as follows:

1. If the homeless child lives in the district in which the school of origin is located, the district of origin will provide the child's transportation to and from the school of origin.
2. If the homeless child lives in a district other than that in which the school of origin is located, the district of origin and the district where the homeless child is living shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the districts are unable to agree, the responsibility and costs shall be shared equally.

*McKinney-Vento Homeless Education Assistance Improvements Act of 2001, Secs. 722, 725; 42 U.S.C. 11432(g)(1)(J)(iii)(I), (II)*  
[See FDC]

SCHOOL ACTIVITIES

When transporting students in connection with school activities other than on routes to and from school:

TRANSPORTATION MANAGEMENT  
STUDENT TRANSPORTATION

CNA  
(LEGAL)

1. Only school buses or motor buses may be used to transport 15 or more students; and
2. Passenger cars or passenger vans may be used to transport fewer than 15 students.

*Education Code 34.003(b)(1), (2)*

The operator of a passenger car or passenger van used to transport students to school or to a school activity shall ensure that the number of passengers does not exceed the designed capacity of the vehicle and that each passenger is secured by a safety belt.

*Education Code 34.003(c)*

ACCELERATED  
INSTRUCTION  
PROGRAMS

The District shall provide students required to attend the accelerated programs described in policy code EIE with transportation to those programs if the programs occur outside of regular school hours. *Education Code 28.0211(j)*

TRANSPORTATION  
COMPANY OR SYSTEM

The Board may contract for all or any part of its public school transportation with a mass transit authority or commercial transportation company, provided that the authority or commercial transportation company:

1. Requires its school bus drivers to have the qualifications required by and be certified in accordance with standards established by the Department of Public Safety;
2. Transports 15 or more students only in school buses or mass transit authority buses that meet or exceed safety standards for school buses established under Education Code 34.002;
3. Conducts all the following education programs with Board approval:
  - a. A program to inform the public that public school students will be riding on the authority's or company's buses;
  - b. A program to educate drivers of the buses to be used under the contract of the special needs and problems of public school students riding on the buses; and
  - c. A program to educate public school students on bus riding safety and any special considerations arising from the use of the authority's or company's buses.

The Board may supplement the state transportation cost allotment with local funds necessary to provide complete transportation services.

*Education Code 34.008*

TRANSPORTATION MANAGEMENT  
STUDENT TRANSPORTATION

CNA  
(LEGAL)

CAREER AND  
TECHNOLOGY  
PROGRAM

The District shall be reimbursed the cost of transporting career and technology program students to another campus within the District, to another secondary public school or an area career and technology school, or to an approved postsecondary institution under a contract for instruction approved by TEA. *Education Code 42.155(f)*

CRIMINAL HISTORY

For provisions pertaining to criminal history record information on contractors providing transportation services, see CJA(LEGAL).



TRANSPORTATION MANAGEMENT  
DISTRICT VEHICLES

CNB  
(LOCAL)

NO NONSCHOOL USE	The District shall not permit use of District vehicles for nonschool purposes.
EMERGENCY USE EXCEPTION	In case of emergencies or disasters, the Superintendent or designee may authorize the use of District vehicles by civil defense, health, or emergency service authorities.
SCHOOL-RELATED USE	<p>The Superintendent or designee shall develop administrative regulations for requesting, scheduling, and using District vehicles for extracurricular activities, field trips, and other school-related purposes.</p> <p>[See GKD regarding nonschool use of school facilities]</p>





ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

CQ  
(LEGAL)

PEIMS	<p>The District shall participate in the Public Education Information Management System (PEIMS) and through that system shall provide information required for the administration of the Foundation School Program and of other appropriate provisions of the Education Code. The PEIMS data standards, established by the Commissioner, shall be used by the District to submit information. <i>Education Code 42.006; 19 TAC 61.1025</i></p>
CHILDREN'S INTERNET PROTECTION ACT	<p>Under the Children's Internet Protection Act (CIPA), the District must, as a prerequisite to receiving universal service discount rates, implement certain Internet safety measures and submit certification to the Federal Communications Commission (FCC). <i>47 U.S.C. 254</i> [See UNIVERSAL SERVICE DISCOUNTS, below, for details]</p> <p>Districts that do not receive universal service discounts but do receive certain federal funds under the Elementary and Secondary Education Act (ESEA) must, as a prerequisite to receiving these funds, implement certain Internet safety measures and submit certification to the Department of Education (DOE). <i>20 U.S.C. 6777</i> [See ESEA FUNDING, below, for details]</p>
DEFINITIONS	<p>"Harmful to minors" means any picture, image, graphic image file, or other visual depiction that:</p> <ol style="list-style-type: none"><li>1. Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;</li><li>2. Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and</li><li>3. Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.</li></ol> <p><i>47 U.S.C. 254(h)(7)(G); 20 U.S.C. 6777(e)(6)</i></p> <p>"Technology protection measure" means a specific technology that blocks or filters Internet access. <i>47 U.S.C. 254(h)(7)(I)</i></p>
UNIVERSAL SERVICE DISCOUNTS	<p>An elementary or secondary school having computers with Internet access may not receive universal service discount rates unless the District implements an Internet safety policy, submits certifications to the FCC, and ensures the use of computers with Internet access in accordance with the certifications. <i>47 U.S.C. 254(h)(5)(A); 47 CFR 54.520</i></p> <p>"Universal service" means telecommunications services including Internet access, Internet services, and internal connection services</p>

ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

CQ  
(LEGAL)

and other services that are identified by the FCC as eligible for federal universal service support mechanisms. *47 U.S.C. 254(c)(3), (h)(5)(A)(ii)*

INTERNET SAFETY  
POLICY

The District shall adopt and implement an Internet safety policy that addresses:

1. Access by minors to inappropriate matter on the Internet and the World Wide Web;
2. The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;
3. Unauthorized access, including "hacking," and other unlawful activities by minors on-line;
4. Unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and
5. Measures designed to restrict minors' access to materials harmful to minors.

*47 U.S.C. 254(l)*

As part of its Internet safety policy, the District must educate minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness and response. *47 U.S.C. 254(h)(5)(B)(iii)*

PUBLIC HEARING

The District shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy. *47 U.S.C. 254(h)(5)(A), (l)(1)*

'INAPPROPRIATE  
FOR MINORS'

A determination regarding what matter is inappropriate for minors shall be made by the Board or designee. *47 U.S.C. 254(l)(2)*

TECHNOLOGY  
PROTECTION  
MEASURE

In accordance with the appropriate certification, the District shall operate a technology protection measure that protects minors against access to visual depictions that are obscene, child pornography, or harmful to minors; and protects adults against access to visual depictions that are obscene or child pornography. *47 U.S.C. 254(h)(5)(B), (C)*

MONITORED USE

In accordance with the appropriate certification, the District shall monitor the on-line activities of minors. *47 U.S.C. 254(h)(5)(B)*

CERTIFICATIONS TO  
THE FCC

To be eligible for universal service discount rates, the District shall certify to the FCC, in the manner prescribed at 47 CFR 54.520, that:

1. An Internet safety policy has been adopted and implemented.

ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

CQ  
(LEGAL)

2. With respect to use by minors, the District is enforcing the Internet safety policy, educating minors about appropriate on-line behavior as part of its Internet safety policy, and operating a technology protection measure during any use of the computers.
3. With respect to use by adults, the District is enforcing an Internet safety policy and operating a technology protection measure during any use of the computers, except that an administrator, supervisor, or other person authorized by the District may disable the technology protection measure during use by an adult to enable access for bona fide research or other lawful purpose.

*47 U.S.C. 254(h)(5); 47 CFR 54.520*

ESEA FUNDING

Federal funds made available under Title II, Part D of the ESEA for an elementary or secondary school that does not receive universal service discount rates may not be used to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet unless the District:

1. Has in place a policy of Internet safety for minors that includes the operation of a technology protection measure that protects against access to visual depictions that are obscene, child pornography, or harmful to minors and enforces the operation of the technology protection measure during any use by minors of its computers with Internet access; and
2. Has in place a policy of Internet safety that includes the operation of a technology protection measure that protects against access to visual depictions that are obscene or child pornography; and enforces the operation of the technology protection measure during any use of its computers with Internet access.

The District may disable the technology protection measure to enable access to bona fide research or for another lawful purpose.

CERTIFICATION TO  
DOE

The District shall certify its compliance with these requirements to the DOE as part of the annual application process for each program funding year under the ESEA.

*20 U.S.C. 6777*

TRANSFER OF  
EQUIPMENT TO  
STUDENTS

The District may transfer to a student enrolled in the District:

1. Any data processing equipment donated to the District, including equipment donated by a private donor, a state elec-

ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

CQ  
(LEGAL)

mosynary institution, or a state agency under Government Code 2175.128;

2. Any equipment purchased by the District; and
3. Any surplus or salvage equipment owned by the District.

*Education Code 32.102(a)*

Before transferring data processing equipment to a student, the District must:

1. Adopt rules governing transfers, including provisions for technical assistance to the student by the District;
2. Determine that the transfer serves a public purpose and benefits the District; and
3. Remove from the equipment any offensive, confidential, or proprietary information, as determined by the District.

*Education Code 32.104*

DONATIONS

The District may accept:

1. Donations of data processing equipment for transfer to students; and
2. Gifts, grants, or donations of money or services to purchase, refurbish, or repair data processing equipment.

*Education Code 32.102(b)*

USE OF PUBLIC FUNDS

The District may spend public funds to:

1. Purchase, refurbish, or repair any data processing equipment transferred to a student; and
2. Store, transport, or transfer data processing equipment under this policy.

*Education Code 32.105*

ELIGIBILITY

A student is eligible to receive data processing equipment under this policy only if the student does not otherwise have home access to data processing equipment, as determined by the District. The District shall give preference to educationally disadvantaged students. *Education Code 32.103*

RETURN OF EQUIPMENT

Except as provided below, a student who receives data processing equipment from the District under this policy shall return the equipment to the District not later than the earliest of:

1. Five years after the date the student receives the equipment;

ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

CQ  
(LEGAL)

2. The date the student graduates;
3. The date the student transfers to another district; or
4. The date the student withdraws from school.

If, at the time the student is required to return the equipment, the District determines that the equipment has no marketable value, the student is not required to return the equipment.

*Education Code 32.106*

UNIFORM  
ELECTRONIC  
TRANSACTIONS ACT

The District may agree with other parties to conduct transactions by electronic means. Any such agreement or transaction must be done in accordance with the Uniform Electronic Transactions Act.  
*Business and Commerce Code Chapter 322*



ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

CQ  
(LOCAL)

	<p>The Superintendent or designee shall implement, monitor, and evaluate electronic media resources for instructional and administrative purposes.</p>
<p>AVAILABILITY OF ACCESS</p> <p>LIMITED PERSONAL USE</p>	<p>Access to the District's electronic communications system, including the Internet, shall be made available to students and employees primarily for instructional and administrative purposes and in accordance with administrative regulations. Limited personal use of the system shall be permitted if the use:</p> <ol style="list-style-type: none"><li>1. Imposes no tangible cost on the District;</li><li>2. Does not unduly burden the District's computer or network resources; and</li><li>3. Has no adverse effect on an employee's job performance or on a student's academic performance.</li></ol>
<p>ACCEPTABLE USE</p>	<p>The Superintendent or designee shall develop and implement administrative regulations, guidelines, and user agreements consistent with the purposes and mission of the District and with law and policy.</p> <p>Access to the District's electronic communications system is a privilege, not a right. All users shall be required to acknowledge receipt and understanding of all administrative regulations governing use of the system and shall agree in writing to allow monitoring of their use and to comply with such regulations and guidelines. Noncompliance may result in suspension of access or termination of privileges and other disciplinary action consistent with District policies. [See DH, FN series, FO series, and the Student Code of Conduct] Violations of law may result in criminal prosecution as well as disciplinary action by the District.</p>
<p>INTERNET SAFETY</p>	<p>The Superintendent or designee shall develop and implement an Internet safety plan to:</p> <ol style="list-style-type: none"><li>1. Control students' access to inappropriate materials, as well as to materials that are harmful to minors;</li><li>2. Ensure student safety and security when using electronic communications;</li><li>3. Prevent unauthorized access, including hacking and other unlawful activities;</li><li>4. Restrict unauthorized disclosure, use, and dissemination of personally identifiable information regarding students; and</li><li>5. Educate students about cyberbullying awareness and response and about appropriate online behavior, including inter-</li></ol>

ELECTRONIC COMMUNICATION AND DATA MANAGEMENT

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(LOCAL)

acting with other individuals on social networking Web sites and in chat rooms.

FILTERING

Each District computer with Internet access shall have a filtering device or software that blocks access to visual depictions that are obscene, pornographic, inappropriate for students, or harmful to minors, as defined by the federal Children's Internet Protection Act and as determined by the Superintendent or designee.

The Superintendent or designee shall enforce the use of such filtering devices. Upon approval from the Superintendent or designee, an administrator, supervisor, or other authorized person may disable the filtering device for bona fide research or other lawful purpose.

MONITORED USE

Electronic mail transmissions and other use of the electronic communications system by students and employees shall not be considered private. Designated District staff shall be authorized to monitor such communication at any time to ensure appropriate use.

INTELLECTUAL  
PROPERTY RIGHTS

Students shall retain all rights to work they create using the District's electronic communications system.

As agents of the District, employees shall have limited rights to work they create using the District's electronic communications system. The District shall retain the right to use any product created in the scope of a person's employment even when the author is no longer an employee of the District.

DISCLAIMER OF  
LIABILITY

The District shall not be liable for users' inappropriate use of electronic communication resources or violations of copyright restrictions or other laws, users' mistakes or negligence, and costs incurred by users. The District shall not be responsible for ensuring the accuracy, age appropriateness, or usability of any information found on the Internet.



FACILITY STANDARDS

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(LEGAL)

APPLICABILITY OF  
STATE STANDARDS  
AFTER JANUARY 1,  
2004

All new facilities and major space renovations approved by the Board after January 1, 2004, shall meet the facility standards established by the Commissioner as set out in Texas Administrative Code Title 19, Chapter 61, Section 61.1036. Other renovations associated with repair or replacement of architectural interior or exterior finishes, fixtures, equipment, and electrical, plumbing, and mechanical systems are not subject to space or educational adequacy requirements, but must meet construction quality standards. *Education Code 46.008; 19 TAC 61.1036*

DEFINITIONS

After January 1, 2004, a "major space renovation" means renovations to all or part of the facility's instructional space where the scope of the work in the affected part of the facility involves substantial renovations to the extent that most existing interior walls and fixtures are demolished and then subsequently rebuilt in a different configuration or function. *19 TAC 61.1036(a)(10)*

"Educational program" means a written document, developed and provided by the District, that includes the following information:

1. A summary of the District's educational philosophy, mission, and goals; and
2. A description of the general nature of the District's instructional program in accordance with the Texas Administrative Code Title 19, Chapter 74, Section 74.1 (relating to Essential Knowledge and Skills). The written educational program should describe:
  - a. The learning activities to be housed, by instructional space;
  - b. How the subject matter will be taught (methods of instructional delivery);
  - c. The materials and equipment to be used and stored;
  - d. Utilities and infrastructure needs; and
  - e. The characteristics of furniture needed to support instruction.

*19 TAC 61.1036(a)(2)*

"Educational specifications" means a written document for a proposed new school facility or major space renovation that includes a description of the proposed project, expressing the range of issues and alternatives. School districts that do not have personnel on staff with experience in developing educational specifications shall use the services of a design professional or consultant experienced in school planning and design to assist in the development

of the educational specifications. The District shall allow for input from teachers, other school campus staff, and District program staff in developing the educational specifications. The following information should be included in the educational specifications:

1. The instructional programs, grade configuration, and type of facility;
2. The spatial relationships—the desired relationships for the functions housed at the facility:
  - a. Should be developed by the District to support the District's instructional program;
  - b. Should identify functions that should be:
    - (1) Adjacent to, immediately accessible;
    - (2) Nearby, easily accessible; and
    - (3) Removed from or away from; and
  - c. Should relate to classroom/instructional functions, instructional support functions, building circulation, site activities/functions, and site circulation.
3. Number of students;
4. A list of any specialized classrooms or major support areas, noninstructional support areas, outdoor learning areas, outdoor science discovery centers, living science centers, or external activity spaces;
5. A schedule of the estimated number and approximate size of all instructional and instructional support spaces included in the facility;
6. Estimated budget for the facility project;
7. School administrative organization;
8. Provisions for outdoor instruction;
9. Hours of operation that include the instructional day, extracurricular activities, and any public access or use;
10. The safety of students and staff in instructional programs, such as science and vocational instruction; and
11. The overall security of the facility.

*19 TAC 61.1036(a)(3)*

FACILITY STANDARDS

CS  
(LEGAL)

APPLICABILITY OF  
STATE STANDARDS  
BEFORE JANUARY 1,  
2004

All new facilities and major space renovations approved by the Board before January 1, 2004, shall meet the facility standards established by the Commissioner as set out in Texas Administrative Code Title 19, Chapter 61, Section 61.1033. Other renovations associated with repair or replacement of architectural interior or exterior finishes, fixtures, equipment, and electrical, plumbing, and mechanical systems are not subject to space or educational adequacy requirements, but must meet construction quality standards. *Education Code 46.008; 19 TAC 61.1033(a)(5), (b)*

FIRE ESCAPES

The Board shall ensure that each school building that is two or more stories shall have such fire escapes as are required by law. *Health and Safety Code 791.002, 791.035, 791.036*

SECURITY CRITERIA

A district that constructs a new instructional facility or conducts a major renovation of an existing instructional facility using Instructional Facilities Allotment funds shall consider, in the design of the instructional facility, security criteria developed by the Texas School Safety Center. *Education Code 46.0081*

READILY ACCESSIBLE  
PROGRAMS

No qualified individual with a disability shall, because the District's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, and activities of the District or be subject to discrimination. *42 U.S.C. 12132; 28 CFR 35.149; 29 U.S.C. 794; 34 CFR 104.21*

The District shall operate each program, service, or activity so that when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. The District is not, however, required to make each existing facility or every part of a facility accessible to and usable by individuals with disabilities.

Compliance with these requirements may be achieved by:

1. Redesigning equipment.
2. Reassigning classes or other services to accessible buildings.
3. Assigning aides to qualified individuals with disabilities.
4. Home visits.
5. Delivery of services at alternate accessible sites.
6. Alteration of existing facilities.
7. Constructing new facilities that comply with 34 CFR 104.23 and 28 CFR 35.151.
8. Any other methods that would result in making services, programs, and activities accessible to individuals with disabilities.

FACILITY STANDARDS

CS  
(LEGAL)

Structural changes in existing facilities need not be made when other methods will achieve compliance with Title II of the Americans with Disabilities Act and its implementing regulation. In choosing among available alternatives for meeting these requirements, the Board shall give priority to methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

*28 CFR 35.150; 34 CFR 104.22*

REVIEW OF PLANS

All plans and specifications for construction or for the substantial renovation, modification, or alteration of a building or facility that has an estimated construction cost of \$50,000 or more shall be submitted to the Department of Licensing and Regulation for review and approval. The District as owner of the building or facility may not allow an application to be filed with a local governmental entity for a building construction permit related to the plans and specifications or allow construction, renovation, modification, or alteration of the building or facility to begin before the date the plans and specifications are submitted to the Department by the architect, interior designer, landscape architect, or engineer.

The District as owner of each building or facility that has an estimated construction, renovation, modification, or alteration cost of at least \$50,000 is responsible for having the building or facility inspected for compliance with the standards and specifications adopted by the Commission of Licensing and Regulation not later than the first anniversary of the date that construction or substantial renovation, modification, or alteration of the building or facility is completed. The inspection must be performed by the Department, an entity with whom the Commission contracts, or a person who holds a certificate of registration to perform inspections.

*Gov't Code 469.101, 469.102(c), 469.105*

NOTICE

The District shall adopt and implement procedures to ensure that interested persons, including those with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities. *34 CFR 104.22(f)*

PORTABLE BUILDINGS

Any portable, modular building capable of being relocated that is purchased or leased after September 1, 2007, for use as a school facility, regardless of whether the building is an industrialized building as defined by Occupations Code 1202.003, must be inspected as provided by Occupations Code Subchapter E, Chapter 1202 to ensure compliance with the mandatory building codes or approved designs, plans, and specifications. *Education Code 46.008(b); 19 TAC 61.1036(f)(3)*

FACILITY STANDARDS

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(LEGAL)

**PLAYGROUNDS** Public funds may not be used to purchase playground equipment or surfacing for the area under and around the equipment if either purchase does not substantially comply with each applicable provision of the Handbook for Public Playground Safety, published by the U.S. Consumer Product Safety Commission.

**EXCEPTION** Public funds may be used to maintain playground equipment or surfacing that was purchased before September 1, 1997, even if they do not comply with the Playground Safety Handbook.

*Health and Safety Code 756.061*

**OUTDOOR LIGHTING FIXTURES** An outdoor lighting fixture that is designed, installed, or replaced on or after September 1, 1999, may be installed, replaced, maintained, or operated using state funds only if the fixture meets the specific energy conservation and light pollution standards in Health and Safety Code Chapter 425.

**EXCEPTIONS** The standards for state-funded outdoor lighting fixtures do not apply when:

1. Preempted by federal law, rule, or regulation;
2. Emergency personnel temporarily require additional illumination for emergency procedures;
3. The lighting fixture is used temporarily for nighttime work;
4. Special events or circumstances\* require additional illumination;
5. The fixture is used solely to enhance the aesthetic beauty of an object; or
6. A compelling safety interest cannot be addressed by another method.

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**\*Note:** Special events or situations that may require additional illumination include sporting events and illumination of monuments, historic structures, or flags. Illumination for special events or situations must be installed to shield the outdoor lighting fixtures from direct view and to minimize upward lighting and light pollution.

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*Health and Safety Code 425.002*

**TESTING OF NATURAL GAS PIPING** At least every two years, before the beginning of the school year and in strict compliance with the time frames established by Railroad Commission rule, the District shall pressure test the natural gas piping system in each District facility. The testing may be per-

FACILITY STANDARDS

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(LEGAL)

formed on a two-year cycle under which the District pressure tests the natural gas piping system in approximately one-half of the facilities each year. If the District operates one or more District facilities on a year-round calendar, the pressure test in each of those facilities shall be conducted and reported not later than July 1 of the year in which the pressure test is performed. *Utilities Code 121.502; 16 TAC 8.230(c)(4)*

RAILROAD  
COMMISSION  
RULES

The Railroad Commission of Texas has adopted rules to enforce this policy. Each District facility described in Commission rules shall be tested in accordance with the procedures and timetables implemented by Commission rules. *16 TAC 8.230*

STANDARDS AND  
PROCEDURE

A test performed under a municipal code in compliance with Railroad Commission rules shall satisfy the pressure testing requirements. *Utilities Code 121.502(d); 16 TAC 8.230(c)(1)*

The pressure test shall determine whether the natural gas piping downstream of a District facility meter holds at least normal operating pressure over a specified period determined by the Railroad Commission. During the pressure test, each system supply inlet and outlet in the facility must be closed. The pressure test shall be performed by a person qualified in accordance with the testing procedures established by Railroad Commission rules. At the District's request, the Railroad Commission shall assist the District in developing a procedure for conducting the test. *Utilities Code 121.503; 16 TAC 8.230(c)(2), (3)*

NOTICE

The District shall provide written notice to the District's natural gas supplier specifying the date and result of each pressure test or other inspection. The supplier shall develop procedures for receiving such written notice from the District. *Utilities Code 121.504(a); 16 TAC 8.230(c)(1)*

TERMINATION OF  
SERVICE

The supplier shall terminate service to a District facility if:

1. The supplier receives official notification from the firm or individual conducting the test of a hazardous natural gas leakage in the facility piping system; or
2. A test or other inspection is not performed as required.

*Utilities Code 121.505(a)*

The supplier shall develop procedures for terminating service to the District if:

1. The natural gas supplier receives notification of a hazardous natural gas leak in the school facility piping system; or

FACILITY STANDARDS

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(LEGAL)

2. The natural gas supplier does not receive written notification from the District specifying the completion date and results of the testing.

*16 TAC 8.230(b)(2)*

REPORTING LEAKS

An identified natural gas leakage in a District facility must be reported to the Board. The firm or individual conducting the natural gas piping test shall immediately report any hazardous natural gas leak in a District facility to the Board and to the District's natural gas supplier. *Utilities Code 121.506; 16 TAC 8.230(c)(6)*

LP-GAS SYSTEMS  
TESTING

At least biennially, the District shall perform pressure tests for leakage on the LP-gas piping system in each District facility before the beginning of the school year. The District may perform the pressure tests on a two-year cycle under which the tests are performed for the LP-gas piping systems of approximately half of the facilities each year. If the District operates one or more District facilities on a year-round calendar, the pressure test in each of those facilities must be conducted and reported not later than July 1 of the year in which the test is performed.

A test performed under a municipal code satisfies the pressure testing requirements.

*Natural Resources Code 113.352; 16 TAC 9.41*

REQUIREMENTS OF  
TEST

The District shall perform the pressure test to determine whether the LP-gas piping system holds at least the amount of pressure specified by the National Fire Protection Association 54, National Fuel Gas Code. The pressure test must be conducted in accordance with National Fire Protection Association 54.

The Railroad Commission, upon request, shall assist the District in providing for the certification of a District employee to conduct the test and in developing a procedure for conducting the test.

*Natural Resources Code 113.353*

Before the introduction of any LP-gas into the LP-gas piping system, the District shall provide verification to its supplier that the piping has been tested.

NOTICE

The District shall provide written notice to the Railroad Commission specifying the date and the result of each pressure test or other inspection of the LP-gas piping system within one week of the date each test is performed.

*Natural Resources Code 113.354; 16 TAC 9.41*

TERMINATION OF  
SERVICE

A supplier shall terminate service to a District facility if:

FACILITY STANDARDS

CS  
(LEGAL)

1. The supplier receives official notification from the firm or individual conducting the test of a hazardous leakage in the facility LP-gas piping system; or
2. A test at the facility is not performed as required.

*Natural Resources Code 113.355*

REPORTING LEAKS

An identified LP-gas leakage in a District facility shall be reported to the Board and the LP gas system shall be removed from LP gas service until repairs are made and another test passed. *Natural Resources Code 113.356; 16 TAC 9.41(b)(3)*

INTRASTATE PIPELINE  
EMERGENCY  
RESPONSE PLAN

The Railroad Commission shall require the owner or operator of each intrastate hazardous liquid or carbon dioxide pipeline facility, any part of which is located within 1,000 feet of a public school building containing classrooms, or within 1,000 feet of another public school facility where students congregate, to:

1. On written request from the District, provide in writing the following parts of a pipeline emergency response plan that are relevant to the school:
  - a. A description and map of the pipeline facilities that are within 1,000 feet of the school building or facility;
  - b. A list of any product transported in the segment of the pipeline that is within 1,000 feet of the school facility;
  - c. The designated emergency number for the pipeline facility operator;
  - d. Information on the state's excavation one-call system; and
  - e. Information on how to recognize, report, and respond to a product release; and
2. Mail a copy of the requested items by certified mail, return receipt requested, to the Superintendent of the District in which the school building or facility is located.

A pipeline operator or the operator's representative shall appear at a regularly scheduled meeting of the Board to explain the above items if requested by the Board or District.

The Railroad Commission may not require the release of parts of an emergency response plan that include security sensitive information, including maps or data. Security sensitive information shall be made available for review by but not provided to the Board.

*Natural Resources Code 117.012(k), (l), (m); 16 TAC 8.315*



FACILITIES CONSTRUCTION

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(LEGAL)

BOARD AUTHORITY	The Board may adopt rules and procedures for the acquisition of goods and services. <i>Education Code 44.031(d)</i>
DELEGATION OF AUTHORITY	<p>The Board may delegate its authority regarding an action authorized or required to be taken by the District by Education Code Chapter 44, Subchapter B to a designated person, representative, or committee.</p> <p>The Board may not delegate the authority to act regarding an action authorized or required to be taken by the Board by Education Code Chapter 44, Subchapter B.</p> <p>In procuring construction services, the District shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. If the District fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the Board in an open public meeting is advisory only.</p> <p><i>Education Code 44.0312</i></p>
INJUNCTION	A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which the District is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court. <i>Education Code 44.032(f)</i>
IMPERMISSIBLE PRACTICES	A trustee, employee, or agent of the District who knowingly or with criminal negligence violates the purchasing laws is subject to criminal penalties. <i>Education Code 44.032</i> [See CH]
CONTRACTS VALUED AT OR ABOVE \$25,000	<p>All District contracts valued at \$25,000 or more in the aggregate for each 12-month period shall be made by the method that provides the best value for the District [see also CH]:</p> <ol style="list-style-type: none"><li>1. Competitive bidding. [See CVA]</li><li>2. Competitive sealed proposals. [See CVB]</li><li>3. An interlocal contract.</li><li>4. A design/build contract. [See CVC]</li><li>5. A contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager. [See CVD, CVE]</li><li>6. A job order contract for the minor construction, repair, rehabilitation, or alteration of a facility. [See CVF]</li></ol>

FACILITIES CONSTRUCTION

CV  
(LEGAL)

7. The reverse auction procedure as defined by Government Code 2155.062(d). [See CH]

*Education Code 44.031(a)*

[For information on contract-related fees, see CH]

SELECTING A CONTRACTING METHOD	When the District is considering awarding a construction contract using a method specified by Education Code 44.031(a), the Board shall, before advertising, determine which purchasing method provides the best value for the District. <i>Education Code 44.035(a)</i>
PUBLIC NOTICE	Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the District's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the District's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. <i>Education Code 44.031(g)</i>
CONTRACT SELECTION CRITERIA	The District shall base its selection among offerors on criteria authorized in Education Code 44.031(b). [See CH] The District shall publish in the request for bids, proposals, or qualifications the criteria that will be used to evaluate the offerors and the relative weights given to the criteria. <i>Education Code 44.035(b)</i>
MAKING EVALUATIONS PUBLIC	The District shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded. <i>Education Code 44.035(c)</i>
ATTORNEY FEES	A governmental contract for general construction, an improvement, a service, or a public works project may not provide for the award of attorney's fees to the District in a dispute in which the District prevails unless the contract provides for the award of attorney's fees to each other party to the contract if that party prevails in the dispute. <i>Gov't Code 2252.904</i>
IMPACT FEES	The District is not required to pay impact fees imposed under Local Government Code Chapter 395 unless the Board consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the Board considers advisable to provide for the payment of the fees. <i>Local Gov't Code 395.022</i>

FACILITIES CONSTRUCTION

CV  
(LEGAL)

PROFESSIONAL  
SERVICES

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect, attorney, or fiscal agents. The District may contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031. *Education Code 44.031(f)*

Competitive bids shall not be solicited for professional services of any licensed or registered certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse. Contracts for these professional services shall be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.002, 2254.003(a)* [See PROCURING ARCHITECTURAL, ENGINEERING, AND LAND-SURVEYING SERVICES, below]

An interlocal contract between the District and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

EMERGENCY DAMAGE  
OR DESTRUCTION

If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the Board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. *Education Code 44.031(h)*

RIGHT TO WORK

While engaged in awarding a contract or overseeing procurement or construction for a public work or public improvement, the District:

1. May not consider whether a vendor is a member of or has another relationship with any organization; and
2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

*Education Code 44.043*

FACILITIES CONSTRUCTION

CV  
(LEGAL)

REGISTERED  
ARCHITECT

An architectural plan or specification for any of the following may be prepared only by an architect registered in accordance with Occupations Code, Title 6, Chapter 1051:

1. A new building constructed and owned by the District that will be used for education, assembly, or office occupancy when the total projected construction costs at the commencement of construction exceed \$100,000.
2. Any alteration or addition to an existing building owned by the District that is, or will be, used for education, assembly, or office occupancy when the total projected construction costs of alteration or addition at the commencement of construction exceed \$50,000 and the alteration or addition requires the removal, relocation, or addition of any walls or partitions or the alteration or addition of an exit.

This section does not prohibit the District from choosing a registered architect or a registered professional engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand, limit, or otherwise alter the scope of a design professional's practice nor does it allow a design professional to prepare an architectural plan or specification described above.

*Occupations Code 1051.703; 22 TAC 1.212*

REGISTERED  
ENGINEER

Electrical or mechanical engineering plans, specifications, and estimates for a District construction project whose contemplated cost at completion is more than \$8,000 and that involves public health, welfare, or safety must be prepared by a registered professional engineer, and the engineering construction executed under the supervision of such an engineer. *Occupations Code 1001.053; Atty. Gen. Op. C-791 (1966)*

The District is not required to secure the services of a registered professional engineer to prepare plans for or supervise a construction project that does not involve electrical or mechanical engineering and for which the contemplated cost does not exceed \$20,000. *Occupations Code 1001.053*

PROCURING  
ARCHITECTURAL,  
ENGINEERING, AND  
LAND-SURVEYING  
SERVICES

In procuring architectural, engineering, or land-surveying services, the District shall [see PROFESSIONAL SERVICES above]:

1. First select the most highly qualified provider on the basis of demonstrated competence and qualifications; and
2. Then attempt to negotiate a contract with that provider at a fair and reasonable price.

FACILITIES CONSTRUCTION

CV  
(LEGAL)

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land-surveying services, the District shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. The District shall continue this process until a contract is entered into.

*Gov't Code 2254.004*

ACCESSIBILITY

Each facility or part of a facility constructed by, on behalf of, or for the use of the District shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Alterations of facilities that affect or could affect their usability shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by individuals with disabilities.

*28 CFR 35.151, 34 CFR 104.23*

PAYMENT AND  
PERFORMANCE  
BONDS

When the Board makes a public work contract for constructing, altering, or repairing a public building or carrying out or completing any public work, it shall require the contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds shall be executed by a corporate surety in accordance with Insurance Code 7.19-1. The bond shall be payable to the Board and in a form approved by the Board. *Gov't Code 2253.021(a), (d), (e)*

For a contract in excess of \$100,000, a performance bond shall be executed in the amount of the contract conditioned on the faithful performance of the work according to the plans, specifications, and contract documents. The bond is solely for the protection of the District. *Gov't Code 2253.021(b)*

For a contract in excess of \$25,000, a payment bond shall be executed in the amount of the contract solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. *Gov't Code 2253.021(c)*

FAILURE TO OBTAIN  
PAYMENT BOND

If the Board fails to obtain a payment bond covering a contract in excess of \$25,000 from the prime contractor, it is subject to the same liability as a surety would be, and a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the contract were subject to Subchapter J, Chapter 53, Property Code. *Gov't Code 2253.027*

FACILITIES CONSTRUCTION

CV  
(LEGAL)

NO BOND FOR  
DESIGN SERVICES  
ONLY

A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract that includes design services only. *Education Code 44.036(j)* [See CVC for more information on design/build contracts, including bond amounts]

BOND FOR  
INSURED LOSS

The Board shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor:

1. A performance bond for the benefit of the District, as described above; and
2. A payment bond, as described above. If the payment bond is not furnished, the District is subject to the same liability that a surety would have if the surety had issued the payment bond and the District had required the bond to be provided.

These bonds shall be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish these bonds.

EXCEPTION TO  
BOND  
REQUIREMENT

The requirement that the District secure a performance or payment bond from an insurance company, above, does not apply when a surety company is complying with an obligation under a bond that had been issued for the benefit of the District.

*Gov't Code 2253.022*

OUT-OF-STATE  
BIDDERS

The Board shall not award a contract for general construction, improvements, services, or public works projects or for purchase of supplies, materials, or equipment to a bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. *Gov't Code 2252.001, 2252.002*

This requirement shall not apply to a contract involving federal funds. The District shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003, 2252.004*

PREVAILING WAGE ON  
PUBLIC WORKS

A worker, laborer, or mechanic employed on a public work, exclusive of maintenance work, by or on behalf of the District shall be paid not less than the general prevailing rate of per diem wages. The general prevailing rate of per diem wages is the rate of per di-

FACILITIES CONSTRUCTION

CV  
(LEGAL)

em wages for work of a similar character in the locality in which the work is performed, and also includes the rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for public work with the District. *Gov't Code 2258.001, 2258.021*

The Board shall determine, as a sum certain, the general prevailing rate of per diem wages in the District for each craft or type of worker needed to execute the contract and also for legal holiday and overtime work. To ascertain the general prevailing rate of per diem wages, the Board shall either conduct a survey of the wages received by classes of workers, laborers, and mechanics employed on projects of a character similar to the contract work in the District or adopt the prevailing wage rate as determined by the U.S. Department of Labor. The Board shall specify the prevailing rate of per diem wages in the call for bids and in the contract itself. The Board's determination of the general prevailing rates of per diem wages shall be final. *Gov't Code 2258.001, 2258.022*

ENFORCEMENT

The Board, and an agent or officer of the Board, shall receive complaints regarding violations of the prevailing wage requirements of Chapter 2258, and withhold money from the contractor as required by statute. Upon receipt of a complaint, the Board shall determine, before the 31st day after the date the information is received, whether good cause exists to believe that a contractor or subcontractor has failed to pay the prevailing wage and shall provide written notice of its determination to the contractor or subcontractor and any affected laborer, worker, or mechanic of its initial determination. *Gov't Code 2258.051, 2258.052*

RETAINAGE AND  
REIMBURSEMENT

The Board shall retain any amounts due under the contract pending a final determination of the violation. Upon a final determination that violations have occurred, the Board shall use those retained amounts to pay the laborer, worker, or mechanic the difference between the amount the worker received in wages and the amount the worker would have received at the prevailing rate of per diem wages provided in the arbitrator's award. The Board may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made. *Gov't Code 2258.052(d), 2258.056*

PENALTY FOR  
NONCOMPLIANCE

The contractor to whom the contract is awarded or any subcontractors of the contractor shall pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the contract. A contractor or subcontractor who fails to pay the specified rates as required shall pay to the District \$60 for each worker, laborer, or mechanic employed for each calendar day or

FACILITIES CONSTRUCTION

CV  
(LEGAL)

part of a calendar day the worker is paid less than the wage rates specified in the contract. The Board must specify this penalty in the contract. If the District does not determine the prevailing wage rates and specify them in the contract, the contractor or subcontractor may not be fined. The Board shall use any penalty money collected to offset the costs incurred in administering Government Code Chapter 2258. *Gov't Code 2258.023*

REQUIRED WORKERS'  
COMPENSATION  
COVERAGE

When the District enters into a building or construction contract on a project, it shall fulfill the following requirements regarding required workers' compensation coverages. A project includes the provision of all services related to a building or construction contract for the District. The District shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers' compensation coverages. [See CV(EXHIBIT)]
2. As part of the contract, using the language required by 28 TAC 110.110(c)(7), require the contractor to perform the duties and responsibilities pertaining to required workers' compensation coverages. [See CV(EXHIBIT)]
3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person's beginning work on the project. This provision includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracts directly with the contractor and regardless of whether that person has employees. This includes, but is not limited to, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the contract. Services include, but are not limited to, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
4. Obtain from the contractor a new certificate of coverage showing extension of coverage:
  - a. Before the end of the coverage period, if the contractor's current certificate shows that the coverage period ends during the duration of the project; and



FACILITIES CONSTRUCTION

CV  
(LEGAL)

- b. No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project.
5. Retain certificates of coverage on file for the duration of the project and for three years thereafter.
6. Provide a copy of the certificate of coverage to the Texas Department of Insurance upon request and to any person entitled to a copy by law.
7. Use the prescribed language for bid specifications and contracts without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation. [See CV(EXHIBIT) for prescribed language]

*Labor Code 406.096; 28 TAC 110.110(a)(7)(8), (c)*

EXCEPTION

This coverage requirement does not apply to sole proprietors or partners of a covered business entity or corporate officers, if the sole proprietor, partner or officer is explicitly excluded from the coverage of their business entity through an endorsement to the insurance policy or certificate of authority to self insure. *Labor Code 406.097; 28 TAC 110.110(i)*

CRIMINAL HISTORY

For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).



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

## SECTION D: PERSONNEL

DA	EMPLOYMENT OBJECTIVES
DAA	Equal Employment Opportunity
DAB	Objective Criteria for Personnel Decisions
DB	EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
DBA	Credentials and Records
DBAA	Criminal History and Credit Reports
DBB	Medical Examinations and Communicable Diseases
DBD	Conflict of Interest
DBE	Nepotism
DC	EMPLOYMENT PRACTICES
DCA	Probationary Contracts
DCB	Term Contracts
DCC	Continuing Contracts
DCD	At-Will Employment
DCE	Other Types of Contracts
DE	COMPENSATION AND BENEFITS
DEA	Salaries and Wages
DEAA	Incentives and Stipends
DEB	Fringe Benefits
DEC	Leaves and Absences
DECA	Family and Medical Leave
DECB	Military Leave
DED	Vacations and Holidays
DEE	Expense Reimbursement
DEG	Retirement
DF	TERMINATION OF EMPLOYMENT
DFA	Probationary Contracts
DFAA	Suspension/Termination During Contract
DFAB	Termination at End of Year
DFAC	Return To Probationary Status
DFB	Term Contracts
DFBA	Suspension/Termination During Contract
DFBB	Nonrenewal
DFC	Continuing Contracts
DFCA	Suspension/Termination
DFD	Hearings Before Hearing Examiner
DFE	Resignation
DFF	Reduction in Force

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## SECTION D: PERSONNEL

DG	EMPLOYEE RIGHTS AND PRIVILEGES
DGA	Freedom of Association
DGB	Personnel-Management Relations
DGBA	Employee Complaints/Grievances
DGC	Intellectual Property Rights
DH	EMPLOYEE STANDARDS OF CONDUCT
DHA	Gifts and Solicitations
DHE	Searches and Alcohol/Drug Testing
DI	EMPLOYEE WELFARE
DIA	Freedom from Discrimination, Harassment, and Retaliation
DJ	EMPLOYEE RECOGNITION AND AWARDS
DK	ASSIGNMENT AND SCHEDULES
DL	WORK LOAD
DLA	Staff Meetings
DLB	Required Plans and Reports
DM	PROFESSIONAL DEVELOPMENT
DMA	Required Staff Development
DMB	Career Advancement
DMC	Continuing Professional Education
DMD	Professional Meetings and Visitations
DME	Research and Publication
DN	PERFORMANCE APPRAISAL
DNA	Evaluation of Teachers
DNB	Evaluation of Other Professional Employees
DP	PERSONNEL POSITIONS
DPB	Substitute, Temporary, and Part-Time Positions

EMPLOYMENT OBJECTIVES  
EQUAL EMPLOYMENT OPPORTUNITY

DAA  
(LEGAL)

NONDISCRIMINATION  
— IN GENERAL

The District shall not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of any of the following protected characteristics:

1. Race, color, or national origin;
2. Sex;
3. Religion;
4. Age (applies to individuals who are 40 years of age or older);
5. Disability; or
6. Genetic information.

*42 U.S.C. 1981; 42 U.S.C. 2000e et seq. (Title VII); 20 U.S.C. 1681 et seq. (Title IX); 42 U.S.C. 12111 et seq. (Americans with Disabilities Act); 29 U.S.C. 621 et seq. (Age Discrimination in Employment Act); 29 U.S.C. 793, 794 (Rehabilitation Act); U.S. Const. Amend. I; Human Resources Code 121.003(f); Labor Code Chapter 21 (Texas Commission on Human Rights Act); Labor Code Chapter 21, Subchapter H (genetic information)*

Title VII proscribes employment practices that are overtly discriminatory (disparate treatment), as well as those that are fair in form but discriminatory in practice (disparate impact). Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)

DISPARATE  
TREATMENT

Disparate treatment (intentional discrimination) occurs when members of a protected group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. *29 CFR 1607.11*

DISPARATE IMPACT

Disparate impact occurs when an employer uses a particular employment practice that causes a disparate (disproportionate) impact on a protected group and the employer fails to demonstrate that the challenged practice is job-related and consistent with business necessity. *42 U.S.C. 2000e-2(k)(1)(A)*

JOB QUALIFICATION

The District may take employment actions based on religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification. *42 U.S.C. 2000e-2(e); 29 U.S.C. 623(f)*

EMPLOYMENT  
POSTINGS

The District shall not print or publish any notice or advertisement relating to District employment that indicates any preference, limitation, specification, or discrimination based on race, color, religion,

EMPLOYMENT OBJECTIVES  
EQUAL EMPLOYMENT OPPORTUNITY

DAA  
(LEGAL)

sex, or national origin, unless the characteristic is a bona fide occupational qualification. *42 U.S.C. 2000e-3(b)*

HARASSMENT OF  
EMPLOYEES

The District has an affirmative duty to maintain a working environment free of harassment on the basis of a protected characteristic. *42 U.S.C. 2000e et seq.; 29 CFR 1606.8(a), 1604.11* [See DIA]

RETALIATION

The District may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. *29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 34 CFR 100.7(e) (Title VI); 34 CFR 110.34 (Age Act); 42 U.S.C. 12203 (ADA); Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005) (Title IX)* [See DIA]

NOTICES

The District shall post in conspicuous places upon its premises a notice setting forth the information the Equal Employment Opportunity Commission deems appropriate to effectuate the purposes of the anti-discrimination laws. *29 U.S.C. 627; 42 U.S.C. 2000e-10*

SECTION 504  
NOTICE

A district that employs 15 or more persons shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability.

The notice shall state:

1. That the District does not discriminate in employment in its programs and activities; and
2. The identity of the District's 504 coordinator.

Methods of notification may include:

1. Posting of notices;
2. Publication in newspapers and magazines;
3. Placing notices in District publications; and
4. Distributing memoranda or other written communications.

If the District publishes or uses recruitment materials containing general information that it makes available to applicants or employees, it shall include in those materials a statement of its nondiscrimination policy.

*34 CFR 104.8*

AGE DISCRIMINATION

The District may take an employment action on the basis of age pursuant to a bona fide seniority system or a bona fide employee

EMPLOYMENT OBJECTIVES  
EQUAL EMPLOYMENT OPPORTUNITY

DAA  
(LEGAL)

benefit plan. However, a bona fide employee benefit plan shall not excuse the failure to hire any individual and no such benefit plan shall require or permit the involuntary retirement of any individual because of age. 29 U.S.C. 623(f)

SEX DISCRIMINATION

GENDER  
STEREOTYPES

The District may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)

PREGNANCY

The prohibition against discrimination on the basis of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. The District shall treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe benefit programs. 42 U.S.C. 2000e(k); 29 CFR 1604.10

EQUAL PAY

The District may not pay an employee at a rate less than the rate the District pays employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort, or responsibility and which are performed under similar working conditions. This rule does not apply if the payment is pursuant to a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. 29 U.S.C. 206(d); 34 CFR 106.54

RELIGIOUS  
DISCRIMINATION

The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless the District demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship to the District's business. "Undue hardship" means more than a *de minimus* (minimal) cost. 42 U.S.C. 2000e(j); 29 CFR 1605.2

The District may not substantially burden an employee's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. & Rem. Code 110.003*

DISABILITY  
DISCRIMINATION

The Americans with Disabilities Act (ADA) prohibits the District from discriminating against a qualified individual on the basis of disability in job application procedures, hiring, advancement, or discharge of employees, compensation, job training, and other terms, conditions, and privileges of employment. The ADA does not provide a basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability. 42 U.S.C. 12112(a), 12201(g); 29 U.S.C. 794(a); *Labor Code 21.051, 21.105*

EMPLOYMENT OBJECTIVES  
EQUAL EMPLOYMENT OPPORTUNITY

DAA  
(LEGAL)

In addition, each district that receives assistance under the Individuals with Disabilities Education Act (IDEA) must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted by the IDEA. *34 CFR 300.177(b)*

DEFINITION OF  
DISABILITY

“Disability” means a physical or mental impairment that substantially limits one or more of an individual’s major life activities, a record of having such an impairment, or being regarded as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

An individual meets the requirement of being “regarded as” having an impairment if the individual establishes that he or she has been subjected to an action prohibited by the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. However, this provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of six months or less.

*42 U.S.C. 12102(1), (3), (4); 29 CFR 1630.2(g); Labor Code 21.002(6)*

OTHER  
DEFINITIONS  
  
‘MAJOR LIFE  
ACTIVITIES’

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activities” also include the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *42 U.S.C. 12102(2)*

‘QUALIFIED  
INDIVIDUAL’

“Qualified individual” means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. Consideration shall be given to a district’s judgment as to what functions



EMPLOYMENT OBJECTIVES  
EQUAL EMPLOYMENT OPPORTUNITY

DAA  
(LEGAL)

of a job are essential. A written job description prepared before advertising or interviewing applicants for the job is evidence of the job's essential functions. *42 U.S.C. 12111(8); 34 CFR 104.4(l)*

REASONABLE  
ACCOMMODATIONS

The District shall make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability, unless the District can demonstrate that the accommodation would impose an undue hardship on the operation of the District. *42 U.S.C. 12112(b)(5); 29 CFR 1630.9; 29 U.S.C. 794; 34 CFR 104.11; Labor Code 21.051* [See DBB regarding medical examinations and inquiries under the Americans with Disabilities Act]

"Reasonable accommodation" includes:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

*42 U.S.C. 12111(9); 29 CFR 1630.2(o); 34 CFR 104.12(b)*

"Undue hardship" means an action requiring significant difficulty or expense when considered in light of the nature and cost of the accommodation needed, overall financial resources of the affected facility and the District, and other factors set out in law. *42 U.S.C. 12111(10); 29 CFR 1630.2(p); 34 CFR 104.12(c)*

DISCRIMINATION  
BASED ON  
RELATIONSHIP

The District shall not exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association. *42 U.S.C. 12112(b)(4); 29 CFR 1630.8; 34 CFR 104.11*

ILLEGAL DRUGS

The term "qualified individual with a disability" does not include any employee or applicant who is currently engaging in the illegal use of drugs, when the District acts on the basis of such use.

DRUG TESTING

The District is not prohibited from conducting drug testing of employees and applicants for the illegal use of drugs or making employment decisions based on the results of such tests.

*42 U.S.C. 12114(c), (d)* [See DHE]

EMPLOYMENT OBJECTIVES  
EQUAL EMPLOYMENT OPPORTUNITY

DAA  
(LEGAL)

ALCOHOL USE	The term "qualified individual with a disability" does not include an individual who is an alcoholic and whose current use of alcohol prevents the employee from performing the duties of his or her job or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others. <i>42 U.S.C. 12114(a); 29 U.S.C. 705(20)(C); 29 CFR 1630.3(a); 28 CFR 35.104</i>
QUALIFICATION STANDARDS	As a qualification standard, the District may require that an individual not pose a direct threat to the health or safety of other individuals in the workplace. "Direct threat" means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. <i>42 U.S.C. 12111(3); 29 CFR 1630.2(r)</i>
DIRECT THREAT TO HEALTH OR SAFETY	
VISION STANDARDS AND TESTS	The District shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the District, is shown to be job-related for the position in question and consistent with business necessity. <i>42 U.S.C. 12113(c)</i>
COMMUNICABLE DISEASES	The District may refuse to assign or continue to assign an individual to a job involving food handling if the individual has an infectious or communicable disease that is transmitted to others through handling of food. <i>42 U.S.C. 12113(d); 29 U.S.C. 705(20)(D); 29 CFR 1630.16(e); Labor Code 21.002(6)(B)</i>
MILITARY SERVICE	The District shall not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service. The District shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed Services Employment and Re-employment Rights Act (USERRA). <i>38 U.S.C. 4311</i> [See also DECB]
GRIEVANCE POLICIES	A district that receives federal financial assistance and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act. <i>34 CFR 104.7(b), 104.11</i>
SECTION 504	
AMERICANS WITH DISABILITIES ACT	A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Americans with Disabilities Act. <i>28 CFR 35.107, 35.140</i>

EMPLOYMENT OBJECTIVES  
EQUAL EMPLOYMENT OPPORTUNITY

DAA  
(LEGAL)

TITLE IX	A district that receives federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX. <i>34 CFR 106.8(b); <u>North Haven Board of Education v. Bell</u>, 456 U.S. 512 (1982)</i>
COMPLIANCE COORDINATOR	The District shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, the Age Act, and the ADA. The District shall notify all employees of the name, office address, and telephone number of the employee(s) so designated. <i>34 CFR 104.7(b), 104.11; 28 CFR 35.107, 35.140; 34 CFR 106.8(b)</i>



EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
CRIMINAL HISTORY AND CREDIT REPORTS

DBAA  
(LEGAL)

DEFINITIONS

“Criminal history clearinghouse” (Clearinghouse) means the electronic clearinghouse and subscription service established by the Department of Public Safety (DPS) to provide criminal history record information to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the criminal history record information requested must consent to the release of the information. *Gov’t Code 411.0845(a), (h)*

“Criminal history record information” (CHRI) means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. *Gov’t Code 411.082(2)*

“National criminal history record information” (NCHRI) means criminal history record information obtained from DPS under Government Code Chapter 411, Subchapter F, and the Federal Bureau of Investigation (FBI) under Government Code 411.087. *Education Code 22.081(2)*

CERTIFIED PERSONS

The State Board for Educator Certification (SBEC) shall review the NCHRI of a person who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by the District. *Education Code 22.0831(c)*

NONCERTIFIED  
EMPLOYEES

This section applies to a person who is not an applicant for or holder of a certificate from SBEC and who, on or after January 1, 2008, is offered employment by:

APPLICABILITY

1. The District; or
2. A shared services arrangement, if the employee’s or applicant’s duties are or will be performed on school property or at another location where students are regularly present.

[For noncertified employees of a district or shared services arrangement hired before January 1, 2008, see ALL OTHER EMPLOYEES, below.]

INFORMATION TO  
DPS AND TEA

Before or immediately after employing or securing the services of a person subject to this section, the District shall send or ensure that the person sends to DPS information that DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

The District shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI of the person and notify the District if the person may not be hired or must be discharged under Education Code 22.085.

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
CRIMINAL HISTORY AND CREDIT REPORTS

DBAA  
(LEGAL)

EMPLOYMENT PENDING REVIEW	After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.
CRIMINAL HISTORY	<p>The District shall obtain all CHRI that relates to a person subject to this section through the Clearinghouse and shall subscribe to the CHRI of that person. The District may require the person to pay any fees related to obtaining the CHRI.</p> <p><i>Education Code 22.0833; 19 TAC 153.1109(d)</i></p>
SUBSTITUTE TEACHERS	This section applies to a person who is a substitute teacher for the District or a shared services arrangement.
APPLICABILITY	For purposes of the CHRI review requirements, a "substitute teacher" is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.
INFORMATION TO DPS AND TEA	<p>The District shall send or ensure that a person to whom this section applies sends to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.</p> <p>The District shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI and certification records of the person and notify the District if the person:</p> <ol style="list-style-type: none"><li>1. May not be hired or must be discharged as provided by Education Code 22.085; or</li><li>2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.</li></ol>
EMPLOYMENT PENDING REVIEW	After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.
CRIMINAL HISTORY	<p>The District shall obtain all CHRI that relates to a person to whom this section applies through the Clearinghouse. The District may require the person to pay any fees related to obtaining the CHRI.</p> <p><i>Education Code 22.0836; 19 TAC 153.1101(5), 153.1111(d)</i></p>
STUDENT TEACHERS APPLICABILITY	This section applies to a person participating in an internship consisting of student teaching to receive a teaching certificate.

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
CRIMINAL HISTORY AND CREDIT REPORTS

DBAA  
(LEGAL)

CRIMINAL HISTORY	<p>A student teacher may not perform any student teaching until:</p> <ol style="list-style-type: none"><li>1. The student teacher has provided to the District a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government; and</li><li>2. The District has obtained from DPS all CHRI that relates to a student teacher. The District may also obtain CHRI relating to a student teacher from any other law enforcement agency, criminal justice agency, or private consumer reporting agency. The District may require a student teacher to pay any costs related to obtaining the CHRI.</li></ol> <p><i>Education Code 22.0835</i></p>
COORDINATION OF EFFORTS	<p>TEA, SBEC, the District, and a shared services arrangement may coordinate as necessary to ensure that criminal history reviews authorized or required under Education Code Chapter 22, Subchapter C are not unnecessarily duplicated. <i>Education Code 22.0833(h)</i></p>
ALL OTHER EMPLOYEES	<p>The District shall obtain CHRI that relates to a person who is not subject to an NCHRI review under Education Code Chapter 21, Subchapter C and who is an employee of:</p> <ol style="list-style-type: none"><li>1. The District; or</li><li>2. A shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present.</li></ol> <p>The District may obtain the CHRI from:</p> <ol style="list-style-type: none"><li>1. DPS;</li><li>2. A law enforcement or criminal justice agency; or</li><li>3. A private consumer reporting agency [see CONSUMER CREDIT REPORTS, below].</li></ol> <p><i>Education Code 22.083(a), (a-1), (c); Gov't Code 411.097</i></p>
CONFIDENTIALITY OF RECORD	<p>CHRI obtained from DPS may not be released or disclosed to any person except the individual who is the subject of the information, TEA, or SBEC. It is an offense to knowingly or intentionally:</p> <ol style="list-style-type: none"><li>1. Disclose CHRI to a person who is not entitled to the information; or</li><li>2. Provide a copy of an individual's CHRI to the individual or any other person.</li></ol> <p><i>Gov't Code 411.085(a), 411.097(d)</i></p>

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
CRIMINAL HISTORY AND CREDIT REPORTS

DBAA  
(LEGAL)

**SBEC NOTIFICATION** The Superintendent shall promptly notify SBEC in writing by filing a report with the TEA staff within seven calendar days of the date the Superintendent obtains or has knowledge of information indicating that an applicant for or holder of a certificate issued by SBEC has a reported criminal history. *Education Code 22.087; 19 TAC 249.14(d)(1)* [See also DF]

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**Note:** For criminal history record provisions regarding volunteers, see GKG. For provisions on employees of entities that contract with the District, see CJA.

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**DISCHARGE OF CONVICTED EMPLOYEES** The District shall discharge or refuse to hire an employee or applicant for employment if the District obtains information through a CHRI review that:

1. The employee or applicant has been convicted of:
  - a. A felony under Penal Code Title 5;
  - b. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
  - c. An offense under the laws of another state or federal law that is equivalent to an offense under paragraphs a or b; and
2. At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.

**EXCEPTION** However, the District is not required to discharge or refuse to hire an employee or applicant if the person committed an offense under Title 5, Penal Code and:

1. The date of the offense is more than 30 years before:
  - a. June 15, 2007, in the case of a person employed by the District as of that date; or
  - b. The date the person's employment will begin, in the case of a person applying for employment with the District after June 15, 2007; and
2. The employee or applicant for employment satisfied all terms of the court order entered on conviction.

**CERTIFICATION TO SBEC** Each school year, the Superintendent shall certify to the Commissioner that the District has complied with the above provisions.

**SANCTIONS** SBEC may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record in-



EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
CRIMINAL HISTORY AND CREDIT REPORTS

DBAA  
(LEGAL)

	<p>formation review, that the employee or applicant has been convicted of an offense described above.</p>
OPTIONAL TERMINATION	<p>The District may discharge an employee if the District obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to SBEC or to the District. An employee so discharged is considered to have been discharged for misconduct for the purposes of Labor Code 207.044 (unemployment compensation).</p> <p><i>Education Code 22.085 [See DF]</i></p>
CONSUMER CREDIT REPORTS DEFINITIONS	<p>"Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.</p> <p>"Consumer report" includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person's eligibility for employment.</p> <p>"Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.</p> <p>"Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.</p> <p><i>15 U.S.C. 1681a</i></p>
OBTAINING REPORTS	<p>The District may not procure a consumer report for employment purposes unless:</p> <ol style="list-style-type: none"><li>1. The District has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and</li><li>2. The applicant or employee has authorized in writing the procurement of the consumer report.</li></ol>
ADVERSE ACTION	<p>Before taking any adverse action based on the consumer report, the District shall provide the applicant or employee a copy of the consumer report and a written description of the person's rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.</p> <p><i>15 U.S.C. 1681b(b)(2)</i></p>

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
CRIMINAL HISTORY AND CREDIT REPORTS

DBAA  
(LEGAL)

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**Note:** The following provisions apply to a district that uses consumer reports.

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ADDRESS  
DISCREPANCIES

“Notice of address discrepancy” means a notice sent to a user by a consumer reporting agency that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.

The District must develop and implement reasonable policies and procedures designed to enable the District, when it receives a notice of address discrepancy, to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report.

If the District regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, the District must also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which the District has reasonably confirmed is accurate, to the consumer reporting agency.

*16 CFR 681.1*

DISPOSAL OF  
RECORDS

The District must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

“Dispose” includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

*16 CFR 682.3*

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
MEDICAL EXAMINATIONS AND COMMUNICABLE DISEASES

DBB  
(LOCAL)

EXAMINATIONS  
DURING  
EMPLOYMENT

The Superintendent or designee may require an employee to undergo a medical examination if information received from the employee, the employee's supervisor, or other sources indicates the employee has a physical or mental impairment that:

1. Interferes with the employee's ability to perform essential job functions; or
2. Poses a direct threat to the health or safety of the employee or others. A communicable or other infectious disease may constitute a direct threat.

The District may designate the physician to perform the examination. If the District designates the physician, the District shall pay the cost of the examination. The District may place the employee on paid administrative leave while awaiting results of the examination and evaluating the results.

Based on the results of the examination, the Superintendent or designee shall determine whether the employee has an impairment. If so, the Superintendent or designee shall determine whether the impairment interferes with the employee's ability to perform essential job functions or poses a direct threat. If not, the employee shall be returned to his or her job position.

If the impairment does interfere with the employee's ability to perform essential job functions or poses a direct threat, the Superintendent or designee shall determine whether the employee has a disability and, if so, whether the disability requires reasonable accommodation, including the use of available leave. The granting of additional unpaid leave may be a reasonable accommodation in some circumstances. If the employee does not have a disability, the Superintendent or designee shall evaluate the employee's eligibility for leave. [See DEC(LOCAL)]

[See DAA for information on disabilities and reasonable accommodation.]

PLACEMENT ON  
TEMPORARY  
DISABILITY  
AT EMPLOYEE'S  
REQUEST

The Superintendent or designee shall have authority to place an employee on temporary disability leave at the employee's request, as appropriate, when the employee's condition interferes with the performance of regular duties.

BY BOARD  
AUTHORITY

Based on the Superintendent's recommendation that an employee be involuntarily placed on temporary disability leave, the Board shall place an employee on temporary disability leave if the Board determines, in consultation with the physician who performed the

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
MEDICAL EXAMINATIONS AND COMMUNICABLE DISEASES

DBB  
(LOCAL)

medical examination, that the educator's condition interferes with the performance of regular duties.

[See DEC(LEGAL)]

OTHER  
REQUIREMENTS

Employees with communicable diseases shall follow recommendations of public health officials regarding contact with students and other employees. Food service workers shall comply with health requirements established by city, county, and state health authorities. Bus drivers shall comply with legal requirements. [See DBA]

Staff members in the Head Start program shall have an initial health examination, which includes screening for tuberculosis, and periodic re-examinations. Regular volunteers in the Head Start program shall be screened for tuberculosis. A regular volunteer is an individual who volunteers three days per week for four or more consecutive weeks.

COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEA  
(LEGAL)

STATE FUNDING

Subject to Education Code 42.2516(g) and (h) (regarding reduction in state aid for certain districts), the District is entitled to state revenue necessary to provide the District with an amount equal to \$2,500 for each classroom teacher, full-time librarian, full-time counselor, and full-time school nurse employed by the District and entitled to the state minimum salary. *Education Code 42.2516(b)(2)*

The District is entitled to state aid in an amount equal to the sum of:

1. \$500 for each full-time District employee, other than administrators or employees subject to the minimum salary schedule; and
2. \$250 for each part-time District employee, other than administrators.

*Education Code 42.2513*

MINIMUM SALARY  
SCHEDULE —  
EDUCATORS

The District shall pay each classroom teacher, full-time librarian, full-time counselor, or full-time nurse not less than the minimum monthly salary, based on the employee's level of experience, specified in Education Code 21.402 and 19 TAC 153.1021.

DEFINITIONS

'CLASSROOM  
TEACHER'

"Classroom teacher" means an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting, focusing on the delivery of the Texas Essential Knowledge and Skills, and who holds the relevant certificate from SBEC. Although noninstructional duties do not qualify as teaching, necessary functions related to the educator's instructional assignment, such as instructional planning and transition between instructional periods, should be applied to creditable classroom time.

'LIBRARIAN'

"Librarian" means an educator who provides full-time library services and holds the relevant certificate from SBEC.

'COUNSELOR'

"Counselor" means an educator who provides full-time counseling and guidance services and holds the relevant certificate from SBEC.

'NURSE'

"Nurse" means an educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEA  
(LEGAL)

'FULL-TIME'	<p>"Full-time" means contracted employment for at least ten months (187 days) for 100 percent of the school day, in accordance with the definitions of school day in Education Code 25.082, employment contract in Education Code 21.002, and school year in Education Code 25.081.</p> <p><i>19 TAC 153.1022(a)</i></p>
PLACEMENT ON SALARY SCHEDULE	<p>The Commissioner's rules determine the experience for which a teacher, librarian, counselor, or nurse is to be given credit in placing the teacher, librarian, counselor, or nurse on the minimum salary schedule. The District shall credit the teacher, librarian, counselor, or nurse for each year of experience, whether or not the years are consecutive. <i>Education Code 21.402(a), 21.403(c); 19 TAC 153.1022</i></p>
EMPLOYEES FORMERLY ON CAREER LADDER	<p>A teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary the teacher or librarian received for the 1994–95 school year as long as the teacher or librarian is employed by the same district.</p> <p>"Gross monthly salary" includes the amount the teacher or librarian received as a career ladder supplement under Section 16.057, as that section existed January 1, 1993.</p> <p><i>Education Code 21.402(f), 21.403(d)</i></p> <p>In addition, a teacher or librarian who was on level two or three of the career ladder is entitled, as long as he or she is employed by the same district, to:</p>
LEVEL TWO EDUCATORS	<p>1. Placement on the minimum salary schedule at the step above the step on which the teacher would otherwise be placed, if the teacher or librarian received a career ladder supplement for level two of the career ladder on August 31, 1993; or</p>
LEVEL THREE EDUCATORS	<p>2. Placement on the minimum salary schedule at the step two steps above the step on which the teacher would otherwise be placed, if the teacher or librarian received a career ladder supplement for level three of the career ladder on August 31, 1993.</p> <p><i>Education Code 21.403(d)</i></p>
SUPPORT STAFF COMPENSATION	<p>The District shall pay each District employee, other than an administrator or an employee subject to the minimum salary schedule, an amount at least equal to:</p> <ol style="list-style-type: none"><li>1. \$500, for full-time employees.</li><li>2. \$250, for part-time employees.</li></ol>

COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEA  
(LEGAL)

Such payment is in addition to wages the District would otherwise pay the employee during the school year.

To be eligible, the employee must be a participating member of TRS, must not be a TRS retiree, and must have provided written election of whether to designate a portion of the individual's compensation to be used as health-care supplementation.

For purposes of this support staff compensation, a "full-time" employee is one who works for a school district, a participating open-enrollment charter school, an education service center, or a combination of such entities for 30 or more hours each week. A "part-time" employee is one who works for a school district, a participating open-enrollment charter school, an education service center, or a combination of such entities for fewer than 30 hours each week.

*Education Code 22.107; 19 TAC 61.1018*

PAY INCREASES

The District shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. *Tex. Const. Art. III, Sec. 53*

SALARY ADVANCES  
AND LOANS

The District shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. *Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)*

DESIGNATION OF  
COMPENSATION FOR  
BENEFITS

An employee who is covered by a cafeteria plan or who is eligible to pay health care premiums through a premium conversion plan may elect to designate a portion of the employee's compensation to be used as health care supplementation. The amount designated may not exceed the amount permitted under federal law. *Education Code 21.103*

USE

An employee may use the compensation designated for health care supplementation for any employee benefit, including depositing the designated amount into a cafeteria plan in which the employee is enrolled or using the designated amount for health care premiums through a premium conversion plan. *Education Code 21.106*

ANNUAL ELECTION

Each school year, an active employee must elect in writing whether to designate a portion of the employee's compensation to be used as health care supplementation. The election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. *Education Code 21.105*

DEFINITION

For purposes of the designation of compensation as health care supplementation, "employee" means an active, contributing member of TRS who:

COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEA  
(LEGAL)

1. Is employed by the District;
2. Is not a retiree eligible for coverage under Insurance Code Chapter 1575 (retiree group health benefits);
3. Is not eligible for coverage by a group insurance plan under Insurance Code Chapter 1551 (state employee health insurance) or Chapter 1601 (state university employee health insurance); and
4. Is not an individual performing personal services for the District as an independent contractor.

*Education Code 22.101(2)*

FAIR LABOR  
STANDARDS ACT

Unless an exemption applies, the District shall pay each of its employees not less than minimum wage. *29 U.S.C. 206(a)(1)*

MINIMUM WAGE

Unless an exemption applies, the District shall pay an employee not less than one and one-half times the employee's regular rate of pay for all hours in excess of forty in any workweek. *29 U.S.C. 207(a)(1); 29 CFR pt. 778*

COMPENSATORY  
TIME

Nonexempt employees may receive, in lieu of overtime compensation, compensatory time off at a rate of not less than one and one-half hours for each hour of overtime work, pursuant to an agreement or understanding arrived at between the employer and employee before the performance of the work. Such agreement or understanding may be informal, such as when an employee works overtime knowing that the employer rewards overtime with compensatory time.

ACCRUAL

An employee may accrue not more than 240 hours of compensatory time. If the employee's overtime work included a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 480 hours of compensatory time. After the employee has reached these limits, the employee shall be paid overtime compensation for additional overtime work.

PAYMENT FOR  
ACCRUED TIME

Compensation paid to an employee for accrued compensatory time shall be paid at the regular rate earned by the employee at the time of payment. An employee who has accrued compensatory time off shall be paid for any unused compensatory time upon separation from employment at the rates set forth at *29 U.S.C. 207(o)(4)*.

USE

An employee who has requested the use of compensatory time shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the District.



COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEA  
(LEGAL)

The Fair Labor Standards Act does not prohibit the District from compelling the use of accrued compensatory time.

*29 U.S.C. 207(o); Christensen v. Harris County, 529 U.S. 576 (2000); Houston Police Officers' Union v. City of Houston, 330 F.3d 298 (5th Cir. 2003)*

EXEMPT  
EMPLOYEES

The minimum wage and overtime provisions do not apply to any employee employed in a bona fide executive, administrative, or professional capacity. *29 U.S.C. 213(a)(1)*

ACADEMIC  
ADMINISTRATORS

The term "employee employed in a bona fide administrative capacity" includes an employee:

1. Compensated for services on a salary or fee basis at a rate of not less than \$455 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the District by which employed; and
2. Whose primary duty is performing administrative functions directly related to academic instruction or training in the District or department or subdivision thereof.

"Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

Employees engaged in academic administrative functions include:

1. The Superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program;
2. The principal and any vice principals responsible for the operation of an elementary or secondary school;
3. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and
4. Other employees with similar responsibilities.

COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEA  
(LEGAL)

Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers, or dietitians do not perform academic administrative functions, although such employees may qualify for another exemption.

*29 CFR 541.204*

SALARY BASIS

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis, unless the employee is a teacher. Subject to the exceptions listed in the rule, an employee must receive the full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. A district that makes improper deductions from salary shall lose the exemption if the facts demonstrate that the District did not intend to pay exempt employees on a salary basis. *29 CFR 541.500, .602(a), .603*

PARTIAL-DAY  
DEDUCTIONS

A District employee who otherwise meets the salary basis requirements shall not be disqualified from exemption on the basis that the employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because:

1. Permission for its use has not been sought or has been sought and denied;
2. Accrued leave has been exhausted; or
3. The employee chooses to use leave without pay.

Deductions from the pay of a District employee for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

*29 CFR 541.710*

SAFE HARBOR  
POLICY

If the District has a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the District will not lose the deduction unless the District willfully violates the policy by con-

COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEA  
(LEGAL)

tinuing to make improper deductions after receiving employee complaints.

The best evidence of a clearly communicated policy is a written policy that was distributed to employees before the improper pay deductions by, for example, providing a copy of the policy to employees upon hire, publishing the policy in an employee handbook, or publishing the policy on the District's intranet.

*29 CFR 541.603(d)*

TEACHERS

The term "employee employed in a bona fide professional capacity" includes any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an elementary or secondary school system by which the employee is employed. The salary basis requirements do not apply to teaching professionals.

Exempt teachers include:

1. Regular academic teachers;
2. Teachers of kindergarten or nursery school pupils;
3. Teachers of gifted or disabled children;
4. Teachers of skilled and semi-skilled trades and occupations;
5. Teachers engaged in automobile driving instruction;
6. Home economics teachers; and
7. Vocal or instrumental music instructors.

Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. However, a teacher who is not certified may be considered for exemption,

COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEA  
(LEGAL)

provided that such individual is employed as a teacher by the employing school or school system.

*29 CFR 541.303*

WAGE AND HOUR  
RECORDS

The District shall maintain and preserve payroll or other records for nonexempt employees containing the information required by the regulations under the Fair Labor Standards Act. *29 CFR 516.2*

TRS CONTRIBUTIONS  
FOR NEW HIRES

During each fiscal year, the District shall pay an amount equal to the state contribution rate, as established by the General Appropriations Act for the fiscal year, applied to the aggregate compensation of new members of the retirement system, during their first 90 days of employment.

“New member” means a person first employed on or after September 1, 2005, including a former member who withdrew retirement contributions under Government Code 822.003 and is reemployed on or after September 1, 2005.

On a monthly basis, the District shall:

1. Certify to TRS the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments under this section for the payroll periods; and
2. Retain information, as determined by TRS, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

The District must remit the amount required under this section to TRS at the same time the District remits the member's contribution. In computing the amount required to be remitted, the District shall include compensation paid to an employee for the entire pay period that contains the 90th calendar day of new employment.

*Gov't Code 825.4041*

TRS SURCHARGE FOR  
REHIRED RETIREES

During each payroll period for which a retiree is reported, the District shall contribute to the retirement system for each retiree reported an amount based on the retiree's salary equal to the sum of:

TRS FUND  
CONTRIBUTIONS

1. The current contribution amount that would be contributed by the retiree if the retiree were an active, contributing member; and

COMPENSATION AND BENEFITS  
SALARIES AND WAGES

DEA  
(LEGAL)

2. The current contribution amount authorized by the General Appropriations Act that the state would contribute for that retiree if the retiree were an active, contributing member.

HEALTH  
INSURANCE  
CONTRIBUTIONS

In addition, each payroll period and for each rehired retiree who is enrolled in TRS Care (retiree group health insurance), the District shall contribute to the TRS Care trust fund any difference between the amount the retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program, as determined by TRS. If more than one employer reports the retiree to TRS during a month, the amount of the required payment shall be prorated among employers.

EXCEPTION

The District is not required to contribute these amounts for a retiree who retired from the retirement system before September 1, 2005.

*Gov't Code 825.4092; Insurance Code 1575.204*



COMPENSATION AND BENEFITS  
INCENTIVES AND STIPENDS

DEAA  
(LEGAL)

INCENTIVE GRANTS— CONTRACT PROVISION	The District shall provide in employment contracts that qualifying employees may receive an incentive payment under the Student Achievement Awards Program/Texas Educator Excellence Grant (TEEG) and Educator Excellence Award Program/District Awards for Teacher Excellence (DATE) if the District participates in one of these programs. The District shall indicate that any incentive payment distributed is considered a payment for performance and not an entitlement as part of an employee's salary. <i>Education Code 21.415</i>
TEXAS EDUCATOR EXCELLENCE GRANT (TEEG)	The TEEG is an annual grant program under which the District may receive a grant on behalf of an eligible campus as an award for student achievement. Funds from the program shall be distributed to the District, on behalf of an eligible campus, that submitted an approved campus incentive plan developed in accordance with Education Code 21.654 and 19 TAC 102.1071(c).
APPLICATION	<p>The District must act pursuant to its local Board policy for submitting a campus incentive plan and grant application to TEA.</p> <p>The Board may either vote to submit a grant application or designate the Superintendent to submit the application on the Board's behalf. The Superintendent may act on previously delegated authority regarding the submission of the grant(s).</p>
EXCLUSION OF CERTAIN TEACHERS	A campus or District may choose to exclude from receiving an incentive award a teacher who has transferred or retired or who works part-time on a campus eligible to receive grant funds. In such instance, the campus incentive plan must reflect the campus/District policies with regard to such a teacher at the program start date.
AWARD AMOUNTS	Each individual incentive should be no less than \$3,000 and no more than \$10,000 per teacher to the extent practicable.
NO APPEALS	<p>The following decisions of the Board relating to the program are not appealable to the Commissioner:</p> <ol style="list-style-type: none"><li>1. A decision to approve and/or submit an incentive plan and/or grant application;</li><li>2. A local grievance decision as to whether an award was made in compliance with the approved plan;</li><li>3. A decision as to whether award amounts between \$3,000 and \$10,000 per teacher are practicable.</li></ol> <p><i>19 TAC 102.1071</i></p>

COMPENSATION AND BENEFITS  
INCENTIVES AND STIPENDS

DEAA  
(LEGAL)

DISTRICT AWARDS  
FOR TEACHER  
EXCELLENCE (DATE)

The DATE is an annual grant program under which the District may receive a grant for the purpose of providing awards to classroom teachers and District employees. Funds from the program shall be distributed to each selected school district that submitted an approved local awards plan developed in accordance with Education Code 21.704 and 19 TAC 102.1073(e).

APPLICATION

The District must act pursuant to local Board policy for submitting a local awards plan and grant application to TEA. The local awards plan must meet the criteria set forth at 19 TAC 102.1073(e).

The Board's decision to approve and submit its local awards plan and grant application may not be appealed to the Commissioner.

EXCLUSION OF  
CERTAIN  
TEACHERS

The District may choose to exclude a teacher on a selected campus from receiving an award except involuntarily transferred teachers or retired teachers no longer on the selected campus. The local awards plan must reflect the District policies with regard to such a teacher at the program start date. A decision to exclude certain teachers from receiving an award may not be appealed to the Commissioner.

AWARD AMOUNTS

The District must use at least 60 percent of grant funds to directly award classroom teachers who effectively improve student achievement as determined by meaningful, objective measures (Part 1 funds). The remaining funds may be used only for the purposes listed at Education Code 21.705.

Annual award amounts should be equal to or greater than \$3,000, unless otherwise determined by the Board. Minimum awards must be no less than \$1,000 per teacher identified under Part 1. The Board's decision on award amounts per teacher is final and may not be appealed to the Commissioner.

*Education Code Ch. 21, Subch. O; 19 TAC 102.1073*

MENTOR TEACHERS

The District may assign a mentor teacher to each classroom teacher who has less than two years of teaching experience. A teacher assigned as a mentor must:

1. Teach in the same school;
2. To the extent practicable, teach the same subject or grade level, as applicable; and
3. Meet the qualifications prescribed by Commissioner's rules.

The Commissioner's rules must require that a mentor teacher:

1. Complete a research-based mentor and induction training program approved by the Commissioner;



COMPENSATION AND BENEFITS  
INCENTIVES AND STIPENDS

DEAA  
(LEGAL)

2. Complete a training program provided by the District; and
3. Have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance.

The District may apply to the Commissioner for funds for a mentor teacher program. The District may use the funds only for providing:

1. Mentor teacher stipends;
2. Scheduled time for mentor teachers to provide mentoring to assigned classroom teachers; and
3. Mentoring support through providers of mentor training.

*Education Code 21.458*

MASTER TEACHER  
GRANT PROGRAMS

The Commissioner shall establish master reading, mathematics, technology, and science teacher grant programs to encourage teachers to become certified as master teachers and to work with other teachers and students to improve student performance.

*Education Code 21.410–.413*

APPLICATION

The District may apply to the Commissioner for grants for each identified high-need campus to be used to pay year-end stipends to certified master reading teachers, master mathematics teachers, and master science teachers.

USE OF FUNDS

Grant funds may be used only for the purpose of paying a year-end stipend to a master reading teacher, master mathematics teacher, or master science teacher whose primary duties are to teach reading, mathematics, or science, respectively, and to serve as a reading, mathematics, or science teacher mentor for the amount of time and in the manner established by the District.

PAYMENTS

The Commissioner shall reduce payments to the District proportionately to the extent a teacher does not meet the requirements for a master teacher for the entire school year.

If a teacher qualifies as a master teacher for a partial month, the District's written policy will determine how the District counts the partial month, for example, as no month served or as an entire month served. Only whole months shall be entered on the application by the District on the teacher's behalf.

Education Code sections 21.410–.413 do not create a property right to a grant or stipend. A master teacher stipend is not considered in determining whether the District is paying the teacher the minimum monthly salary under Education Code 21.402.

COMPENSATION AND BENEFITS  
INCENTIVES AND STIPENDS

DEAA  
(LEGAL)

DESIGNATION OF  
TEACHER

A district that employs more certified master teachers than the number of grants available shall designate which certified master teacher(s) to assign the duties required to receive the state stipends. The designation is based on a written policy adopted by the Board. The District's decision is final and may not be appealed.

The District may not apportion among teachers a stipend paid with a grant the District receives under this program. The District may use local money to pay additional stipends in amounts determined by the District.

*Education Code 21.410(g), 21.411(g), 21.412(g), 21.413(g); 19 TAC Ch. 102, Subch. BB*

RETIREMENT  
INCENTIVES

The District may not offer or provide a financial or other incentive to an employee to encourage the employee to retire from the Teacher Retirement System of Texas. *Education Code 22.007*

ATTENDANCE  
SUPPLEMENT

The District shall not deny an educator a salary bonus or similar compensation given in whole or in part on the basis of educator attendance because of the educator's absence from school for observance of a religious holy day observed by a religion whose places of worship are exempt from property taxation under Tax Code 11.20. *Education Code 21.406*

COMPENSATION AND BENEFITS  
LEAVES AND ABSENCES

DEC  
(LEGAL)

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**Note:** This policy addresses leaves in general. For provisions regarding the Family and Medical Leave Act (FMLA), including FML for an employee seeking leave because of a relative's military service, see DECA. For provisions addressing leave for an employee's military service, see DECB.

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STATE LEAVE

STATE PERSONAL  
LEAVE

The District shall provide employees with five days per year of state personal leave, with no limit on accumulation and no restrictions on transfer among districts. The District may provide additional personal leave beyond this minimum.

The Board may adopt a policy governing an employee's use of state personal leave, except that the policy may not restrict the purposes for which the leave may be used.

*Education Code 22.003(a)*

STATE SICK LEAVE  
(ACCUMULATED  
PRIOR TO 1995)

District employees retain any sick leave accumulated as state minimum sick leave under former Section 13.904(a) of the Education Code. Accumulated state sick leave shall be used only for the following:

1. Illness of the employee.
2. Illness of a member of the employee's immediate family.
3. Family emergency.
4. Death in the employee's immediate family.

*Acts of the 74th Legislative Session, Senate Bill 1, Sec. 66*

FORMER  
EDUCATION  
SERVICE CENTER  
(ESC) EMPLOYEES

The District shall accept the sick leave accrued by an employee who was formerly employed by a regional education service center (ESC), not to exceed five days per year for each year of employment. *Education Code 8.007*

TEMPORARY  
DISABILITY

Each full-time educator shall be given a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties. The contract or employment of the educator may not be terminated while the educator is on a leave of absence for temporary disability. For purposes of temporary disability leave, pregnancy is considered a temporary disability.

AT EMPLOYEE'S  
REQUEST

A request for a leave of absence for temporary disability must be made to the Superintendent. The request must:

COMPENSATION AND BENEFITS  
LEAVES AND ABSENCES

DEC  
(LEGAL)

1. Be accompanied by a physician's statement confirming inability to work;
2. State the date requested by the educator for the leave to begin; and
3. State the probable date of return as certified by the physician.

BY BOARD  
AUTHORITY

The Board may adopt a policy providing for placing an educator on leave of absence for temporary disability if, in the Board's judgment in consultation with a physician who has performed a thorough medical examination of the educator, the educator's condition interferes with the performance of regular duties. The educator shall have the right to present to the Board testimony or other information relevant to the educator's fitness to continue in the performance of regular duties. [See DBB]

RETURN TO ACTIVE  
DUTY  
NOTICE

The educator shall notify the Superintendent of a desire to return to active duty no later than the 30th day before the expected date of return. The notice must be accompanied by a physician's statement indicating the educator's physical fitness for the resumption of regular duties.

PLACEMENT

An educator returning to active duty after a leave of absence for temporary disability is entitled to an assignment at the school where the educator formerly taught, subject to the availability of an appropriate teaching position. In any event, the educator shall be placed on active duty no later than the beginning of the next school year. A principal at another campus voluntarily may approve the appointment of an employee who wishes to return from leave of absence. However, if no other principal approves the assignment by the beginning of the next school year, the District must place the employee at the school at which the employee formerly taught or was assigned.

LENGTH OF  
ABSENCE

The Superintendent shall grant the length of leave of absence for temporary disability as required by the individual educator. The Board may establish a maximum length for a leave of absence for temporary disability, but the maximum length may not be less than 180 calendar days.

*Education Code 21.409; Atty. Gen. Op. DM-177 (1992); Atty. Gen. Op. H-352 (1974)*

SICK LEAVE  
DIFFERENT FROM  
TEMPORARY  
DISABILITY LEAVE

An employee's entitlement to sick leave is unaffected by any concurrent eligibility for a leave of absence for temporary disability. The two types of leave are different, and each must be granted by its own terms. *Atty. Gen. Op. H-352 (1974)*

COMPENSATION AND BENEFITS  
LEAVES AND ABSENCES

DEC  
(LEGAL)

ASSAULT LEAVE

In addition to all other days of leave, a District employee who is physically assaulted during the performance of regular duties is entitled to the number of days of leave necessary to recuperate from physical injuries sustained as a result of the assault. At the request of an employee, the District must immediately assign the employee to assault leave. Days of assault leave may not be deducted from accrued personal leave. Assault leave may not extend more than two years beyond the date of the assault. Following an investigation of the claim, the District may change the assault leave status and charge the leave against the employee's accrued personal leave or against the employee's pay if insufficient accrued personal leave is available.

Notwithstanding any other law, assault leave benefits due to an employee shall be coordinated with temporary income benefits due from workers' compensation so the employee's total compensation from temporary income benefits and assault leave benefits will equal 100 percent of the employee's weekly rate of pay.

A District employee is physically assaulted if the person engaging in the conduct causing injury to the employee:

1. Could be prosecuted for assault; or
2. Could not be prosecuted for assault only because the person's age or mental capacity makes the person a nonresponsible person for purposes of criminal liability.

*Education Code 22.003(b), (c)*

RELIGIOUS  
OBSERVANCES

The District shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of District business. Such absence shall be without pay unless applicable paid local leave is available. *42 U.S.C. 2000e(j), 2000e-2(a); Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 107 S.Ct. 367 (1986); Pinsker v. Joint Dist. No. 28J of Adams and Arapahoe Counties, 735 F.2d 388 (10th Cir. 1984)*

COMPLIANCE WITH A  
SUBPOENA

The District may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. *Labor Code 52.051(a)*

JURY DUTY

The District may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against an employee because of the employee's compliance with a summons to appear as a juror. For each regularly scheduled workday on which a nonsalaried employee serves in any phase of jury service, the District shall pay the employee the employee's normal daily compensation. An em-

COMPENSATION AND BENEFITS  
LEAVES AND ABSENCES

DEC  
(LEGAL)

employee's accumulated personal leave may not be reduced because of the employee's service in compliance with a summons to appear as a juror. *Education Code 22.006*

DEVELOPMENTAL  
LEAVES OF ABSENCE

The Board may grant a developmental leave of absence for study, research travel, or other suitable purpose to an employee working in a position requiring a permanent teaching certificate who has served in the District at least five consecutive school years.

A developmental leave of absence may be granted for one school year at one-half regular salary or for one-half of a school year at full regular salary. Payment to the employee shall be made periodically by the District in the same manner, on the same schedule, and with the same deductions as if the employee were on full-time duty.

An employee on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be an employee of the District for purposes of participating in programs, holding memberships, and receiving benefits afforded by employment in the District.

*Education Code 21.452*

ABSENCE CONTROL

Uniform enforcement of a reasonable absence-control rule is not retaliatory discharge. For example, a district that terminates an employee for violating a reasonable absence-control provision cannot be liable for retaliatory discharge as long as the rule is uniformly enforced. *Continental Coffee Products Co. v. Cazarez*, 937 S.W.2d 444 (Tex. 1996) (workers' compensation discrimination case); *Texas Division-Tranter, Inc. v. Carrozza*, 876 S.W.2d 312 (Tex. 1994) (workers' compensation discrimination case); *Swearingen v. Owens-Corning Fiberglas Corp.*, 968 F.2d 559 (5th Cir. 1992) (workers' compensation discrimination case); *Howell v. Standard Motor Prods., Inc.*, 2001 U.S. Dist LEXIS 12332 (N. D. Tex. 2001) (Family and Medical Leave Act case); *Specialty Retailers v. DeMoranville*, 933 S.W.2d 490 (Tex. 1996) (age discrimination case); *Gonzalez v. El Paso Natural Gas Co.*, 40 F.E.P. Cases (BNA) 353 (Tex. App.—El Paso 1986, no pet.) (sex discrimination case)

[Some employees may have protected status even after the expiration of all other leave. See CRE and DAA.]

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

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**Note:** This policy summarizes the Family and Medical Leave Act (FMLA) and implementing regulations, including FML for an employee seeking leave because of a relative's military service. For provisions on leaves in general, see DEC. For provisions addressing leave for an employee's military service, see DECB.

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This introductory page outlines the contents of this policy on the Family and Medical Leave Act. See the following sections for statutory provisions on:

SECTION I	General Provisions	pages 2–3
	1. Applicability to districts	
	2. Employee eligibility	
SECTION II	Leave Entitlement and Use	pages 3–10
	1. Amount of leave	
	2. Intermittent use of leave	
	3. Special rules for instructional employees	
	4. Use of paid leave	
	5. Continuation of health insurance	
	6. Reinstatement of employee	
SECTION III	Notices and Medical Certification	pages 10–17
	1. Notices to employee	
	2. Notice to employer regarding use of FML	
	3. Certification of leave	
SECTION IV	Miscellaneous Provisions	page 17
	1. Preservation of records	
	2. Prohibition against discrimination	

**SECTION I: GENERAL PROVISIONS**

**COVERED EMPLOYER** All public elementary and secondary schools are “covered employers” under the FMLA, without regard to the number of employees employed. The term “employer” includes any person who acts directly or indirectly in the interest of the District to any of the District's employees. *29 U.S.C. 2611(4), 2618(a); 29 CFR 825.104(a)*

**ELIGIBLE EMPLOYEE** “Eligible employee” means an employee who:

1. Has been employed by the District for at least 12 months. The 12 months need not be consecutive;
2. Has been employed by the District for at least 1,250 hours of service during the 12-months immediately preceding the commencement of leave; and
3. Is employed at a worksite where 50 or more employees are employed by the District within 75 miles of that worksite.

*29 U.S.C. 2611(2); 29 CFR 825.110*

[A district that has no eligible employees must comply with the requirements at GENERAL NOTICE, below.]

**QUALIFYING REASONS FOR LEAVE** The District shall grant leave to eligible employees:

1. For the birth of a son or daughter, and to care for the newborn child;
2. For placement with the employee of a son or daughter for adoption or foster care;
3. To care for the employee's spouse, son or daughter, or parent with a serious health condition;
4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job;
5. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation; and
6. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

*29 U.S.C. 2612(a); 29 CFR 825.112*

For explanations and definitions relating to “serious health condition,” see 29 CFR 825.113–.115. For provisions regarding treat-



LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

ment for substance abuse, see 29 CFR 825.119. For the definition of "next of kin," see 29 CFR 825.127(b)(3).

QUALIFYING  
EXIGENCY

An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

1. Short-notice deployment.
2. Military events and related activities.
3. Childcare and school activities.
4. Financial and legal arrangements.
5. Counseling.
6. Rest and recuperation.
7. Post-deployment activities.
8. Additional activities provided that the District and employee agree that the leave shall qualify as an exigency, and agree to both the timing and duration.

*29 CFR 826.126*

PREGNANCY OR  
BIRTH

Both the mother and father are entitled to FMLA leave to be with a healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. In addition, the mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. The mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health-care provider during the absence, and even if the absence does not last for more than three consecutive calendar days. The husband is entitled to FMLA leave if needed to care for his pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for the spouse following the birth of a child if the spouse has a serious health condition.

*29 CFR 825.120*

**SECTION II: LEAVE ENTITLEMENT AND USE**

AMOUNT OF LEAVE

Except in the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 12 work-weeks of leave during a 12-month period for any one or more of the qualifying reasons.

A husband and wife who are employed by the same district may be limited to a combined total of 12 weeks of FMLA leave during any 12-month period if leave is taken for the birth of a son or daughter,

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

the placement of a child for adoption or foster care, or to care for a parent with a serious health condition.

*29 U.S.C. 2612(a), (f); 29 CFR 825.120(a)(3), .200, .201*

DETERMINING THE  
12-MONTH PERIOD

Except with respect to military caregiver leave, the District may choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement occurs:

1. The calendar year;
2. Any fixed 12-month "leave year," such as a fiscal year or a year starting on an employee's "anniversary" date;
3. The 12-month period measured forward from the date any employee's first FMLA leave begins; or
4. A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

*29 CFR 825.200(b)*

MILITARY  
CAREGIVER LEAVE

In the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a "single 12-month period." The "single 12-month period" is measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins, regardless of the method used by the District to determine the 12-month period for other FMLA leaves. During the "single 12-month period," an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. *29 CFR 825.200(f), (g)*

A husband and wife who are employed by the same district may be limited to a combined total of 26 weeks of FMLA leave during the "single 12-month period" if leave is taken as military caregiver leave, for the birth of a son or daughter, for the placement of a child for adoption or foster care, or to care for a parent with a serious health condition. *29 CFR 825.127(d)*

SUMMER VACATION  
AND OTHER  
EXTENDED BREAKS

If the District's activity temporarily ceases and employees generally are not expected to report for work for one or more weeks (e.g., a school closing for two weeks for the Christmas/New Year holiday), those days do not count against the employee's FMLA leave entitlement. Similarly, the period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. *29 CFR 825.200(h), .601(a)*

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

INTERMITTENT OR  
REDUCED LEAVE  
SCHEDULE

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. "Intermittent leave" is FMLA leave taken in separate blocks of time due to a single qualifying reason. A "reduced leave schedule" is a leave schedule that reduces an employee's usual number of working hours per work-week, or hours per workday.

For leave taken because of the employee's own serious health condition, to care for a parent, son, or daughter with a serious health condition, or military caregiver leave, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. Leave due to a qualifying exigency may also be taken on an intermittent or reduced schedule basis.

When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the District agrees.

*29 U.S.C. 2612(b); 29 CFR 825.202*

TRANSFER TO  
ALTERNATIVE  
POSITION

If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, the District may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. *29 U.S.C. 2612(b)(2); 29 CFR 825.204*

CALCULATING  
LEAVE USE

When an employee takes leave on an intermittent or reduced schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. The District must account for intermittent or reduced schedule leave using an increment no greater than the shortest period of time that the District uses to account for use of other forms of leave, provided the increment is not greater than one hour. *29 CFR 825.205*

SPECIAL RULES FOR  
INSTRUCTIONAL  
EMPLOYEES

Special rules apply to certain employees of the District. These special rules affect leave taken intermittently or on a reduced schedule, or taken near the end of an academic term (semester) by instructional employees.

"Instructional employees" are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include teacher assistants or aides who do not have as their principal job actual

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

*29 CFR 825.600*

FAILURE TO  
PROVIDE NOTICE  
OF FORESEEABLE  
LEAVE

If an instructional employee does not give required notice of foreseeable leave to be taken intermittently or on a reduced schedule, the District may require the employee to take leave of a particular duration or to transfer temporarily to an alternative position. Alternatively, the District may require the employee to delay the taking of leave until the notice provision is met. *29 CFR 601(b)*

20 PERCENT RULE

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered service-member, or for the employee's own serious health condition; the leave is foreseeable based on planned medical treatment; and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the District may require the employee to choose:

1. To take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
2. To transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

"Periods of a particular duration" means a block or blocks of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave. If an employee chooses to take leave for "periods of a particular duration" in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

*29 U.S.C. 2618(c); 29 CFR 825.601, .603*

LEAVE AT THE END OF  
A SEMESTER

As a rule, the District may not require an employee to take more FMLA leave than the employee needs. The FMLA recognizes exceptions where instructional employees begin leave near the end of a semester. As set forth below, the District may in certain cases require the employee to take leave until the end of the semester.

The school semester, or "academic term," typically ends near the end of the calendar year and the end of spring each school year.

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

In no case may a school have more than two academic terms or semesters each year for purposes of the FMLA.

If the District requires the employee to take leave until the end of the semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. Any additional leave required by the District to the end of the semester is not counted as FMLA leave; however, the District shall maintain the employee's group health insurance and restore the employee to the same or equivalent job, including other benefits, at the end of the leave.

*29 U.S.C. 2618(d); 29 CFR 825.603*

MORE THAN FIVE  
WEEKS BEFORE  
END OF SEMESTER

The District may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave more than five weeks before the end of the semester;
2. The leave will last at least three weeks; and
3. The employee would return to work during the three-week period before the end of the semester.

DURING LAST FIVE  
WEEKS OF  
SEMESTER

The District may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave during the last five weeks of the semester for any reason other than the employee's own serious health condition or a qualifying exigency;
2. The leave will last more than two weeks; and
3. The employee would return to work during the two-week period before the end of the semester.

DURING LAST  
THREE WEEKS OF  
SEMESTER

The District may require an instructional employee to continue taking leave until the end of the semester if the employee begins leave during the three-week period before the end of the semester for any reason other than the employee's own serious health condition or a qualifying exigency.

*29 CFR 825.602*

SUBSTITUTION OF  
PAID LEAVE

Generally, FMLA leave is unpaid leave. However, an employee may choose to substitute accrued paid leave for unpaid FMLA leave. If an employee does not choose to substitute accrued paid leave, the District may require the employee to do so. The term "substitute" means that the paid leave provided by the District, and accrued pursuant to established policies of the District, will run concurrently with the unpaid FMLA leave. An employee's ability to

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

	<p>substitute accrued paid leave is determined by the terms and conditions of the District's normal leave policy. <i>29 U.S.C. 2612(d); 29 CFR 825.207(a)</i></p>
COMPENSATORY TIME	<p>If an employee requests and is permitted to use accrued compensatory time to receive pay during FMLA leave, or if the District requires such use, the compensatory time taken may be counted against the employee's FMLA leave entitlement. <i>29 CFR 825.207(f)</i></p>
FMLA AND WORKERS' COMPENSATION	<p>A serious health condition may result from injury to the employee "on or off" the job. If the District designates the leave as FMLA leave, the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, neither the employee nor the District may require the substitution of paid leave. However, the District and an employee may agree, where state law permits, to have paid leave supplement workers' compensation benefits.</p> <p>If the health-care provider treating the employee for the workers' compensation injury certifies that the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the District's offer of a "light duty job." As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the District may require the use of accrued paid leave.</p> <p><i>29 U.S.C. 825.207(d)</i></p>
MAINTENANCE OF HEALTH BENEFITS	<p>During any FMLA leave, the District must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.</p> <p>An employee may choose not to retain group health plan coverage during FMLA leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as before taking leave without any qualifying period, physical examination, exclusion of pre-existing conditions, and the like.</p> <p><i>29 U.S.C. 2614(c); 29 CFR 825.209</i></p>
PAYMENT OF PREMIUMS	<p>During FMLA leave, the employee must continue to pay the employee's share of group health plan premiums. If premiums are raised or lowered, the employee would be required to pay the new premium rates. <i>29 CFR 825.210</i></p>

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

FAILURE TO PAY  
PREMIUMS

Unless the District has an established policy providing a longer grace period, the District's obligations to maintain health insurance coverage cease if an employee's premium payment is more than 30 days late. In order to terminate the employee's coverage, the District must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. Coverage for the employee may be terminated at the end of the 30-day grace period, where the required 15-day notice has been provided.

Upon the employee's return from FMLA leave, the District must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. The employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

*29 CFR 825.212*

RECOVERY OF  
BENEFIT COST

If an employee fails to return to work after FMLA leave has been exhausted or expires, a District may recover from the employee its share of health plan premiums during the employee's unpaid FMLA leave, unless the employee's failure to return is due to one of the reasons set forth in the regulations. The District may not recover its share of health insurance premiums for any period of FMLA leave covered by paid leave. *29 CFR 825.213*

RIGHT TO  
REINSTATEMENT

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. *29 CFR 825.214(a), .216(a)*

MOONLIGHTING  
DURING LEAVE

If the District has a uniformly applied policy governing outside or supplemental employment, the policy may continue to apply to an employee while on FMLA leave. A district that does not have such a policy may not deny FMLA benefits on the basis of outside or supplemental employment unless the FMLA leave was fraudulently obtained. *29 U.S.C. 2618(e); 29 CFR 825.216(e)*

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

REINSTATEMENT  
OF SCHOOL  
EMPLOYEES

The District shall make the determination of how an employee is to be restored to "an equivalent position" upon return from FMLA leave on the basis of established Board policies and practices. The "established policies" must be in writing, must be made known to the employee before the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to "an equivalent position" must provide substantially the same protections as provided in the FMLA. For example, an employee may not be restored to a position requiring additional licensure or certification. *29 CFR 825.604*

PAY INCREASES  
AND BONUSES

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the District's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave.

Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then an employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

*29 CFR 825.215(c)*

KEY EMPLOYEES

The District may deny job restoration to a key employee if such denial is necessary to prevent substantial and grievous economic injury to the operations of the District. *29 U.S.C. 2614(b); 29 CFR 825.217-.219*

**SECTION III: NOTICES AND MEDICAL CERTIFICATION**

EMPLOYER NOTICES  
GENERAL NOTICE

Every covered employer must post on its premises a notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints with the Department of Labor's Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. Covered employers must post this general notice even if no employees are eligible for FMLA leave.



LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

If the District has any eligible employees, it shall also:

1. Include the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist; or
2. Distribute a copy of the general notice to each new employee upon hiring.

Electronic posting is sufficient if it meets the other requirements of this section.

If the District's workforce is comprised of a significant portion of workers who are not literate in English, the District shall provide the general notice in a language in which the employees are literate.

The District may use Department of Labor (DOL) form WHD 1420 or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice.

*29 CFR 825.300(a)*

ELIGIBILITY NOTICE

When an employee requests FMLA leave, or when the District acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the District must notify the employee of the employee's eligibility to take FMLA leave. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.

The District must provide the eligibility notice within five business days, absent extenuating circumstances. Notification of eligibility may be oral or in writing. The District may use DOL form WH-381 to provide such notification to employees. The District shall translate the notice in any situation in which it is required to translate the general notice.

*29 CFR 825.300(b)*

RIGHTS AND  
RESPONSIBILITIES  
NOTICE

Each time the District provides an eligibility notice to an employee, the District shall also provide a written rights and responsibilities notice. The rights and responsibilities notice must include the information required by the FMLA regulations at 29 CFR 825.300(c)(1).

The District may use DOL form WH-381 to provide such notification to employees. The District may adapt the prototype notice as appropriate to meet these notice requirements. The notice may be distributed electronically if it meets the other requirements of this section. The District shall translate the notice in any situation in which it is required to translate the general notice.

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

*29 CFR 825.300(c)*

DESIGNATION  
NOTICE

When the District has enough information to determine whether leave is being taken for an FMLA-qualifying reason, the District must notify the employee whether the leave will be designated as FMLA leave. If the District determines that the leave will not be designated as FMLA-qualifying, the District must notify the employee of that determination. Absent extenuating circumstances, the District must provide the designation notice within five business days.

The District may use Department of Labor (DOL) form WH-382. If the leave is not designated as FMLA leave because it does not meet the requirements of the Act, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

The designation notice must include the information required by the FMLA regulations at 29 CFR 825.300(d)(1) (substitution of paid leave), (d)(3) (fitness for duty certification), and (d)(6) (amount of leave charged against FMLA entitlement). For further provisions on designation of leave, see 29 CFR 825.301.

*29 CFR 825.300(d)*

RETROACTIVE  
DESIGNATION

The District may retroactively designate leave as FMLA leave, with appropriate notice to the employee, if the District's failure to timely designate leave does not cause harm or injury to the employee. In addition, the District and an employee may agree that leave will be retroactively designated as FMLA leave. *29 CFR 825.301(d)*

EMPLOYEE NOTICE

An employee giving notice of the need for FMLA leave must state a qualifying reason for the leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave, below. The employee does not need to expressly assert rights under the Act or even mention the FMLA. *29 CFR 825.301*

FORESEEABLE  
LEAVE

An employee must provide at least 30 days' advance notice before FMLA leave is to begin if the need for leave is foreseeable based upon an expected birth, placement for adoption or foster care, or planned medical treatment of the employee, a family member, or a covered servicemember. If 30 days' notice is not practicable, the employee must give notice as soon as practicable. For leave due to a qualifying exigency, the employee must provide notice as soon as practicable regardless of how far in advance the leave is foreseeable.

When planning medical treatment, the employee must consult with the District and make a reasonable effort to schedule the treatment

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

so as not to disrupt unduly the District's operations, subject to the approval of the health-care provider.

*29 CFR 825.302*

UNFORESEEABLE LEAVE	When the approximate timing of leave is not foreseeable, an employee must provide notice to the District as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the District's usual and customary notice requirements applicable to such leave. <i>29 CFR 825.303</i>
COMPLIANCE WITH DISTRICT REQUIREMENTS	The District may require an employee to comply with its usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied. <i>29 CFR 825.302(d)–.303(c)</i>
CERTIFICATION OF LEAVE	The District may require that an employee's FMLA leave be supported by certification, as described below. The District must give notice of a requirement for certification each time certification is required. At the time the District requests certification, the District must advise the employee of the consequences of failure to provide adequate certification. <i>29 CFR 825.305(a)</i>
TIMING	In most cases, the District should request certification at the time the employee gives notice of the need for leave or within five business days thereafter or, in the case of unforeseen leave, within five business days after the leave commences. The District may request certification at a later date if the District later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the District within 15 calendar days after the District's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. <i>29 CFR 825.305(b)</i>
INCOMPLETE OR INSUFFICIENT CERTIFICATION	<p>The District shall advise an employee if it finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. The District must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent, good faith efforts) to cure any such deficiency.</p> <p>A certification is "incomplete" if one or more of the applicable entries have not been completed. A certification is "insufficient" if it is complete, but the information provided is vague, ambiguous, or</p>

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

non-responsive. A certification that is not returned to the District is not considered incomplete or insufficient, but constitutes a failure to provide certification.

*29 CFR 825.305(c)*

MEDICAL  
CERTIFICATION OF  
SERIOUS HEALTH  
CONDITION

When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, the District may require the employee to obtain medical certification from a health-care provider. The District may use Department of Labor (DOL) optional form WH-380-E when the employee needs leave due to the employee's own serious health condition and optional form WH-380-F when the employee needs leave to care for a family member with a serious health condition. The District may not require information beyond that specified in the FMLA regulations.

An employee may choose to comply with the certification requirement by providing the District with an authorization, release, or waiver allowing the District to communicate directly with the health-care provider.

*29 CFR 825.306*

AUTHENTICATION  
AND CLARIFICATION

If an employee submits a complete and sufficient certification signed by the health-care provider, the District may not request additional information from the health-care provider. However, the District may contact the health-care provider for purposes of clarification and authentication of the certification after the District has given the employee an opportunity to cure any deficiencies, as set forth above. To make such contact, the District must use a health-care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances may the employee's direct supervisor contact the employee's health-care provider.

"Authentication" means providing the health-care provider with a copy of the certification and requesting verification that the information on the form was completed and/or authorized by the health-care provider who signed the document; no additional medical information may be requested.

"Clarification" means contacting the health-care provider to understand the handwriting on the certification or to understand the meaning of a response. The District may not ask the health-care provider for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule must be satisfied

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

when individually identifiable health information of an employee is shared with the District by a HIPAA-covered health-care provider.

*29 CFR 825.307(a)*

SECOND AND THIRD  
OPINIONS

If the District has reason to doubt the validity of a medical certification, the District may require the employee to obtain a second opinion at the District's expense. If the opinions of the employee's and the District's designated health-care providers differ, the District may require the employee to obtain certification from a third health-care provider, again at the District's expense. *29 CFR 825.307(b), (c)*

FOREIGN MEDICAL  
CERTIFICATION

If the employee or a family member is visiting another country, or a family member resides in another country, and a serious health condition develops, the District shall accept medical certification as well as second and third opinions from a health-care provider who practices in that country. If the certification is in a language other than English, the employee must provide the District with a written translation of the certification upon request. *29 CFR 825.307(f)*

RECERTIFICATION

The District may request recertification no more often than every 30 days and only in connection with an absence by the employee, except as set forth in the FMLA regulations. The District must allow at least 15 calendar days for the employee to provide recertification.

As part of the recertification for leave taken because of a serious health condition, the District may provide the health-care provider with a record of the employee's absence pattern and ask the health-care provider if the serious health condition and need for leave is consistent with such a pattern.

*29 CFR 308*

CERTIFICATION—  
QUALIFYING  
EXIGENCY LEAVE

The first time an employee requests leave because of a qualifying exigency, the District may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service.

The District may also require that the leave be supported by a certification that addresses the information at 29 CFR 825.309(b). The District may use DOL optional form WH-384, or another form containing the same basic information, for this certification. The District may not require information beyond that specified in the regulations.

LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

DECA  
(LEGAL)

*29 CFR 825.309*

CERTIFICATION—  
MILITARY  
CAREGIVER LEAVE

When an employee takes military caregiver leave, the District may require the employee to obtain a certification completed by an authorized health-care provider of the covered servicemember. In addition, the District may request that the employee and/or covered servicemember address in the certification the information at 29 CFR 825.310(c). The District may also require the employee to provide confirmation of a covered family relationship to the seriously injured or ill servicemember.

The District may use DOL optional form WH-385, or another form containing the same basic information, for this certification. The District may not require information beyond that specified in the regulations. The District must accept as sufficient certification "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill servicemember at his or her bedside.

The District may seek authentication and/or clarification of the certification under the procedures described above. Second and third opinions, and recertifications, are not permitted for leave to care for a covered servicemember.

*29 CFR 825.310*

INTENT TO RETURN  
TO WORK

The District may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The District's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

*29 CFR 825.311*

FITNESS FOR DUTY  
CERTIFICATION

As a condition of restoring an employee who took FMLA leave due to the employee's own serious health condition, the District may have a uniformly applied policy or practice that requires all similarly situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health-care provider that the employee is able to resume work. The District may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. *29 CFR 825.312*

FAILURE TO  
PROVIDE  
CERTIFICATION

If the employee fails to provide the District with a complete and sufficient certification, despite the opportunity to cure, or fails to provide any certification, the District may deny the taking of FMLA leave. This provision applies in any case where the District requests a certification, including any clarifications necessary to de-

termine if certifications are authentic and sufficient. *29 CFR 825.305*

For failure to provide timely certification of foreseeable leave, see 29 CFR 825.313(a). For failure to provide timely certification of unforeseeable leave, see 29 CFR 825.313(b). For failure to provide timely recertification, see 29 CFR 825.313(c). For failure to provide timely fitness-for-duty certification, see 29 CFR 825.313(d).

#### **SECTION IV: MISCELLANEOUS PROVISIONS**

##### RECORDS

The District shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act (FLSA) and the FMLA regulations. The District shall keep these records for no less than three years and make them available for inspection, copying, and transcription by representatives of the DOL upon request.

If the District is preserving records electronically, the District must comply with 29 CFR 825.500(b). A district that has eligible employees must maintain records with the data set forth at 29 CFR 825.500(c). A district that has no eligible employees must maintain just the data at 29 CFR 825.500(c)(1). For districts in a joint employment situation, see 29 CFR 825.500(e).

Records and documents relating to certifications, recertifications, or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. If the Americans with Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements [see 29 CFR 1630.14(c)(1)], except as set forth in this section of the regulations.

##### *29 CFR 825.500*

##### PROHIBITION AGAINST DISCRIMINATION AND RETALIATION

The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. *29 U.S.C. 2615; 29 CFR 825.220*





LEAVES AND ABSENCES  
MILITARY LEAVE

DECB  
(LEGAL)

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**Note:** This policy addresses leave for an employee's military service. For provisions on leaves in general, see DEC. For provisions regarding the Family and Medical Leave Act (FMLA), including FML for an employee seeking leave because of a relative's military service, see DECA.

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FEDERAL MILITARY  
LEAVE

Any person who is absent from a position of employment by reason of voluntary or involuntary service in the uniformed services (the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Services, and any other category of persons designated by the President in time of war or emergency) shall be entitled to certain reemployment rights and benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) if:

1. The person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to the District (unless notice is precluded by military necessity or is otherwise unreasonable or impossible);
2. The cumulative length of the absence and of all previous absences from a position of employment with the District does not exceed five years; and
3. The person reports to or submits an application for reemployment to the District and complies with the appropriate procedural requirements that apply under the circumstances.

A person who is reemployed under this Act is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

The District is not required to reemploy a person if:

1. The District's circumstances have so changed as to make reemployment impossible or unreasonable;
2. The reemployment of such person would impose an undue hardship on the District; or
3. The employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and

LEAVES AND ABSENCES  
MILITARY LEAVE

DECB  
(LEGAL)

there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

*38 U.S.C. 4301, et. seq.*

STATE LEAVE FOR  
MEMBER OF MILITARY  
OR RESCUE TEAM  
SHORT TERM

All employees of the District who are members of the state military forces, a reserve component of the United States Armed Forces, or a member of a state or federally authorized Urban Search and Rescue team shall be granted a paid leave of absence from their duties without loss of time, efficiency rating, vacation time, personal time, sick leave, or salary on all days during which they are engaged in authorized training or duty ordered or authorized by proper authority, not to exceed 15 workdays in a federal fiscal year. *Gov't Code 431.005(a), (b)*

CALLED TO DUTY

A member of the state military forces who is ordered to active state duty by the governor or other proper authority under state law is entitled to the same benefits and protections provided to persons performing service in the uniformed services under 38 U.S.C. 4301–4313 and 4316–4319 and to persons in the military service of the United States under 50 App. U.S.C. 501–536, 560, and 580–594, as those laws existed on April 1, 2003. *Gov't Code 431.017*

LONG TERM

Any employee, other than a temporary employee, who leaves a position with the District to enter active military service is entitled to be reemployed by the District in the same position held at the time of the induction, enlistment, or order, or to a position of similar seniority, status, and pay. To be entitled to reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions not later than the fifth anniversary after the date of induction, enlistment, or call to active military service and must be physically and mentally qualified to perform the duties of the position. *Gov't Code 613.001(3), 613.002*

An employee who cannot perform the duties of the position because of a disability sustained during military service is entitled to reemployment in the District in a position that the employee can perform and that has like seniority, status, and pay as the former position or the nearest possible seniority, status, and pay. *Gov't Code 613.003*

To be reemployed, a veteran of the military must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service. Application must be made in writing to the Superintendent and have attached to it evidence of the veteran's discharge, separation, or release from military service under honorable conditions. *Gov't Code 613.004*

LEAVES AND ABSENCES  
MILITARY LEAVE

DECB  
(LEGAL)

A person reemployed after active military service shall not be discharged without cause before the first anniversary of the date of the reemployment. *Gov't Code 613.005*

"Military service" means service as a member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, the Texas National Guard or the Texas State Guard. *Gov't Code 613.001(2)*

USE OF PERSONAL  
LEAVE

An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. This provision applies to any personal or sick leave available under former law or provided by local policy.

The District may adopt a policy providing for paid leave for active military service as part of the consideration of employment.

*Education Code 22.003(d), (e)*



SPECIAL EDUCATION  
IDENTIFICATION, EVALUATION, AND ELIGIBILITY

EHBAA  
(LEGAL)

CHILD FIND

The District shall ensure that all children residing within the District who have disabilities, regardless of the severity of their disabilities, and who are in need of special education and related services are identified, located, and evaluated. This requirement applies to:

1. Homeless children;
2. Children who are wards of the state;
3. Children attending private schools;
4. Highly mobile children (including migrant children); and
5. Children who are suspected of being in need of special education but who are advancing from grade to grade.

*20 U.S.C. 1412(a)(3)(A); 34 CFR 300.111(a)(1)(i), (c)*

PRIVATE SCHOOL  
STUDENTS

The District shall conduct a timely and meaningful consultation with private school representatives regarding the child find process and the provision of special education and related services to children enrolled in private schools in the District.

The District shall undertake activities similar to those undertaken for public school children and shall complete the child find process for children enrolled in private schools in a time period comparable to that for other students attending public schools in the District.

*20 U.S.C. 1412(a)(10)(A)(ii)–(iv)* [See EHBAC regarding students in nondistrict placement]

PRESCHOOL  
STUDENTS

The District shall develop a system to notify District residents with children who are at least three and younger than six and who are eligible for enrollment in a special education program of the availability of the program. *Education Code 29.009*

REFERRALS

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of the District's overall general education referral or screening system. Either a parent, TEA, another state agency, or the District may initiate a request for an initial evaluation.

Before referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students. If a student continues to experience difficulty in the general classroom after the provision of interventions, District personnel must refer the student for a full and individual initial evaluation.

*20 U.S.C. 1414(a)(1); 34 CFR 300.301; 19 TAC 89.1011*

NOTICE OF RIGHTS

A reasonable time before the District proposes or refuses to initiate the identification, evaluation, or educational placement of a student

SPECIAL EDUCATION  
IDENTIFICATION, EVALUATION, AND ELIGIBILITY

EHBAA  
(LEGAL)

or the provision of a free appropriate public education (FAPE) to a student, the District shall provide written notice to the student's parent or guardian. *20 U.S.C. 1415(b)(3); 34 CFR 300.503* [See EHBAE]

INITIAL EVALUATION

The District shall conduct a full and individual initial evaluation before the initial provision of special education and related services. *20 U.S.C. 1414(a)(1)(A)*

The District shall ensure that evaluations of children who transfer from one district to another in the same academic year are coordinated with the children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of evaluations. *20 U.S.C. 1414(b)(3)(D)*

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. *20 U.S.C. 1414(a)(1)(E)*

CONSENT FOR  
INITIAL EVALUATION

Before the District conducts an initial evaluation, it shall make reasonable efforts to obtain informed parental consent.

If the parent does not provide consent for an initial evaluation, or if the parent fails to respond to a request to provide consent, the District may, but is not required to, pursue the initial evaluation by utilizing due process procedures [see EHBAE], except to the extent inconsistent with state law relating to such parental consent.

Parental consent to initial evaluation shall not be construed as consent for placement for special education and related services.

*20 U.S.C. 1414(a)(1)(D); 34 CFR 300.300*

WARDS OF THE  
STATE

If the child is a ward of the state and is not residing with the child's parent, the District shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation, unless:

1. Despite reasonable efforts to do so, the District cannot discover the whereabouts of the parent;
2. The rights of the parent have been terminated; or
3. The rights of the parent to make educational decisions have been subrogated and an individual appointed by a judge to represent the student has given consent for an initial evaluation.

*20 U.S.C. 1414(a)(1)(D)(iii); 34 CFR 300.300(a)(2)*

SPECIAL EDUCATION  
IDENTIFICATION, EVALUATION, AND ELIGIBILITY

EHBAA  
(LEGAL)

TIMEFRAME	<p>The District must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation, or a shorter time frame if one is established by the state.</p> <p>This time frame shall not apply if:</p> <ol style="list-style-type: none"><li>1. A child enrolls in the current district after the relevant time frame has begun and before the previous district made a determination as to whether the child has a disability, but only if the current district is making sufficient progress to ensure a prompt completion of the evaluation and the parent and current district agree to a specific time for completion of the evaluation; or</li><li>2. The parent repeatedly fails or refuses to produce the child for the evaluation.</li></ol> <p><i>20 U.S.C. 1414(a)(1)(C)(ii); 34 CFR 300.301(c)-(e); Education Code 29.004</i></p>
PSYCHOLOGICAL EXAMINATIONS	<p>If the District determines that an additional examination or test is required for the evaluation, the district shall provide the information required by Education Code 29.0041(a) and shall obtain parental consent. If a parent does not give consent within 20 calendar days after the District provided the information, the parent's consent is considered denied.</p> <p>The time required for a district to provide information and seek consent may not be counted toward the 60 calendar days for completion of an evaluation.</p> <p><i>Education Code 29.0041</i></p>
DETERMINATION OF ELIGIBILITY	<p>Upon completion of the administration of assessments and other evaluation measures, a team of qualified professionals and the parent shall make the determination of whether the child has a disability and of the educational needs of the child.</p> <p>The District shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.</p> <p><i>20 U.S.C. 1414(b)(4)(B); 34 CFR 300.306(a)</i></p>
REEVALUATIONS	<p>The District shall ensure that each child with a disability is reevaluated if the District determines that the educational or related services needs of the child, including improved academic achievement and functional performance, warrant a reevaluation, or if the child's parent or teacher requests a reevaluation.</p> <p>Reevaluation shall occur:</p>

SPECIAL EDUCATION  
IDENTIFICATION, EVALUATION, AND ELIGIBILITY

EHBAA  
(LEGAL)

1. No more than once a year, unless the parent and the District agree otherwise; and
2. At least once every three years, unless the parent and District agree that a reevaluation is unnecessary.

The District shall obtain informed parental consent before conducting a reevaluation, except that informed parental consent is not needed if the District can demonstrate that it has taken reasonable measures to obtain consent and the child's parent has failed to respond.

*20 U.S.C. 1414(a)(2), (c)(3); 34 CFR 300.303*

EVALUATION FOR  
CHANGE IN  
ELIGIBILITY

The District shall evaluate a child before determining that the child is no longer a child with a disability. However, an evaluation is not required before the termination of eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under state law. *20 U.S.C. 1414(c)(5); 34 CFR 300.305(e)*

INDEPENDENT  
EVALUATION

The parents have a right to obtain an independent educational evaluation of their child. If a parent requests an independent evaluation, the District shall provide the parents with information regarding where one can be obtained and the District's criteria for independent evaluations.

AT PUBLIC  
EXPENSE

If a parent requests an independent evaluation at public expense, the District shall, without unnecessary delay, either:

1. File a due process complaint to request a hearing to show that its evaluation is appropriate; or
2. Ensure that an independent evaluation is provided at public expense, unless the District demonstrates that the evaluation obtained by the parent did not meet District criteria.

AT PRIVATE  
EXPENSE

If the District initiates a hearing, and the final decision is that the District's evaluation is appropriate, the parent still has a right to an independent evaluation, but not at public expense. If the parent obtains an independent evaluation at private expense, the results of the evaluation shall be considered by the District, if it meets District criteria, in any decision made with respect to providing FAPE to the child.

*34 CFR 300.502*

ELIGIBILITY

A student is eligible to participate in the District's special education program if:

1. The student is between the ages of 3 and 21, inclusive;



SPECIAL EDUCATION  
IDENTIFICATION, EVALUATION, AND ELIGIBILITY

EHBAA  
(LEGAL)

2. The student has one or more of the disabilities listed in federal regulations, state law, or both; and
3. The student's disability(ies) prevents the student from being adequately or safely educated in the public schools without the provision of special services.

*20 U.S.C. 1401(3); Education Code 29.003(b); 19 TAC 89.1035, 89.1040*

VISUAL AND  
AUDITORY  
IMPAIRMENTS

A student with a visual or auditory impairment shall be eligible to participate in the District's special education program from birth.  
*19 TAC 89.1035(b); Education Code 30.002*

CONSENT TO  
SERVICES

The District must obtain informed consent from the parent for the initial provision of special education and related services. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of services, the District:

1. May not use the procedures in 34 CFR part 300 subpart E (including the mediation and due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child;
2. Will not be considered to be in violation of the requirement to make FAPE available to the child for the failure to provide the services for which the District requests consent; and
3. Is not required to convene an ARD meeting or develop an IEP for the child for the services.

If, at any time after the provision of initial services, the parent of a child revokes consent in writing for the continued provision of services, the District:

1. May not continue to provide services to the child, but must provide prior written notice before ceasing services;
2. May not use the procedures in 34 CFR part 300 subpart E in order to obtain agreement or a ruling that the services may be provided to the child;
3. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further services; and
4. Is not required to convene an ARD meeting or develop an IEP for further provision of services.

*34 CFR 300.300*

SPECIAL EDUCATION  
IDENTIFICATION, EVALUATION, AND ELIGIBILITY

EHBAA  
(LEGAL)

PRESCRIPTION  
MEDICATION

An employee of the District is prohibited from requiring a child to obtain a prescription for a substance covered under the federal Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation for special education, or receiving special education and related services.

An employee is not prohibited from consulting or sharing classroom-based observations with parents regarding a student's academic and functional performance, behavior in the classroom or school, or the need for evaluation for special education or related services.

*20 U.S.C. 1412(a)(25)*

SPECIAL EDUCATION  
STUDENTS IN NONDISTRICT PLACEMENT

EHBAC  
(LEGAL)

SHARED SERVICES ARRANGEMENTS	The District may enter into a written contract to jointly operate its special education program. The contract must be approved by the Commissioner. <i>Education Code 29.007</i>
PRIVATE SCHOOL— DISTRICT PLACED  STUDENT RECEIVES IEP	If the District places a child with a disability in a private school or facility, or refers the child to a private school or facility, as a means of carrying out the requirements of the special education laws, the District shall ensure that the child is provided special education and related services, in accordance with an IEP, at no cost to the parents. <i>20 U.S.C. 1412(a)(10)(B)(i)</i>
PRIVATE SCHOOL— PARENT PLACED	When a parentally placed child with a disability is referred to the District, the District shall convene an admission, review, and dismissal (ARD) committee to determine whether the District can offer the child a free appropriate public education (FAPE). If the District determines that it can offer FAPE, it is not responsible for providing educational services to the child, except that the District must develop and implement an individualized services plan (ISP). <i>19 TAC 89.1096(b)</i>
OFFER OF FAPE REJECTED  STUDENT RECEIVES ISP	If the District made FAPE available to a child with a disability and the parents elected to place the child in a private school or facility, the District is not required to pay for the cost of education, including special education and related services. However, the District must develop and implement an ISP. <i>20 U.S.C. 1412(a)(10)(C)(i); 34 CFR 300.148(a)</i>
FAPE OFFERED BUT NOT PROVIDED  REIMBURSE- MENT	If the parents of a child with a disability, who previously received special education and related services under the authority of the District, enroll the child in a private school without the consent or referral by the District, a court or a hearing officer may require the District to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the District had not made FAPE available to the child in a timely manner before the enrollment. This right of reimbursement is subject to the notice and other requirements set forth at 34 CFR 300.148(d). <i>20 U.S.C. 1412(a)(10)(C)(ii); 34 CFR 300.148(c)</i>
HOME SCHOOL STUDENTS	A home school student is considered a private school student, for purposes of the District's obligations under IDEA, if the home school provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress. <i>19 TAC 89.1096(a)</i>
INDIVIDUALIZED SERVICES PLAN (ISP)	Each parentally placed private school child with a disability who has been designated to receive services shall have an ISP that describes the specific special education and related services that the district will provide the child.

SPECIAL EDUCATION  
STUDENTS IN NONDISTRICT PLACEMENT

EHBAC  
(LEGAL)

Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No parentally placed private school child has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

Decisions about the services that will be provided must be made in accordance with 34 CFR 300.134(c) (consultation process) and 300.137(c) (attendance of private school representatives at services plan committee meetings). The District must make the final decisions with respect to the services to be provided.

*34 CFR 300.137, 300.138*

DUAL ENROLLMENT

Parents shall have the right to “dual enroll” an eligible student age three or four in both the public school and a private school beginning on the student’s third birthday and continuing until the end of the school year in which the student turns five, or until the student is eligible to attend the District’s kindergarten program, whichever comes first, subject to the following:

1. The student’s ARD committee shall develop an IEP designed to provide the student with FAPE in the least restrictive environment (LRE).
2. From the IEP, the parent and the District shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the LRE and the policies and procedures of the District.
3. The District shall be responsible for employing and supervising the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the District.

*19 TAC 89.1096(c)*

RESPONSIBLE  
DISTRICT

The District where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.

If the parents decline dual enrollment, but request an ISP, the district where the private school is located is responsible for development of the ISP for a student designated to receive services.

*19 TAC 89.1096(c), (d)*

SPECIAL EDUCATION  
STUDENTS IN NONDISTRICT PLACEMENT

EHBAC  
(LEGAL)

DISTRICT CHARTER SCHOOLS	<p>The District shall serve children with disabilities attending District charter schools in the same manner as it serves children with disabilities in its other schools and shall provide federal special education funds to those schools in the same manner as it provides those funds to its other schools. <i>20 U.S.C. 1413(a)(5); 34 CFR 300.209(b)</i></p>
RESIDENTIAL FACILITIES IDENTIFICATION OF STUDENTS	<p>If a residential facility that is licensed by appropriate state agencies is located within the District's boundaries, the District must provide special education and related services to eligible students residing in the facility.</p> <p>If, after contacting the facility to offer services to eligible students with disabilities, the District determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, the District is not required to provide services. However, the District shall annually contact the facility to offer services to eligible students with disabilities.</p> <p><i>19 TAC 89.1001(c)</i></p>
DISTRICT PLACEMENTS	<p>The District may contract with a public or private facility, institution, or agency inside or outside of Texas for residential placement for a student with a disability when the ARD committee determines that a residential placement is necessary for the student to receive FAPE. Contracts for residential placement must be approved by the Commissioner. <i>Education Code 29.008(a); 19 TAC 89.61(a)</i></p> <p>If placement in a public or private residential program is necessary to provide special education and related services, the program, including non-medical care and room and board, must be at no cost to the parents. <i>34 CFR 300.104</i></p> <p>If the District contracts for education services, rather than providing the services itself, it shall oversee the implementation of the student's IEP and shall annually reevaluate the appropriateness of the arrangement. <i>Education Code 29.008(d)</i></p> <p>Further, a District shall have the responsibilities set forth at 19 TAC 89.61 regarding students in residential placements:</p>
OUT-OF-STATE PLACEMENTS	<p>If the District contracts for an out-of-state residential placement, it shall do so in accordance with the rules for in-state residential placement, except that the facility shall be approved by the appropriate agency in the state in which the facility is located rather than by the Texas Commissioner of Education. <i>19 TAC 89.61(c)(3)</i></p>

SPECIAL EDUCATION  
STUDENTS IN NONDISTRICT PLACEMENT

EHBAC  
(LEGAL)

SCHOOL FOR THE  
BLIND AND  
VISUALLY IMPAIRED  
AND SCHOOL FOR  
THE DEAF

The District shall share the cost of education (excluding the summer program) for each of its students enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf.

Before considering the student's educational placement for special education services, the District shall provide each parent of a student with visual or auditory impairments the following written information regarding the Texas School for the Deaf or Texas School for the Blind and Visually Impaired:

1. The availability of programs offered.
2. The eligibility and admissions requirements.
3. The student's rights to admission and to appeal admission decisions.

*Education Code 30.003(a), 30.004(a); 19 TAC 89.62*

The District may request services through the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf in accordance with 19 TAC 89.1085. *19 TAC 89.1085*

ADULT PRISONS

If a child with a disability is convicted as an adult under state law and incarcerated in an adult prison, the child's ARD committee may modify the child's IEP or placement, notwithstanding the LRE requirements, if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

1. Federal requirements pertaining to participation of students with disabilities in general assessments;
2. Requirements concerning transition planning and transition services, if the children's eligibility will end, because of their age, before they will be released from prison.

*20 U.S.C. 1414(d)(7)*

SPECIAL EDUCATION  
PROCEDURAL REQUIREMENTS

EHBAE  
(LEGAL)

PROCEDURAL  
SAFEGUARDS

The District shall establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE). *20 U.S.C. 1415(a)-(b)*

These procedures shall include:

EXAMINATION OF  
RECORDS AND  
PARTICIPATION IN  
MEETINGS

1. An opportunity for the parents to review all education records and to participate in meetings relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. *34 CFR 300.501*

INDEPENDENT  
EDUCATIONAL  
EVALUATION

2. An opportunity for the parents to obtain an independent educational evaluation of the child. *34 CFR 300.501*

ASSIGNMENT OF  
SURROGATE  
PARENT

3. Assignment of an individual to act as a surrogate for the parent when no parent can be identified, the District cannot locate the parents, or the child is a ward of the state. *34 CFR 300.519*

PRIOR WRITTEN  
NOTICE

4. Prior written notice to the parents whenever the District proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. *34 CFR 300.503* [See PRIOR NOTICE AND CONSENT, below]

MEDIATION

5. Procedures to allow parties to resolve disputes through a mediation process. *34 CFR 300.506*

COMPLAINTS

6. An opportunity for any party to file a due process complaint on any matter relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. [See COMPLAINT PROCEDURES, below] *34 CFR 300.507*

DUE PROCESS  
COMPLAINT

7. Procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which shall remain confidential). *34 CFR 300.508*

CONSENT

Consent means that:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
2. The parent understands and agrees in writing to the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

SPECIAL EDUCATION  
PROCEDURAL REQUIREMENTS

EHBAE  
(LEGAL)

3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. A revocation of consent is not retroactive.

If the parent revokes consent in writing for his or her child's receipt of services after the child is initially provided special education and related services, the District is not required to amend the child's education records to remove any references to the child's receipt of services because of the revocation of consent.

*34 CFR 300.9*

LANGUAGE OF  
NOTICES

The procedural safeguards and prior notices described below must be written in language understandable to the general public. The notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. *34 CFR 300.503(c), 300.504(d)*

ELECTRONIC  
DELIVERY OF  
NOTICES

A parent may elect to receive the procedural safeguards notice, prior notice, or notice of due process complaint by electronic mail if the district makes that option available. *34 CFR 300.505*

PROCEDURAL  
SAFEGUARDS NOTICE

The District shall provide a copy of the procedural safeguards to parents only one time a year, except that a copy also shall be given to the parents:

1. Upon initial referral or parental request for evaluation;
2. Upon receipt of the first state complaint and upon receipt of the first due process complaint in a school year;
3. On the date of a decision to make a disciplinary removal that is a change in placement; and
4. Upon request by a parent.

The District may place a current copy of the procedural safeguards notice on its Internet Web site, if it has one.

CONTENTS OF  
NOTICE

The notice shall include a full explanation of the procedural safeguards relating to:

1. Independent educational evaluations;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;



SPECIAL EDUCATION  
PROCEDURAL REQUIREMENTS

EHBAE  
(LEGAL)

5. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
  - a. The time period in which to file a complaint,
  - b. The opportunity for the District to resolve the complaint; and
  - c. The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.
6. The availability of mediation;
7. The child's placement during pendency of any due process proceedings;
8. Procedures for children who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placement by parents of children in private schools at public expense;
10. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
11. Civil actions, including the time period in which to file such actions; and
12. Attorneys' fees.

*20 U.S.C. 1415(a)–(b), (d); 34 CFR 300.504(c)*

PRIOR NOTICE AND  
CONSENT

The District shall provide prior written notice to the parents a reasonable time before the District proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of a child or the provision of FAPE to the child. *34 CFR 300.503(a)*

"Reasonable time" is defined as at least five school days, unless the parents agree otherwise. *19 TAC 89.1015*

CONTENTS OF  
NOTICE

The notice must include:

1. A description of the action proposed or refused by the District;
2. An explanation of why the District proposes or refuses to take the action;

SPECIAL EDUCATION  
PROCEDURAL REQUIREMENTS

EHBAE  
(LEGAL)

3. A description of each evaluation procedure, assessment, record, or report the District used as a basis for the proposed or refused action;
4. A statement that the parents have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained;
5. Sources for parents to contact to obtain assistance in understanding the IDEA rules;
6. A description of other options the ARD committee [see EH-BAB] considered and the reasons why those options were rejected; and
7. A description of other factors that are relevant to the district's proposal or refusal.

*34 CFR 300.503(b)*

CONSENT TO  
INITIAL EVALUATION

Before the District conducts an initial evaluation, it shall provide prior written notice, including a description of any evaluation the District proposes to conduct, and obtain informed consent for the evaluation from the parents. *20 U.S.C. 1414(a)(1)(D), (E); 34 CFR 300.304(a)*

CONSENT TO  
SERVICES

The District shall seek informed consent from the parent before providing special education and related services to a child. [See EHBAE] *20 U.S.C. 1414(a)(1)(D)*

CONSENT TO  
REEVALUATION

The District shall obtain informed parental consent before conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the District can demonstrate that it has taken reasonable measures to obtain such consent and the parent has failed to respond. *20 U.S.C. 1414(c)(3)*

PSYCHOLOGICAL  
EXAMINATIONS AND  
TESTS

On request of a child's parent, before obtaining the parent's consent for the administration of any psychological examination or test to the child as part of the evaluation of the child's need for special education, the District shall provide to the child's parent:

1. The name and type of the examination or test; and
2. An explanation of how the examination or test will be used to develop an appropriate IEP for the child.

If the District determines that an additional examination or test is required for the evaluation of a child's need for special education, the District shall provide the information above to the parent re-

SPECIAL EDUCATION  
PROCEDURAL REQUIREMENTS

EHBAE  
(LEGAL)

garding the additional examination or test and shall obtain additional consent for the examination of test.

*Education Code 29.0041(a), (b)*

COMPLAINT  
PROCEDURES

Whenever a due process complaint has been received by the District, the parent shall have an opportunity for an impartial due process hearing, which shall be conducted by TEA. [For TEA rules on due process hearings, see 19 TAC 89.1151–.1191.]

TIME LIMIT

Such due process complaint must set forth an alleged violation that occurred not more than one year before the date the parent or District knew or should have known about the alleged action that forms the basis of the complaint.

*20 U.S.C. 1415(f)(1)(A); 19 TAC 89.1151(c)*

EXCEPTION

This timeline shall not apply if the parent was prevented from requesting a hearing due to:

1. A specific misrepresentation by the District that it had resolved the problem forming the basis of the complaint; or
2. The District's withholding of information from the parent that the District was required by the IDEA to provide.

*20 U.S.C. 1415(b)(6)–(7); 34 CFR 300.511(f)*

'STAY PUT'

During the pendency of any proceeding conducted under IDEA part B (except proceedings to challenge a disciplinary change of placement or manifestation determination), the child shall remain in the then-current educational placement unless the District and the parent agree otherwise. If the child is applying for initial admission to a public school, the child shall, with the consent of the parents, be placed in the public school program until all proceedings have been completed. *20 U.S.C. 1415(j); 34 CFR 300.518, 300.533*

EXCEPTION

When a due process hearing has been requested by a parent or district concerning a disciplinary change of placement or manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the child's assignment to the alternative setting, or the 45-day timeline, if applicable, whichever occurs first, unless the parent and district agree otherwise. *20 U.S.C. 1415(k)(3)(B), 1415(k)(7); 34 CFR 300.533* [See FOF]

RESOLUTION  
PROCESS

Within 15 days of receiving notice of a parent's due process complaint, and before initiating a due process hearing, the District shall convene a meeting with the parent and the relevant member or members of the ARD committee. The purpose of the meeting is for the parent to discuss the due process complaint and the facts that

SPECIAL EDUCATION  
PROCEDURAL REQUIREMENTS

EHBAE  
(LEGAL)

form the basis of the due process complaint, so that the District has the opportunity to resolve the dispute.

The meeting need not be held if the parent and the District agree in writing to waive the meeting, or the parent and the district agree to use the mediation process.

If the District has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the complaint, the due process hearing may occur. If the District is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, the District may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

*34 CFR 300.510*

TRANSFER OF RIGHTS  
TO ADULT STUDENTS

When a student reaches the age of 18, the District shall notify the student and the parents of the transfer of parental rights, as described in the following paragraph. This notice is separate and distinct from the requirement that, beginning at least one year before the student reaches the age of 18, the student's IEP include a statement regarding transfer of parental rights.

A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability. All other rights accorded to parents under Chapter 29, Subchapter A of the Education Code or 20 U.S.C. 1415 transfer to the student.

*34 CFR 300.520; Education Code 29.017(a)-(b); 19 TAC 89.1049(c)*

SPECIAL PROGRAMS  
OTHER INSTRUCTIONAL INITIATIVES

EHBK  
(LEGAL)

RECOGNITION DATES	The District shall regularly observe the following recognition days, weeks, and months by appropriate programs, celebrations, and activities:
WOMEN'S INDEPENDENCE DAY	August 26: Women's Independence Day, to commemorate the ratification in 1920 of the Nineteenth Amendment to the United States Constitution, which guaranteed women the right to vote. <i>Gov't Code 662.051</i>
TEXAS FIRST RESPONDERS DAY	September 11: Texas First Responders Day, in honor of the bravery, courage, and determination of Texas men and women who assist others in emergencies. <i>Gov't Code 662.050</i>
CONSTITUTION DAY	September 17: A district that receives federal funds for a fiscal year shall hold an educational program on the United States Constitution for the students served by the District. <i>Pub. L. 108-447 (2004)</i>
CELEBRATE FREEDOM WEEK	Week of September 17: Celebrate Freedom Week, to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded. [See CELEBRATE FREEDOM WEEK, below] <i>Education Code 29.907</i>
FATHER OF TEXAS DAY	November 3: Father of Texas Day, in memory of Stephen F. Austin, the great pioneer patriot and the real and true Father of Texas. <i>Gov't Code 662.045</i>
SAM RAYBURN DAY	January 6: Sam Rayburn Day, in memory of that great Texas and American statesman, Sam Rayburn. <i>Gov't Code 662.041</i>
STATE OF TEXAS ANNIVERSARY REMEMBRANCE DAY	February 19: State of Texas Anniversary Remembrance Day (STAR Day), in honor of Texas joining the Union and the day that James Pinckney Henderson became the first governor of the State of Texas in 1846. <i>Gov't Code 662.047</i>
TEXAS HISTORY MONTH	March: Texas History Month, in honor of those Texans who helped shape the history of the State of Texas and in recognition of events throughout Texas' history. <i>Gov't Code 662.102.</i>
PARAPROFESSIONAL DAY	The second Wednesday in May: Public School Paraprofessional Day, in recognition of education paraprofessionals including teacher assistants, instructional aides, educational trainers, library attendants, bilingual assistants, special education associates, mentors, and tutors. <i>Gov't Code 662.049</i>
OPTIONAL RECOGNITION MONTHS	In addition, the District may observe the following recognition days, weeks, or months, by appropriate celebrations and activities:

SPECIAL PROGRAMS  
OTHER INSTRUCTIONAL INITIATIVES

EHBK  
(LEGAL)

LUNG CANCER AWARENESS MONTH	November: Lung Cancer Awareness Month, to increase awareness of lung cancer and encourage funding of research and more effective treatments. <i>Gov't Code 662.104</i>
CHILD SAFETY MONTH	April: Child Safety Month, in recognition of the children of this state as this state's most precious resource. <i>Gov't Code 662.103</i>
CELEBRATE FREEDOM WEEK  APPROPRIATE INSTRUCTION	<p>The week in which September 17 falls is designated as Celebrate Freedom Week in public schools. For purposes of this section, Sunday is considered the first day of the week. <i>Education Code 29.907</i></p> <p>Each social studies class shall include, during Celebrate Freedom Week or during another full school week as determined by the Board, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the United States Constitution, including the Bill of Rights, in their historical context.</p> <p>The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the United States Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.</p> <p><i>19 TAC 74.33(a)</i></p>
RECITATION	Each district shall require that, during Celebrate Freedom Week or other prescribed week of instruction, students in grades 3–12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — That to secure these Rights, Governments are instituted among Men, deriving their Just Powers from the Consent of the Governed."
EXCEPTION	<p>Each district shall excuse from recitation a student:</p> <ol style="list-style-type: none"><li>1. Whose parent or guardian submits to the District a written request that the student be excused;</li><li>2. Who, as determined by the District, has a conscientious objection to the recitation; or</li><li>3. Who is the child of a representative of a foreign government to whom the United States government extends diplomatic immunity.</li></ol> <p><i>19 TAC 74.33(b)</i></p>

SPECIAL PROGRAMS  
OTHER INSTRUCTIONAL INITIATIVES

EHBK  
(LEGAL)

“EDUCATION: GO GET  
IT” WEEK

Each district offering middle school, junior high school, or high school grade levels shall designate one week during the school year as “Education: Go Get It” Week. During the designated week, each middle school, junior high school, and high school shall provide students with comprehensive grade-appropriate information about the pursuit of higher education, including:

1. Higher education options;
2. Standard admission requirements for institutions of higher education, including:
  - a. Overall high school grade point average;
  - b. Required curriculum; and
  - c. Scores necessary on generally recognized tests or assessment instruments used in admissions determinations, including the Scholastic Assessment Test and the American College Test;
3. Automatic admission of certain students to general academic teaching institutions under Education Code 51.803 [see EIC]; and
4. Financial aid availability and requirements, including the financial aid information provided by counselors under Education Code 33.007(b) [see EJ].

In addition, each middle school, junior high school, and high school shall provide to students at least one public speaker to promote the importance of higher education.

*Education Code 29.911*

CHARACTER  
EDUCATION

The District may provide a character education program, which must:

1. Stress positive character traits, such as:
  - a. Courage;
  - b. Trustworthiness, including honesty, reliability, punctuality, and loyalty;
  - c. Integrity;
  - d. Respect and courtesy;
  - e. Responsibility, including accountability, diligence, perseverance, and self-control;
  - f. Fairness, including justice and freedom from prejudice;

SPECIAL PROGRAMS  
OTHER INSTRUCTIONAL INITIATIVES

EHBK  
(LEGAL)

- g. Caring, including kindness, empathy, compassion, consideration, patience, generosity, and charity;
  - h. Good citizenship, including patriotism, concern for the common good and the community, and respect for authority and the law; and
  - i. School pride;
2. Use integrated teaching strategies; and
3. Be age appropriate.

In developing or selecting a character education program under this section, the District shall consult with a committee selected by the District that consists of parents of District students, educators, and other members of the community, including community leaders.

The provisions above do not require or authorize proselytizing or indoctrinating concerning any specific religious or political belief.

*Education Code 29.906*

STUDENT ELECTIONS

An election for the participation of students in kindergarten through grade 12 may be held in conjunction with a general, special, or primary election. The student election may be ordered by:

1. The commissioners court, for a student election held in conjunction with an election ordered by the governor or a county authority;
2. The governing body of a political subdivision, for a student election held in conjunction with an election of the political subdivision; or
3. The county executive committee, for a student election held in conjunction with a primary election.

A student election may be held only on election day or the day before election day.

The authority ordering a student election shall specify in the order each grade that may participate in the election. A student in a specified grade may enter a precinct polling place for the purpose of casting an unofficial ballot in the student election on the same offices and measures that appear on the official ballot.

The election officers serving in the official election may not serve in the student election. The authority ordering a student election shall appoint a separate set of election officers to conduct the student election, supervise the participating students, and tabulate and re-



SPECIAL PROGRAMS  
OTHER INSTRUCTIONAL INITIATIVES

EHBK  
(LEGAL)

port the results of that election. The authority ordering a student election shall make the results of that election available to the public but only after the polling places are closed on election day.

Expenses incurred in the conduct of a student election, including any personnel expenses, may be paid only from private grant funds or donations.

*Election Code 276.007*

CPR INSTRUCTION

The District may accept from TEA donations the agency receives under Education Code 7.026 for use in providing instruction to students in the principles and techniques of CPR. The District may accept other donations, including donations of equipment, for use in providing CPR instruction. *Education Code 29.903*



TESTING PROGRAM  
READING ASSESSMENT

EKC  
(LEGAL)

ADOPTION OF  
READING  
INSTRUMENTS

The Commissioner shall adopt a list of reading instruments that the District may use to diagnose student reading development and comprehension. The District-level committee may adopt a list of reading instruments in addition to the reading instruments on the Commissioner's list. Each reading instrument adopted by the District-level committee shall be based on scientific research concerning reading skills development and reading comprehension. A list of adopted reading instruments shall provide for diagnosing the reading development and comprehension of students participating in a bilingual or special language program.

KINDERGARTEN-  
SECOND GRADE

The District shall administer, at the kindergarten and first- and second-grade levels, a reading instrument on the list adopted by the Commissioner or by the District-level committee. The District shall administer the reading instrument in accordance with the Commissioner's recommendations.

SEVENTH GRADE

The District shall administer a diagnostic reading instrument during the first six weeks of the school year to each student in grade 7 whose performance on the grade 6 state reading assessment did not meet the passing standard. If a student was administered the modified state assessment in reading, the ARD committee may determine if the diagnostic assessment is appropriate for use with that student.

A student in grade 7 who does not have a score for the state reading assessment in grade 6 may be given an equivalent comprehension assessment. If that student does not meet the passing standard, the student must be administered the diagnostic reading assessment.

The District must use the Texas Middle School Fluency Assessment and/or an alternate diagnostic reading instrument. The District must submit an alternate diagnostic reading instrument to TEA for approval. An alternate diagnostic instrument must:

1. Be based on published scientific research in reading;
2. Be age and grade-level appropriate, valid, and reliable;
3. Identify specific skill difficulties in word analysis, fluency, and comprehension; and
4. Assist the teacher in making individualized instructional decisions based on the assessment results.

REPORTS

The Superintendent shall:

1. Report to the Commissioner and the board the results of the reading instruments;

TESTING PROGRAM  
READING ASSESSMENT

EKC  
(LEGAL)

2. Report, in writing, to a student's parent or guardian the student's results on the reading instrument; and
3. Effective with the 2008–09 school year, and using the school readiness certification system, report each student's raw score on the reading instrument to TEA using the school readiness certification system.

The results of reading instruments may not be used for purposes of appraisals, incentives, or accountability.

The reading instruments specified in this policy are required only if funds are appropriated for administering them. Funds, other than local funds, may be used to pay the cost of administering a reading instrument only if the instrument is on the list adopted by the Commissioner.

NOTICE TO  
PARENTS

The District shall notify the parent or guardian of each student in kindergarten, first grade, or second grade who is determined, on the basis of reading instrument results, to be at risk for dyslexia or other reading difficulties. The District shall make a good-faith effort to ensure that this notice is provided in person or by regular mail, is clear and easy to understand, and is written in English and in the parent or guardian's native language.

ACCELERATED  
READING  
INSTRUCTION  
PROGRAM

The District shall implement an accelerated reading instruction program that provides reading instruction that addresses reading deficiencies to those students and shall determine the form, content, and timing of that program. [See ACCELERATED READING INSTRUCTION PROGRAM at EHBC(LEGAL)]

*Education Code 28.006; 19 TAC 101.6001*

EQUAL EDUCATIONAL OPPORTUNITY

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(LEGAL)

NONDISCRIMINATION	<p>The District shall provide equal opportunities to all individuals within its jurisdiction or geographic boundaries. <i>Education Code 1.002(a)</i></p> <p>No officer or employee of the District shall, when acting or purporting to act in an official capacity, refuse to permit any student to participate in any school program because of the student's race, religion, color, sex, or national origin. <i>Civ. Prac. &amp; Rem. Code 106.001</i></p> <p>The District may not deny services to any individual eligible to participate in its special education program, but it shall provide individuals with disabilities special educational services as authorized by law. <i>Education Code 1.002(b)</i></p>
FEDERAL FUNDING RECIPIENTS	<p>No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination by any district that receives federal financial assistance, on the basis of any of the following protected characteristics:</p> <ol style="list-style-type: none"><li>1. Sex.</li><li>2. Race, color, or national origin.</li><li>3. Disability, or relationship or association with an individual with a disability. [See EHB, EHBA series, and GA]</li></ol> <p><i>20 U.S.C. 1681 (Title VI); 42 U.S.C. 2000d (Title IX); 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act); 29 U.S.C. 794 (Section 504); 42 U.S.C. 12132 (Americans with Disabilities Act [ADA])</i></p>
HARASSMENT	<p>Sexual harassment of students is discrimination on the basis of sex under Title IX. <u><i>Franklin v. Gwinnett County Schools</i></u>, 503 U.S. 60 (1992) [See also DIA and FFH]</p>
HUMAN RIGHTS COORDINATOR	<p>The District shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, and the ADA. The District shall notify all students and employees of the name, office address, and telephone number of the employee(s) so designated.</p>
GRIEVANCE PROCEDURES	<p>The District shall adopt and publish grievance procedures for prompt and equitable resolution of student complaints alleging discrimination under these statutes. [See FNG]</p> <p><i>34 CFR 106.8 (Title IX); 34 CFR 104.7 (Section 504)</i></p>
RETALIATION	<p>The District shall not coerce, intimidate, threaten, retaliate against, or interfere with any person who attempts to assert a right protected by the above laws or cooperates with investigation and en-</p>

EQUAL EDUCATIONAL OPPORTUNITY

FB  
(LEGAL)

forcement proceedings under these laws. *34 CFR 100.7(e) (Title VI), 104.61 (Section 504), 106.71 (Title IX)*

STUDENTS WITH  
LEARNING  
DIFFICULTIES

The Texas Education Agency shall produce and provide to school districts a written explanation of the options and requirements for providing assistance to students who have learning difficulties or who need or may need special education. The explanation must state that a parent is entitled at any time to request an evaluation of the parent's child for special education services under Education Code 29.004. Each school year, each district shall provide the written explanation to a parent of each district student by including the explanation in the student handbook or by another means. *Education Code 26.0081*

SECTION 504

DEFINITIONS

'STUDENT WITH A  
DISABILITY'

A "student with a disability" is one who has a physical or mental impairment that substantially limits one or more of the student's major life activities, has a record of having such an impairment, or is being regarded as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

A student meets the requirement of being "regarded as" having an impairment if the student establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of 6 months or less.

'MAJOR LIFE  
ACTIVITIES'

"Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. "Major life activity" also includes the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

EQUAL EDUCATIONAL OPPORTUNITY

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(LEGAL)

*29 U.S.C. 705; 42 U.S.C. 12102*

FREE APPROPRIATE  
PUBLIC EDUCATION  
(FAPE)

The District shall provide a free appropriate public education to each qualified student with a disability within the District's jurisdiction, regardless of the nature or severity of the student's disability.

A student with a disability is "qualified" if he or she is between the ages of three and 21, inclusive. *28 CFR 35.104(l)(2)*

An appropriate education is the provision of regular or special education and related services that are:

1. Designed to meet the student's individual educational needs as adequately as the needs of students who do not have disabilities are met; and
2. Based on adherence to procedures that satisfy federal requirements for educational setting, evaluation and placement, and procedural safeguards, as set forth below.

*34 CFR 104.33(b)*

Implementation of an individualized education program (IEP) under IDEA is one means for providing FAPE. *34 CFR 104.33(b)(2)*

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**Note:** See EHBA series for policies regarding the provision of special education to students with disabilities under IDEA who require special education in order to benefit from a free appropriate public education.

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EDUCATIONAL  
SETTING

The District shall place a student with a disability in the regular educational environment, unless the District demonstrates that education in the regular environment with the use of supplemental aids and services cannot be achieved satisfactorily. *34 CFR 104.34(a)*

In providing or arranging for nonacademic and extracurricular services and activities, the District shall ensure that a student with a disability participates with students who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability. *34 CFR 104.34(b), 104.37*

EVALUATION AND  
PLACEMENT

The District shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education and related services. The District shall conduct an evaluation before the initial placement, or any significant change in placement, of the student. *34 CFR 104.35*

EQUAL EDUCATIONAL OPPORTUNITY

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(LEGAL)

PROCEDURAL SAFEGUARDS	<p>The District shall establish a system of procedural safeguards with respect to the identification, evaluation, and educational placement of persons who need or are believed to need special instruction or related services.</p> <p>The system shall include notice, an opportunity for the student's parent or guardian to examine relevant records, an impartial hearing with the opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of IDEA is one means of meeting this requirement. <i>34 CFR 104.36</i></p>
HOMELESS CHILDREN	<p>The District shall adopt policies and practices to ensure that homeless children are not stigmatized or segregated on the basis of their homeless status. [See EHBD and FDC]</p>
LIAISON	<p>The District shall designate an appropriate staff person as the District liaison for homeless children. The District shall inform school personnel, service providers, and advocates working with homeless families of the duties of the liaison. [See FFC]</p> <p><i>No Child Left Behind Act of 2001, 42 U.S.C. 11432(g)(1)(J)(i), (ii)</i></p>
RELIGIOUS FREEDOM	<p>The District may not substantially burden a student's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. <i>Civ. Prac. &amp; Rem. Code 110.003</i> [See also DAA and GA]</p>
DISCRIMINATION ON THE BASIS OF SEX	<p>No person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination by any district receiving federal financial assistance. <i>20 U.S.C. 1681(a)</i></p> <p>The District shall not provide any course or otherwise carry out any of its educational programs or activities separately on the basis of sex, or require or refuse participation therein on the basis of sex, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses. <i>34 CFR 106.34</i></p>
SEPARATE FACILITIES	<p>The District may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for one sex shall be comparable to the facilities provided for the other sex. <i>34 CFR 106.33</i></p>
HUMAN SEXUALITY CLASSES	<p>Portions of classes in elementary and secondary school that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.</p>



EQUAL EDUCATIONAL OPPORTUNITY

FB  
(LEGAL)

VOCAL MUSIC ACTIVITIES	<p>The District may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.</p> <p><i>34 CFR 106.34</i></p>
SINGLE-SEX PROGRAMS	<p>The District shall not, on the basis of sex, exclude any student from admission to an institution of vocational education or any other school or educational unit operated by the District unless the District otherwise makes available to the student, pursuant to the same policies and criteria of admission, comparable courses, services, and facilities. <i>34 CFR 106.35</i></p>
PREGNANCY AND MARITAL STATUS	<p>A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex. <i>34 CFR 106.40</i> [See FND]</p>
PHYSICAL EDUCATION CLASSES	<p>The District may group students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.</p>
SKILLS ASSESSMENT	<p>Where use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the District shall use appropriate standards that do not have such effect.</p>
CONTACT SPORTS	<p>The District may separate students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.</p> <p><i>34 CFR 106.34</i></p>
ATHLETIC PROGRAMS	<p>The District shall not discriminate, on the basis of sex, in interscholastic or intramural athletics or provide any such athletics separately on such basis.</p>
SINGLE-SEX TEAMS	<p>The District may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but not for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport.</p>
EQUAL ATHLETIC OPPORTUNITIES	<p>A district that operates or sponsors interscholastic or intramural athletics shall provide equal athletic opportunity for members of both sexes. The following factors shall be considered in determining whether the District provides equal athletic opportunities:</p>

EQUAL EDUCATIONAL OPPORTUNITY

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(LEGAL)

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
2. Provision of equipment and supplies;
3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms and practice and competitive facilities;
8. Provision of medical and training facilities and services;
9. Provision of housing and dining facilities and services; and
10. Publicity.

*34 CFR 106.41*

STUDENT RECORDS

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(LEGAL)

This introductory page outlines the contents of the student records policy. See the following sections for statutory provisions on:

SECTION I	Education Records	pages 2–4
	1. Definition of ‘education records’	
	2. Screening records	
	3. Immunization records	
	4. Medical records	
	5. Assessment instruments	
	6. Academic achievement record	
SECTION II	Access, Disclosure, and Amendment	pages 4–14
	1. Access to education records: parent, student, and other persons	
	2. Subpoenaed and sex offender records	
	3. Request procedure	
	4. Destruction of requested records	
	5. De-identified records, authenticating requestors’ identities	
	6. Transfer by third parties to other persons	
	7. Record of access to student records	
	8. Right to amend records	
	9. Fees for copies	
	10. Records of students with disabilities: access, consent, confidentiality, destruction	
	11. Annual notification of rights	
SECTION III	Directory Information	pages 14–17
	1. Definition and disclosure of directory information	
	2. Designation of directory information	
	3. Annual notice, contents	
	4. Student recruiting information, parental consent to release	
SECTION IV	Videotapes and Recordings	pages 17–18
	1. Parental consent	
	2. Exceptions to consent	
SECTION V	Information from Law Enforcement	pages 18–20
	1. Criminal records: disclosure, retention	
	2. Duty to flag records of missing children	

STUDENT RECORDS

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(LEGAL)

**SECTION I: EDUCATION RECORDS**

**'EDUCATION  
RECORDS' DEFINED**

For the purposes of this policy, the term "education records" means those records, files, documents, and other materials that contain information directly related to a student and are maintained by an education agency or institution or by a person acting for such agency or institution.

The term "education records" does not include:

1. Records that are created or received by the District after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
2. Records made by District personnel that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to anyone other than a temporary substitute for the maker of the record.
3. Records maintained by a law enforcement unit of the District that were created by that law enforcement unit for the purpose of law enforcement.
4. Records on a student who is 18 years of age or older, or who is attending an institution of postsecondary education, that are:
  - a. Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
  - b. Made, maintained, or used only in connection with treatment of the student; and
  - c. Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.
5. Grades on peer-graded papers before they are collected and recorded by a teacher.

*20 U.S.C. 1232g; 34 CFR 99.3*

**SCREENING  
RECORDS**

The principal of each school shall maintain records of screening for special senses and communication disorders, spinal screening, and assessment for type 2 diabetes for each student in the school. Records shall be open for inspection by the state or local health department. The Texas-Mexico Border Health Coordination Office

STUDENT RECORDS

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(LEGAL)

may, directly or through local health departments, enter a school and inspect records relating to assessment for type 2 diabetes. Individual screening records may be transferred among schools in accordance with provisions below concerning ACCESS BY OTHER PERSONS. *20 U.S.C. 1232g; Health & Safety Code 36.006, 37.003, 95.004; 25 TAC 37.148(o)* [See FFAA]

IMMUNIZATION  
RECORDS

The District shall maintain an individual immunization record during the period of attendance for each student admitted. The records shall be open for inspection at all reasonable times by the Texas Education Agency or by representatives of local health departments or the Texas Department of State Health Services. The District shall cooperate with other districts in transferring students' immunization records between other schools. Specific approval from students, parents, or guardians is not required prior to making such record transfers. *Education Code 38.002* [See FFAB]

MEDICAL RECORDS

The parent or guardian of a student is entitled to access to the student's medical records maintained by the District. On request of a student's parent or guardian, the District shall provide a copy of the student's medical records to the parent or guardian. The District may not impose a charge that exceeds the amount authorized by Section 552.261 of the Government Code [see GBA]. *Education Code 38.0095*

PRIVACY RULE FOR  
NON-'EDUCATION  
RECORDS'

To the extent the District is a covered entity under the Health Insurance Portability and Accountability Act (HIPAA), the District must comply with the Privacy Rule, 45 CFR Part 164, with respect to protected health information that is not an education record. *45 CFR 160.103, 164.501* [See CRD]

ASSESSMENT  
INSTRUMENTS

The results of individual student performance on basic skills assessment instruments or other achievement tests administered by the District are confidential and may be made available only to the student, the student's parent or guardian, and to the school personnel directly involved with the student's educational program. However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and District, and made available to the public, with appropriate interpretations, at regularly scheduled Board meetings. The information may not contain the names of individual students or teachers. *Education Code 39.030(b)* [See EKB]

ACADEMIC  
ACHIEVEMENT  
RECORD (GRADES  
9–12)

The District shall use the academic achievement record (transcript) form adopted by the State Board. This form shall serve as the academic record for each student and shall be maintained permanently by the District. Copies of the record shall be made available to students transferring to another district. The information may be provided to the student or to the receiving district or to both. The

STUDENT RECORDS

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(LEGAL)

District shall respond promptly to all requests for student records from receiving districts. 19 TAC 74.14(b) [See EI]

**SECTION II: ACCESS, DISCLOSURE, AND AMENDMENT**

ACCESS TO  
EDUCATION RECORDS

DEFINITIONS

'ATTENDANCE'

"Attendance" includes, but is not limited to:

1. Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and
2. The period during which a person is working under a work-study program.

'DISCLOSURE'

"Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

'PARENT'

"Parent" includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

'PERSONALLY  
IDENTIFIABLE  
INFORMATION'

"Personally identifiable information" includes, but is not limited to:

1. The student's name;
2. The name of the student's parent or other family members;
3. The address of the student or student's family;
4. A personal identifier, such as the student's biometric record, as defined by 34 CFR 99.3; social security number; or student number;
5. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
6. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
7. Information requested by a person who the District reasonably believes knows the identity of the student to whom the education record relates.

34 CFR 99.3

STUDENT RECORDS

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(LEGAL)

ACCESS BY  
PARENTS

Access to the education records of a student who is or has been in attendance at a school in the District shall be granted to the parent of the student who is a minor or who is a dependent for tax purposes. *34 CFR 99.10, 99.31(a)(8)*

The District shall presume that a parent has authority to inspect and review the student's records unless it has been provided with evidence that there is a court order, state statute, or legally binding document that specifically revokes these rights. A court may order the custodian of records to delete all references in a child's records to the place of residence of either party appointed as conservator before their release to another party appointed as conservator. *34 CFR 99.4; Family Code 153.012, 153.073*

A parent is entitled to access to all written records of the District concerning the parent's child, including attendance records, test scores, grades, disciplinary records, counseling records, psychological records, applications for admission, health and immunization information, teacher and counselor evaluations, and reports of behavioral patterns. *Education Code 26.004*

ACCESS BY  
STUDENT

Whenever a student has attained 18 years of age or is attending an institution of postsecondary education, the rights accorded to, and consent required of, parents transfer from the parents to the student.

Nothing in this section prevents the District from disclosing education records, or personally identifiable information from education records, to a parent without prior written consent of an eligible student if the disclosure meets the conditions in 34 CFR 99.31(a), including if the student is a dependent for tax purposes or in the case of a health or safety emergency.

*34 CFR 99.5*

If material in the education record of a student includes information on another student, only the portion of the material relating to the student whose records were requested may be inspected and reviewed. *34 CFR 99.12(a)*

ACCESS BY OTHER  
PERSONS

Personally identifiable information in education records shall not be released without the written consent of the student's parents, except to the following:

SCHOOL  
OFFICIALS

1. School officials, including teachers, who have legitimate educational interests. An administrator, nurse, or teacher is entitled to access to a student's medical records maintained by the District for reasons determined in District policy.

STUDENT RECORDS

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(LEGAL)

A contractor, consultant, volunteer, or other party to whom the District has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party:

- a. Performs an institutional service or function for which the District would otherwise use employees;
- b. Is under the direct control of the District with respect to the use and maintenance of education records; and
- c. Is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

The District must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. A district that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement.

*34 CFR 99.36; Education Code 38.009*

OFFICIALS OF  
OTHER SCHOOLS

2. Officials of other schools or school systems in which the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer, provided that the District either:
  - a. Includes in its policies a statement that notifies the parent or student that it forwards education records on request of the other school to such officials; or
  - b. Makes a reasonable attempt to notify the parent (unless the record transfer is initiated by the parent).

In either case, the District shall furnish a copy of the transferred records to the parent if requested and shall give the parent an opportunity for a hearing to challenge the content of the record. *34 CFR 99.34(a)*

AUTHORIZED  
GOVERNMENTAL  
REPRESENTATIVES

3. Authorized representatives of the officials or agencies headed by the Comptroller General of the United States, the Attorney General of the United States, the Secretary of Education, or state and local educational authorities who require access to student or other records necessary in connection with the audit and evaluation of federal- or state-supported education



STUDENT RECORDS

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(LEGAL)

programs or in connection with the enforcement of or compliance with federal legal requirements that relate to such programs. 34 CFR 99.35

The District may not refuse to report information concerning a student holding an F, J, or M visa on the basis of the Family Educational Rights and Privacy Act (FERPA) and any regulation implementing FERPA. The District is authorized and required to report information that would ordinarily be protected by FERPA only to the extent required by 8 U.S.C. 1372, 8 CFR 214.3, or any corresponding regulation. 8 U.S.C. 1372(c)(2); 8 CFR 214.1(h)

FINANCIAL AID  
PERSONNEL

4. Personnel involved with a student's application for, or receipt of, financial aid.

JUVENILE  
JUSTICE  
OFFICIALS

5. State and local officials to whom such information is specifically allowed to be reported or disclosed by state statute adopted:
  - a. Prior to November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and its ability to effectively serve the student whose records are released, or
  - b. After November 19, 1974, if:
    - (1) The allowed reporting or disclosure concerns the juvenile justice system and its ability to effectively serve, prior to adjudication, the student whose records are released; and
    - (2) The officials and authorities to whom such information is disclosed certify in writing to the District that the information will not be disclosed to any other party except as provided under state law without the prior written consent of the parent of the student.

ORGANIZATIONS  
CONDUCTING  
STUDIES

6. Organizations conducting studies for, or on behalf of, the District for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction. Such studies must be conducted so that personal identification of students and their parents will not be revealed to persons other than authorized personnel of the organizations conducting the studies who have legitimate interests in the information. Such information must be destroyed when no longer needed for the original purposes of the studies.

STUDENT RECORDS

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(LEGAL)

The District must enter into a written agreement with the organization that:

- a. Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;
- b. Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement;
- c. Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students, as defined in this part, by anyone other than representatives of the organization with legitimate interests; and
- d. Requires the organization to destroy or return to the District all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be returned or destroyed.

The District is not required to initiate a study or agree with or endorse the conclusions or results of the study.

ACCREDITING  
ORGANIZATIONS

7. Accrediting organizations that require the information for purposes of accreditation.

HEALTH &  
SAFETY  
EMERGENCY

8. Appropriate persons, including the student's parents, who, in an emergency, must have such information in order to protect the health or safety of the student or other person.

In making a determination, the District may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the District determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the United States Department of Education will not substitute its judgment for that of the District in evaluating the circumstances and making its determination.

*34 CFR 99.36*

STUDENT RECORDS

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(LEGAL)

DIRECTORY INFORMATION	<p>9. Any person requesting directory information after the District has given public notice of that definition. <i>34 CFR 99.37</i></p> <p><i>20 U.S.C. 1232g(b); 34 CFR 99.31</i></p>
WRITTEN CONSENT	<p>The parent shall provide a signed and dated written consent before the District discloses personally identifiable information from a student's education records to any individual, agency, or organization other than the parent, the student, or those listed above. Such consent shall specify records to be released, the reason for such release, and to whom the records are to be released. <i>34 CFR 99.30</i></p>
SUBPOENAED RECORDS	<p>The District shall release student records to an entity or persons designated in a subpoena. The District shall not disclose to any person the existence or contents of the subpoena if a court orders the District to refrain from such disclosure. Unless the court or other issuing agency orders the District to refrain from such disclosure or the order is an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331, the District shall make a reasonable effort to notify the parents and the student of all such subpoenas in advance of compliance. <i>20 U.S.C. 1232g(b)(1)(J), (b)(2)(B); 34 CFR 99.31(a)(9)</i></p>
SEX OFFENDERS	<p>The District may disclose personally identifiable information without consent if the disclosure concerns sex offenders and other individuals required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071, and the information was provided to the District under 42 U.S.C. 14071 and applicable federal guidelines. <i>34 CFR 99.31(a)(16)</i></p>
REQUEST PROCEDURE	<p>Upon request of a properly qualified individual, access to a student's education record shall be granted within a reasonable period of time, not to exceed 45 days. The District shall respond to reasonable requests for explanations and interpretations of the records. <i>34 CFR 99.10</i></p>
DESTRUCTION OF RECORDS	<p>The District shall not destroy any education records if there is an outstanding request to inspect and review the records. <i>34 CFR 99.10(e)</i></p>
DE-IDENTIFIED RECORDS	<p>The District, or a party that has received education records or information from education records, may release the records or information without the parent's written consent after the removal of all personally identifiable information provided that the District or other party has made a reasonable determination that a student's</p>

STUDENT RECORDS

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(LEGAL)

identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information.

EDUCATION  
RESEARCH

The District, or a party that has received education records or information from education records, may release de-identified student level data from education records for the purpose of education research by attaching a code to each record that may allow the recipient to match information received from the same source, provided that:

1. The District or other party that releases de-identified data under this section does not disclose any information about how it generates and assigns a record code, or that would allow a recipient to identify a student based on a record code;
2. The record code is used for no purpose other than identifying a de-identified record for purposes of education research and cannot be used to ascertain personally identifiable information about a student; and
3. The record code is not based on a student's social security number or other personal information.

AUTHENTICATING  
REQUESTORS'  
IDENTITIES

The District must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom the District discloses personally identifiable information from education records.

*34 CFR 99.31(b)–(c)*

TRANSFER NOT  
PERMITTED

Personal information from student education records shall be transferred to a third party only on the condition that such party will not permit any other party to have access to such information without the written consent of the student's parent. If a third party permits access to information in violation of this policy, the District shall not permit access to information from education records to that third party for a period of not less than five years. *20 U.S.C. 1232g(b)(4)(B); 34 CFR 99.33(a)(1)*

The District shall inform a party to whom a disclosure is made of the requirements of 34 CFR 99.33, unless the disclosure is made pursuant to a court order, lawfully issued subpoena, or litigation; the disclosed information is directory information; the disclosure concerns sex offenders; or the disclosure is made to a parent of a student who is not an eligible student or to a student. *34 CFR 99.33(c), (d)*

The District may disclose personally identifiable information with the understanding that the party receiving the information may

STUDENT RECORDS

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(LEGAL)

make further disclosures of the information on behalf of the District if:

1. The disclosures meet the requirements of 34 CFR 99.31; and
2. The District has complied with the requirements of 34 CFR 99.32(b) regarding the record of disclosure; or a state or local educational authority or federal official or agency listed requesting information through a subpoena or ex parte order has complied with the requirements of 34 CFR 99.32(b)(2).

*34 CFR 99.33(b)*

RECORD OF ACCESS  
TO STUDENT  
RECORDS

Each school shall maintain a record, kept with the education record of each student that indicates all individuals, agencies, or organizations that have requested or obtained access to a student's education records, as well as the names of state and local educational authorities and federal officials and agencies listed in 34 CFR 99.31(a)(3) that may make further disclosures of personally identifiable information from the student's education records without consent. The District must obtain a copy of the record of further disclosures maintained by the named authorities, officials, and agencies under 34 CFR 99.32(b)(2) and make it available in response to a parent's request to review the record.

The District must record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception [see HEALTH & SAFETY EMERGENCY, above]:

1. The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
2. The parties to whom the District disclosed the information.

*34 CFR 99.32*

The records shall include at least the name of the person or agency that made the request and the legitimate interest the person or agency had in the information. The record will be maintained as long as the District maintains the student's education record. The record of access shall be available only to parents, school officials responsible for custody of the records, and those state, local, and federal officials authorized to audit the operation of the system.

*20 U.S.C. 1232g(b)(4)(A)*

The record shall not include requests for access by, or access granted to, parents of the student or officials of the District, requests accompanied by prior written consent of the parent, re-

STUDENT RECORDS

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(LEGAL)

quests for directory information, or a party seeking or receiving records in accordance with a subpoena or ex parte order. *34 CFR 99.32(d)*

RIGHT TO AMEND  
RECORDS

The parent of a student whose records are covered by this policy may ask the District to amend the student's record if the parent believes it contains information that is inaccurate, misleading, or in violation of the student's right of privacy or other rights. If the District decides not to amend the education records requested, it shall inform the parent of its decision and his or her right to a hearing to challenge the content of the student's education records.

If the District decides to amend the records as a result of the hearing, it shall inform the parent in writing. If, as a result of the hearing, the District decides not to amend the records, it shall inform the parent of the right to place a statement in the records commenting on the contested information and/or stating why the parent disagrees with the decision of the District. Any explanation shall be maintained with the contested part of the record for as long as the record is maintained and shall be disclosed whenever the contested portion of the record is disclosed.

*34 CFR 99.20, 99.21*

FEES FOR COPIES

No fee shall be charged to search for or to retrieve the education records of a student. A fee may be charged for copies of education records that are made for the parents or students under this policy provided that the fee does not effectively prevent them from exercising their right to inspect and review those records. Hardship cases shall be dealt with on an individual basis. *20 U.S.C. 1232g; 34 CFR 99.11; Education Code 26.012*

RECORDS OF  
STUDENTS WITH  
DISABILITIES

The District shall permit parents to inspect and review education records collected, maintained, or used for purposes of identifying, evaluating, placing, or educating students with disabilities. *34 CFR 300.613(a)*

ACCESS RIGHTS

In addition to policies applicable to all student records, the following guidelines shall apply when parents of a student with disabilities request to review or inspect District records relating to the education of their child:

1. Parents may request that a representative inspect and review the records. *34 CFR 300.613(b)(3)*
2. The District shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program (IEP) or hearing relating to the identification, evaluation, or placement of the child, and in no case longer than 45 days after the request. *34 CFR 300.613(a)*

STUDENT RECORDS

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(LEGAL)

3. The District shall keep a record of persons obtaining access to these student records (except access by parents and authorized employees), including name, date of access, and the purpose for which the person is authorized to use the records.  
*34 CFR 300.614*

LIST OF TYPES AND  
LOCATIONS OF  
INFORMATION

The District shall provide parents on request a list of types and locations of education records. *34 CFR 300.616*

PARENTAL  
CONSENT

Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. The District may not release information from these records without parental consent except as provided in FERPA. *34 CFR 300.622*

CONFIDENTIALITY

The District shall protect the confidentiality of personally identifiable information in collection, storage, disclosure, and destruction of records. One official in the District shall assume responsibility for ensuring confidentiality of personally identifiable information. All persons collecting or using this information shall receive training or instruction concerning the legal requirements involved in handling these records. The District shall maintain for public inspection a current listing of the names and positions of employees who may have access to this information. *34 CFR 300.623*

DESTRUCTION OF  
INFORMATION

The District shall inform parents when personally identifiable information collected, maintained, or used to provide special education and related services is no longer needed to provide educational services to the student. Such information shall be destroyed at the request of the parents.

A permanent record of the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

*34 CFR 300.624*

ANNUAL  
NOTIFICATION OF  
RIGHTS

The District shall give parents of students in attendance and eligible students in attendance annual notification of their rights under FERPA.

The notice must inform parents or eligible students that they have the right to:

1. Inspect and review the student's education records;

STUDENT RECORDS

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(LEGAL)

2. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
3. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and 34 CFR 99.31 authorize disclosure without consent; and
4. File with the United States Department of Education a complaint under 34 CFR 99.63 and 99.64 concerning alleged failures by the District to comply with the requirements of the Act and 34 CFR part 99.

The notice must include all of the following:

1. The procedure for exercising the right to inspect and review education records.
2. The procedure for requesting amendment of records under 34 CFR 99.20.
3. If the District has a policy of disclosing education records under 34 CFR 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

The District may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

The District shall effectively notify parents who are disabled and parents of students who have a primary or home language other than English.

*20 U.S.C. 1232g(e); 34 CFR 99.7*

**SECTION III: DIRECTORY INFORMATION**

DIRECTORY  
INFORMATION  
DEFINITION

"Directory information" means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information includes the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, dates of attendance, grade level, enrollment status, participation in officially recognized activities and sports, weight and height of members of athletic teams, honors and awards received, and the most recent educational agency or institution attended. "Directory information" does not include a student's:

1. Social security number; or



STUDENT RECORDS

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(LEGAL)

2. Student identification number, unless the student identification number, user identification number, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number, password, or other factor known or possessed only by the authorized user.

DISCLOSURE OF  
DIRECTORY  
INFORMATION

The District may release directory information if it has given public notice of:

1. The types of personally identifiable information that it has designated as directory information.
2. The right of the parent to refuse to permit the District to designate any or all of that information about the student as directory information.
3. The period of time within which the parent must notify the District in writing that he or she does not want any or all of those types of information about the student designated as directory information.

IN CLASS

A parent or eligible student may not use the right of refusal to opt out of directory information disclosures to prevent the District from disclosing or requiring a student to disclose the student's name, identifier, or institutional e-mail address in a class in which the student is enrolled.

FORMER  
STUDENTS

The District may disclose directory information about former students without satisfying the public notice conditions above. However, the District must continue to honor any valid request to opt out of the disclosure of directory information made while a student was in attendance unless the student rescinds the opt-out request.

CONFIRMATION  
OF IDENTITY OR  
RECORDS

The District may not disclose or confirm directory information without meeting the written consent requirements in 34 CFR 99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.

*34 CFR 99.3, 99.37*

DESIGNATION OF  
DIRECTORY  
INFORMATION

The District may designate as directory information any or all information defined as directory information by FERPA. Directory information under that Act that is not designated by the District as directory information for that District is excepted from disclosure by the District under Government Code Chapter 552. [See GBA]

STUDENT RECORDS

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(LEGAL)

Directory information consented to by a parent for use only for a limited school-sponsored purpose, such as for a student directory, student yearbook, or District publication, if any such purpose has been designated by the District, remains otherwise confidential and may not be released under Government Code Chapter 552.

ANNUAL NOTICE

The District shall provide the following to the parent of each District student, at the beginning of each school year or on enrollment of the student after the beginning of the school year:

1. A written explanation of the provisions of FERPA regarding the release of directory information about the student; and
2. Written notice of the right of the parent to object to the release of directory information about the student under FERPA.

CONTENTS OF  
NOTICE

The notice must contain:

1. The following statement in boldface type that is 14-point or larger:

“Certain information about District students is considered directory information and will be released to anyone who follows the procedures for requesting the information unless the parent or guardian objects to the release of the directory information about this student. If you do not want [insert name of District] to disclose directory information from your child’s education records without your prior written consent, you must notify the District in writing by [insert date]. [Insert name of District] has designated the following information as directory information: [Here the District must include any directory information it chooses to designate as directory information for the District, such as a student’s name, address, telephone listing, electronic mail address, photograph, degrees, honors, and awards received, date and place of birth, major field of study, dates of attendance, grade level, most recent education institution attended, participation in officially recognized activities and sports, and the weight and height of members of athletic teams.]”;
2. A form, such as a check-off list or similar mechanism, that:
  - a. Immediately follows, on the same page or the next page, the required statement; and
  - b. Allows a parent to record:
    - (1) The parent’s objection to the release of all directory information or one or more specific categories of directory information if District policy permits the par-

STUDENT RECORDS

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(LEGAL)

ent to object to one or more specific categories of directory information;

- (2) The parent's objection to the release of a secondary student's name, address, and telephone number to a military recruiter or institution of higher education; and
  - (3) The parent's consent to the release of one or more specific categories of directory information for a limited school-sponsored purpose if such purpose has been designated by the District and is specifically identified, such as for a student directory, student yearbook, or District publication; and
3. A statement that federal law requires districts receiving assistance under the Elementary and Secondary Education Act of 1965 [see EHBD] to provide a military recruiter or an institution of higher education, on request, with the name, address, or telephone number of a secondary student unless the parent has advised the District that the parent does not want the student's information disclosed without the parent's prior written consent.

*Education Code 26.013*

STUDENT  
RECRUITING  
INFORMATION

Notwithstanding the DIRECTORY INFORMATION provisions above, each district receiving assistance under the Elementary and Secondary Education Act of 1965 (ESEA) shall provide, on a request made by military recruiters or an institution of higher education, access to secondary school students' names, addresses, and telephone listings.

CONSENT TO  
RELEASE

A secondary school student or the parent of the student may request that the student's name, address, and telephone listing described above not be released without prior written parental consent, and the District shall notify parents of the option to make a request and shall comply with any request.

*20 U.S.C. 7908*

**SECTION IV: VIDEOTAPES AND RECORDINGS**

VIDEOTAPES AND  
RECORDINGS

A District employee must obtain the written consent of a child's parent before the employee may make or authorize the making of a videotape of a child or record or authorize the recording of a child's voice.

EXCEPTIONS

A District employee is not required to obtain the consent of a child's parent before the employee may make a videotape of a child or

STUDENT RECORDS

FL  
(LEGAL)

authorize the recording of a child's voice if the videotape or voice recording is to be used only for:

1. The purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses;
2. A purpose related to a cocurricular or extracurricular activity;
3. A purpose related to regular classroom instruction; or
4. Media coverage of the school.

*Education Code 26.009 [See EHA, FM, and FO]*

**SECTION V: INFORMATION FROM LAW ENFORCEMENT**

INFORMATION FROM  
LAW ENFORCEMENT

ORAL NOTICE OF  
ARREST OR  
REFERRAL

Upon receipt of oral notice from a law enforcement agency that it has arrested a student or referred a student to the juvenile board for a specified offense [see GRA], the Superintendent shall promptly notify all instructional and support personnel who have responsibility for supervising the student. All personnel shall keep the information received confidential.

WRITTEN NOTICE  
OF ARREST OR  
REFERRAL

Upon subsequent receipt of confidential, written notice of the arrest or referral, the Superintendent or designee may send the information in the confidential notice to a District employee having direct supervisory responsibility over the student if the Superintendent or designee determines that the employee needs the information for educational purposes or for the protection of the person informed or others.

ORAL NOTICE OF  
CONVICTION OR  
ADJUDICATION

Upon receipt of oral notice from a prosecuting attorney of a student's conviction, deferred prosecution, or adjudication of a specified offense, including a statement as to whether the student is required to register as a sex offender, the Superintendent shall, within 24 hours of receiving the notice, notify all instructional and support personnel who have regular contact with the student.

NOTICE OF  
TRANSFER OR  
REENROLLMENT

Upon receipt of notice from a parole, probation, or community supervision office having jurisdiction over a student that a student has transferred or reenrolled, the Superintendent of the District to which the student transfers or returns shall, within 24 hours of receiving the notice, notify all instructional and support personnel who have regular contact with the student.

A person who receives information described above shall not disclose it except as specifically authorized by Code of Criminal Procedure 15.27.

*Code of Criminal Procedure 15.27*

STUDENT RECORDS

FL  
(LEGAL)

Information received by the District under this provision shall not be attached to the permanent academic file of the student who is the subject of the report. The District shall destroy the information at the end of the academic year in which the report was filed. *Education Code 37.017*

DUTY TO FLAG  
RECORDS

Upon receipt of notification from a law enforcement agency or the missing children and missing persons information clearinghouse that a child under 11 years of age who attended or who is enrolled in the school is missing, the school shall flag the child's records and maintain the records in its possession so that on receipt of a request regarding the child, the school will be able to notify law enforcement or the missing children and missing persons information clearinghouse that a request for a flagged record has been made.

REQUEST IN  
PERSON

When a request for a flagged record is made in person, the school may not advise the requesting party that the request concerns a missing child and shall:

1. Require the person requesting the flagged record to complete a form stating the person's name, address, telephone number, and relationship to the child for whom a request is made, and the name, address, and birth date of the child;
2. Obtain a copy of the requesting party's driver's license or other photographic identification, if possible;
3. If the request is for a birth certificate, inform the requesting party that a copy of a certificate will be sent by mail; and
4. Immediately notify the appropriate law enforcement agency that a request has been made concerning a flagged record and include a physical description of the requesting party, the identity and address of the requesting party, and a copy of the requesting party's driver's license or other photographic identification.

After providing the information listed above, the school shall mail a copy of the requested record to the requesting party on or after the 21st day after the date of the request.

REQUEST IN  
WRITING

When a request for a flagged record is made in writing, the school may not advise the requesting party that the request concerns a missing child and shall immediately notify the appropriate law enforcement agency that a request has been made concerning a flagged record and provide to the law enforcement agency a copy of the written request. After providing the notification, the school shall mail a copy of the requested record to the requesting party on or after the 21st day after the date of the request.

STUDENT RECORDS

FL  
(LEGAL)

REMOVAL OF FLAG

On the return of a missing child under 11 years of age, the law enforcement agency shall notify each school that has maintained flagged records for the child that the child is no longer missing. On receipt of this notification, the school shall remove the flag from the records.

A school that has reason to believe that a missing child has been recovered may request confirmation that the missing child has been recovered from the appropriate law enforcement agency or the missing children and missing persons information clearing-house. If a response is not received after the 45th day after the date of the request for confirmation, the school may remove the flag from the record and shall inform the law enforcement agency or the missing children and missing persons information clearing-house that the flag has been removed.

*Code of Criminal Procedure 63.020–63.022*

STUDENT RECORDS

FL  
(LOCAL)

COMPREHENSIVE  
SYSTEM

The Superintendent or designee shall develop and maintain a comprehensive system of student records and reports dealing with all facets of the school program operation and shall ensure through reasonable procedures that records are accessed by authorized persons only, as allowed by this policy. These data and records shall be stored in a safe and secure manner and shall be conveniently retrievable for use by authorized school officials.

CUMULATIVE RECORD

A cumulative record shall be maintained for each student from entrance into District schools until withdrawal or graduation from the District.

This record shall move with the student from school to school and be maintained at the school where currently enrolled until graduation or withdrawal. Records for nonenrolled students shall be retained for the period of time required by law. No permanent records may be destroyed without explicit permission from the Superintendent. [See GBA]

CUSTODIAN OF  
RECORDS

The principal is custodian of all records for currently enrolled students. The Superintendent is the custodian of records for students who have withdrawn or graduated. The student handbook made available to all students and parents shall contain a listing of the addresses of District schools, as well as the Superintendent's business address.

TYPES OF EDUCATION  
RECORDS

The record custodian shall be responsible for the education records of the District. These records may include:

1. Admissions data, personal and family data, including certification of date of birth.
2. Standardized test data, including intelligence, aptitude, interest, personality, and social adjustment ratings.
3. All achievement records, as determined by tests, recorded grades, and teacher evaluations.
4. All documentation regarding a student's testing history and any accelerated instruction he or she has received, including any documentation of discussion or action by a grade placement committee convened for the student.
5. Health services record, including:
  - a. The results of any tuberculin tests required by the District.
  - b. The findings of screening or health appraisal programs the District conducts or provides. [See FFAA]

STUDENT RECORDS

FL  
(LOCAL)

- c. Immunization records. [See FFAB]
- 6. Attendance records.
- 7. Student questionnaires.
- 8. Records of teacher, counselor, or administrative conferences with the student or pertaining to the student.
- 9. Verified reports of serious or recurrent behavior patterns.
- 10. Copies of correspondence with parents and others concerned with the student.
- 11. Records transferred from other districts in which the student was enrolled.
- 12. Records pertaining to participation in extracurricular activities.
- 13. Information relating to student participation in special programs.
- 14. Records of fees assessed and paid.
- 15. Records pertaining to student and parent complaints.
- 16. Other records that may contribute to an understanding of the student.

ACCESS BY PARENTS

The District shall make a student's records available to the student's parents, as permitted by law. The records custodian or designee shall use reasonable procedures to verify the requestor's identity before disclosing student records containing personally identifiable information.

Records may be reviewed in person during regular school hours without charge upon written request to the records custodian. For in-person viewing, the records custodian or designee shall be available to explain the record and to answer questions. The confidential nature of the student's records shall be maintained at all times, and records to be viewed shall be restricted to use only in the Superintendent's, principal's, or counselor's office, or other restricted area designated by the records custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school.

Copies of records are available at a per copy cost, payable in advance. Copies of records must be requested in writing. Parents may be denied copies of records if they fail to follow proper procedures or pay the copying charge. If the student qualifies for free or reduced-price lunches and the parents are unable to view the



STUDENT RECORDS

FL  
(LOCAL)

records during regular school hours, upon written request of a parent, one copy of the record shall be provided at no charge.

A parent may continue to have access to his or her child's records under specific circumstances after the student has attained 18 years of age or is attending an institution of postsecondary education. [See FL(LEGAL)]

ACCESS BY SCHOOL  
OFFICIALS

A school official shall be allowed access to student records if he or she has a legitimate educational interest in the records.

For the purposes of this policy, "school officials" shall include:

1. An employee, trustee, or agent of the District, including an attorney, a consultant, a contractor, a volunteer, and any outside service provider used by the District to perform institutional services.
2. An employee of a cooperative of which the District is a member or of a facility with which the District contracts for placement of students with disabilities.
3. A contractor retained by a cooperative of which the District is a member or by a facility with which the District contracts for placement of students with disabilities.
4. A parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

All contractors provided with student records shall follow the same rules as employees concerning privacy of the records and shall return the records upon completion of the assignment.

A school official has a "legitimate educational interest" in a student's records when he or she is:

1. Working with the student;
2. Considering disciplinary or academic actions, the student's case, or an individualized education program for a student with disabilities;
3. Compiling statistical data;
4. Reviewing an education record to fulfill the official's professional responsibility; or
5. Investigating or evaluating programs.

STUDENT RECORDS

FL  
(LOCAL)

TRANSCRIPTS AND  
TRANSFERS OF  
RECORDS

The District may request transcripts from previously attended schools for students transferring into District schools; however, the ultimate responsibility for obtaining transcripts from sending schools rests with the parent or student, if 18 or older.

For purposes of a student's enrollment or transfer, the District shall promptly forward in accordance with the time line provided in law education records upon request to officials of other schools or school systems in which the student intends to enroll or enrolls. [See FD(LEGAL), REQUIRED DOCUMENTATION] The District may return an education record to the school identified as the source of the record.

RECORDS  
RESPONSIBILITY FOR  
STUDENTS IN SPECIAL  
EDUCATION

The director of special education shall be responsible for ensuring the confidentiality of any personally identifiable information in records of students in special education.

A current listing of names and positions of persons who have access to records of students in special education is maintained at the office of special education.

PROCEDURE TO  
AMEND RECORDS

Within 15 District business days of the record custodian's receipt of a request to amend records, the District shall notify the parents in writing of its decision on the request and, if the request is denied, of their right to a hearing. If a hearing is requested, it shall be held within ten District business days after the request is received.

Parents shall be notified in advance of the date, time, and place of the hearing. An administrator who is not responsible for the contested records and who does not have a direct interest in the outcome of the hearing shall conduct the hearing. The parents shall be given a full and fair opportunity to present evidence and, at their own expense, may be assisted or represented at the hearing.

The parents shall be notified of the decision in writing within ten District business days of the hearing. The decision shall be based solely on the evidence presented at the hearing and shall include a summary of the evidence and reasons for the decision. If the decision is to deny the request, the parents shall be informed that they have 30 District business days within which to exercise their right to place in the record a statement commenting on the contested information and/or stating any reason for disagreeing with the District's decision.

DIRECTORY  
INFORMATION

The District has designated the following categories of information as directory information: student name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; degrees, honors, and awards received; dates of attendance; grade level; most recent educational institution attended;

STUDENT RECORDS

FL  
(LOCAL)

participation in officially recognized activities and sports; and  
weight and height of members of athletic teams.



PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING  
DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM OPERATIONS

FOCA  
(LEGAL)

	<p>A disciplinary alternative education program (DAEP) is an educational and self-discipline alternative instruction program for students in elementary through high school grades who are removed from their regular classes for mandatory or discretionary disciplinary reasons and placed in a DAEP. <i>19 TAC 103.1201(a)</i></p>
JOINT / CONTRACTED DAEP	<p>The District may provide a DAEP jointly with one or more other districts, or may contract with third parties for DAEP services. A district that contracts with a third party must require and ensure compliance with district responsibilities that are transferred to the third-party provider. <i>Education Code 37.008(d); 19 TAC 103.1201(d)</i></p> <p>The DAEP may provide for a student's transfer to a different campus, a school-community guidance center, or a community-based alternative school. <i>Education Code 37.008(b)</i></p>
COMMUNITY ORGANIZATIONS	<p>The District shall cooperate with government agencies and community organizations that provide services in the District to students placed in a DAEP. <i>Education Code 37.008(e)</i></p>
FUNDING	<p>A student removed to a DAEP is counted in calculating the District's average daily attendance for the student's time in actual attendance in the program. <i>Education Code 37.008(f)</i></p> <p>The District shall allocate to a DAEP the same expenditure per student attending the DAEP as would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program. <i>Education Code 37.008(g)</i> [See also EHBC, LIMIT ON DAEP EXPENDITURES]</p>
LOCATION	<p>A DAEP shall be provided in a setting other than the student's regular classroom. It may be located on or off a regular school campus. An off-campus DAEP is not subject to a requirement imposed by the Education Code, other than a limitation on liability, a reporting requirement, or a requirement imposed by Education Code Chapter 37 or Chapter 39.</p> <p>An elementary school student may not be placed in a DAEP with a student who is not an elementary school student. The designation of elementary and secondary is determined by adopted local policy.</p> <p>Students who are assigned to the DAEP shall be separated from students who are not assigned to the program. However, summer programs provided by the District may serve students assigned to a DAEP in conjunction with other students, as determined by local policy.</p>

PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING  
DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM OPERATIONS

FOCA  
(LEGAL)

Students in the DAEP shall be separated from students in a juvenile justice alternative education program (JJAEP).

*Education Code 37.006(f), 37.008(a), (c); 19 TAC 103.1201(f)(3), (h)(1), (h)(3)*

HOURS OF  
OPERATION

The school day for a DAEP shall be at least seven hours but no more than ten hours in length each day, including intermissions and recesses. *Education Code 37.008(a); 19 TAC 103.1201(f)(2)*

SAFETY

The District is responsible for the safety and supervision of the students assigned to the DAEP; however, the immunity from the liability established in Education Code 22.0511 [see DG] shall not be impacted. The DAEP staff shall be prepared and trained to respond to health issues and emergencies.

Each district shall establish a board-approved policy for discipline and intervention measures to prevent and intervene against unsafe behavior and include disciplinary actions that do not jeopardize students' physical health and safety, harm emotional well-being, or discourage physical activity.

*19 TAC 103.1201(h)*

STAFFING

A DAEP shall employ only teachers who meet certification requirements under Education Code Chapter 21, Subchapter B. The certified teacher-to-student ratio in a DAEP shall be one teacher for each 15 students in elementary through high school grades. *Education Code 37.008(a); 19 TAC 103.1201(h)(1)*

Staff at each DAEP shall participate in training programs on education, behavior management, and safety procedures that focus on positive and proactive behavior management strategies. The training programs must also target prevention and intervention that include:

1. Training on the education and discipline of students with disabilities who receive special education services;
2. Instruction in social skills and problem-solving skills that addresses diversity, dating violence, anger management, and conflict resolution to teach students how to interact with teachers, family, peers, authority figures, and the general public; and
3. Annual training on established procedures for reporting abuse, neglect, or exploitation of students.

*19 TAC 103.1201(i)*

PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING  
DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM OPERATIONS

FOCA  
(LEGAL)

ENTRANCE  
PROCEDURES

Procedures for each DAEP shall be developed and implemented for newly-entering students and their parents or guardians on the expectations of the DAEP. These procedures shall include written contracts between students, parents or guardians, and the DAEP that formalize expectations and establish the students' individual plans for success. *19 TAC 103.1201(j)*

ACADEMICS

The academic mission of DAEPs shall be to enable students to perform at grade level. A DAEP shall focus on English language arts, mathematics, science, history, and self-discipline. *Education Code 37.008(a), (m)*

The District shall provide an academic and self-discipline program that leads to graduation and includes instruction in each student's currently enrolled foundation curriculum necessary to meet the student's individual graduation plan, including special education services. A student's four-year graduation plan (Minimum, Recommended, or Advanced/Distinguished Achievement) may not be altered when the student is assigned to a DAEP.

OPPORTUNITY TO  
COMPLETE  
COURSE

The District shall offer a student removed to a DAEP an opportunity to complete a foundation curriculum course in which the student was enrolled at the time of removal, before the beginning of the next school year, through any method available, including a correspondence course, distance learning, or summer school. The District may not charge the student for such course provided under this subsection. Except for this requirement, the District is not required to provide in the DAEP a course necessary to fulfill a student's high school graduation requirements.

*Education Code 37.008(l); 19 TAC 103.1201(f)*

ACCOUNTABILITY AND  
ACADEMIC  
ASSESSMENT

The campus of accountability for student performance shall be the student's locally assigned campus, including when the District or shared services arrangement contracts with a third party for DAEP services. *19 TAC 103.1201(d)*

The District shall administer to a student placed in a DAEP program for a period of 90 school days or longer an assessment instrument approved by the Commissioner for that purpose. The instrument shall be administered:

1. Initially on placement of the student in the program; and
2. Subsequently on the date of the student's departure from the program, or as near that date as possible.

The assessment must be designed to assess at least a student's basic skills in reading and mathematics and is in addition to the

PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING  
DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM OPERATIONS

FOCA  
(LEGAL)

assessment instruments required to be administered under Education Code Chapter 39 [see EKB].

*Education Code 37.0082*

SPECIAL  
POPULATIONS

A DAEP serving a student with a disability who receives special education services shall provide educational services that will support the student in meeting the goals identified in the student's IEP. *19 TAC 103.1201(g)*

SPECIAL  
EDUCATION

DRUG AND  
ALCOHOL  
TREATMENT

A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs or alcohol as specified under Education Code 37.006 and 37.007. A DAEP that provides chemical dependency treatment services must be licensed under Health and Safety Code Chapter 464. *Education Code 37.008(k)*

TRANSITION  
SERVICES

The transition services established for a student who is exiting a DAEP and returning to the student's locally assigned campus shall be implemented and updated annually as needed. The transition procedures shall include:

1. An established time line for the student's transition from the DAEP to the student's locally assigned campus; and
2. Written and oral communication from the DAEP staff to the locally assigned campus during the student's assignment to the DAEP, including the student's educational performance and tasks completed.

*19 TAC 103.1201(k)*



PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

GBA  
(LEGAL)

PUBLIC INFORMATION      “Public information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by the Board or for the Board and to which the Board has a right of access. *Gov’t Code 552.002(a)*

AVAILABILITY              Public information is available, at a minimum, to the public during the District’s normal business hours. *Gov’t Code 552.021*

Unless they are expressly confidential under other law, categories of public information that are not excepted from required disclosure under this policy include:

1. A completed report, audit, evaluation, or investigation made of, for, or by the Board, except as provided in Government Code 552.108.
2. The name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of the District.
3. Information in an account, voucher, or contract relating to the receipt or expenditure of public funds.
4. The name of each official and the final record of voting on all proceedings of the Board.
5. All working papers, research material, and information used to estimate the need or expenditure of public funds or taxes by the Board, on completion of the estimate.
6. A description of the District’s organization and where, from whom, and how the public may obtain information, submit information or requests, and obtain decisions.
7. A statement of the general course and method by which the District’s functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.
8. A rule of procedure, description of forms available or the places where forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations.
9. A substantive rule of general applicability adopted or issued by the Board and a statement of general policy or interpretation of general applicability formulated and adopted by the Board.
10. Any amendment, revision, or repeal of the information described in items 6–9.
11. Final opinions and orders issued in adjudication of cases.

PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

GBA  
(LEGAL)

12. A policy statement or interpretation adopted or issued by the Board.
13. Administrative manuals and instructions to staff that affect a member of the public.
14. Information regarded as open to the public under the District's policies.
15. Information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege or confidential under other law.
16. Information that is also contained in a public court record.
17. A settlement agreement to which the Board is a party.

A court in this state may not order the Board or the District's officer for public information to withhold from public inspection any category of public information described above or to not produce the information for inspection or duplication, unless the information is expressly made confidential under other law.

*Gov't Code 552.022*

INVESTMENT  
INFORMATION

Certain District investment information, as specified by Government Code 551.0225, is public information and not excepted from disclosure. *Gov't Code 552.0225*

PERSONAL  
INFORMATION

EMPLOYEE / BOARD  
MEMBER

Each District employee, other than peace officers, and Board member and each former employee and Board member shall choose whether to allow public access to District-held information relating to the person's home address, telephone number, or social security number, or any other information that reveals whether the person has family members. Employees and Board members shall state their choice to the District's main personnel officer in a signed writing not later than the 14th day after employment begins, election or appointment to the Board occurs, or service with the District ends. If an employee or Board member fails to state his or her choice within 14 days, the information is available to the public. However, an employee or Board member may make a written request at any time to the personnel officer to open or close the information relating to the person's home address, telephone number, social security number, or any other information that reveals whether the person has family members. *Gov't Code 552.024*

PEACE OFFICERS /  
SECURITY  
OFFICERS

District-held information relating to the home address, home telephone number, or social security number of peace officers or security officers commissioned by the Board of Private Investigators and Private Security Agencies, or any information that reveals

PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

GBA  
(LEGAL)

whether the person has family members, is confidential and may not be disclosed if the person chooses to restrict public access to the information and notifies the District on a form provided by the District, accompanied by evidence of the individual's status. *Gov't Code 551.1175*

EVALUATIONS

A document evaluating the performance of a teacher or administrator is confidential. *Education Code 21.355*

EDUCATOR  
CERTIFICATION EXAM

The results of an educator certification examination are confidential and are not subject to disclosure, unless:

1. The disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Education Code 21.057; or
2. The educator has failed the examination more than five times.

*Education Code 21.048(c-1)*

CREDIT CARD, DEBIT  
CARD, CHARGE CARD,  
AND ACCESS DEVICE  
NUMBERS

A credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for the District is confidential.

"Access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another device may be used to:

1. Obtain money, goods, services, or another thing of value; or
2. Initiate a transfer of funds other than a transfer originated solely by paper instrument.

*Gov't Code 552.136*

E-MAIL ADDRESSES  
CONFIDENTIAL

An e-mail address of a member of the public that is provided for the purpose of communicating electronically with the District is confidential and not subject to disclosure unless the member of the public affirmatively consents to its release.

EXCEPTIONS

This confidentiality does not apply to an e-mail address:

1. Provided to the District by a person who has a contractual relationship with the District or by the contractor's agent;
2. Provided to the District by a vendor who seeks to contract with the District or by the vendor's agent;
3. Contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers

PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

GBA  
(LEGAL)

or information relating to a potential contract, or provided to the District in the course of negotiating the terms of a contract or potential contract; or

4. Provided to the District on a letterhead, coversheet, printed document, or other document made available to the public.

The District may also disclose an e-mail address for any reason to another governmental body or to a federal agency.

*Gov't Code 552.137*

VICTIM OF ABUSE OR  
IMPROPER  
RELATIONSHIP

The name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Penal Code 21.12(a) may not be released to the public and is not public information subject to disclosure. *Penal Code 21.12(d)*

The name of a student or minor who is the victim of abuse or unlawful conduct by an educator is not public information subject to disclosure. *Education Code 21.006(h)*

PARTICIPANT IN  
ADDRESS  
CONFIDENTIALITY  
PROGRAM

Information relating to a participant in the Address Confidentiality Program for Victims of Family Violence, Sexual Assault, and Stalking under Code of Criminal Procedure Chapter 56, Subchapter C is confidential, except as provided by Code of Criminal Procedure 56.90, and may not be disclosed. *Code of Criminal Procedure 56.88*

VICTIMS OF CERTAIN  
CRIMES

A District employee who is also a victim under Code of Criminal Procedure Chapter 56, Subchapter B may elect whether to allow public access to information held by the District that would identify or tend to identify the victim, including a photograph or other visual representation of the victim. An election under this subsection must be made in writing on a form developed by the District, be signed by the employee, and be filed with the District before the third anniversary of the latest to occur of one of the following:

1. The date the crime was committed;
2. The date employment begins; or
3. The date the governmental body develops the form and provides it to employees.

If the employee fails to make an election, the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.

PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

GBA  
(LEGAL)

*Gov't Code 552.132*

INFORMATION  
EXCEPTED FROM  
PUBLIC DISCLOSURE

The Board or the officer for public information voluntarily may make part or all of its records available to the public, unless the disclosure is expressly prohibited by law or the records are confidential by law. *Gov't Code 552.007*

Categories of information that are excepted from disclosure to the public include:

1. Information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *Gov't Code 552.101*
2. Information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and transcripts from institutions of higher education maintained in files of professional employees; however, the degree obtained and the curriculum on the transcripts shall be subject to disclosure. *Gov't Code 552.102*
3. Information relating to litigation of a civil or criminal nature to which the District is, or may be, a party or to which an officer or employee of the District, as a consequence of the office or employment, is or may be a party, but only if the litigation is pending or reasonably anticipated at the time the District's public information officer receives the request. *Gov't Code 552.103*
4. Information that, if released, would give advantage to competitors or bidders. The requirement of Government Code 552.022 that a category of information listed under 552.022(a) is public information and not excepted from required disclosure unless expressly confidential under law does not apply to information that is excepted from required disclosure under this paragraph. *Gov't Code 552.104*
5. Information pertaining to the location of real or personal property for a public purpose prior to public announcement of the project, or information pertaining to appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property. *Gov't Code 552.105*
6. Drafts and working papers involved in the preparation of proposed legislation. *Gov't Code 552.106*
7. Information the District's attorney is prohibited from disclosing because of a duty to the District under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional

PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

GBA  
(LEGAL)

Conduct or information that a court order has prohibited from disclosure. *Gov't Code 552.107*

8. Under certain circumstances, information (except basic information about an arrested person, an arrest, or a crime) held by a law enforcement agency or prosecutor, including:
  - a. Information that deals with detection, investigation, or prosecution of crime; and
  - b. An internal record or notation that is maintained for internal use in matters relating to law enforcement or prosecution.

*Gov't Code 552.108*

9. Private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy. *Gov't Code 552.109*
10. A trade secret obtained from a person and privileged or confidential by statute or judicial decision. *Gov't Code 552.110(a)*
11. Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *Gov't Code 552.110(b)*
12. Interagency or intra-agency memoranda or letters that would not be available by law to a party in litigation with the District. *Gov't Code 552.111; City of Garland v. Dallas Morning News, 22 S.W.3d 351 (Tex. 2000) (concluding that the deliberative process privilege, incorporated into the exception found at Government Code 552.111, exempts communications related to a governmental agency's policymaking)*
13. An audit working paper of an audit of the District auditor, including any audit relating to the criminal history background check of a public school employee. If information in an audit working paper is also maintained in another record, that other record is not excepted. *Gov't Code 552.116*
14. Student records, except to District personnel, the student, or the student's parents, guardian, or spouse. The District is not required to release student records, except in conformity with FERPA. *Gov't Code 552.114, 552.026 [See FL]*
15. Information that relates to the home address, home telephone number, or social security number of the following persons, or that reveals whether the person has family members:

PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

GBA  
(LEGAL)

- a. A current or former District employee or Board member, except as provided by Section 552.024; or
- b. A peace officer or a security officer commissioned by the Board of Private Investigators and Private Security Agencies, regardless of whether the officer complies with Section 552.1175.

*Gov't Code 552.117*

16. A photograph that depicts a peace officer, the release of which would endanger the life or physical safety of the officer, unless:
- a. The officer is under indictment or charged with an offense by information;
  - b. The officer is a party in a fire or police civil service hearing or a case in arbitration; or
  - c. The photograph is introduced as evidence in a judicial proceeding.

If a photograph is exempt from public disclosure as described above, it may be made public only if the officer gives written consent.

*Gov't Code 552.119*

17. Test items developed by a state-funded educational institution. *Gov't Code 552.122*
18. The certified agenda or tape recording of a closed meeting, unless a court order makes it available for public inspection and copying. *Gov't Code 551.104(c)*
19. Records of a school library or library system that identify or serve to identify a person who requested, obtained, or used a library material or service, unless the records are disclosed:
- a. Because the library determines that disclosure is reasonably necessary for the operation of the library and the records are not confidential under other state or federal law;
  - b. To a person with a special right of access under Government Code 552.023; or
  - c. To a law enforcement agency or prosecutor under a court order or subpoena.

*Gov't Code 552.124*

PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

GBA  
(LEGAL)

20. The name of an applicant for Superintendent, except the Board must give public notice of the name or names of the finalists being considered for that position at least 21 days before the date of the meeting at which final action or a vote is to be taken on the applicant's employment. *Gov't Code 552.126 [See BJB]*

21. Motor vehicle record information that relates to:

- a. A motor vehicle operator's or driver's license or permit issued by an agency of this state;
- b. A motor vehicle title or registration issued by an agency of this state; or
- c. A personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

The motor vehicle record information described above may be released only in accordance with Transportation Code Chapter 730.

*Gov't Code 552.130*

22. An informer's name or information that would substantially reveal the identity of an informer, unless:

- a. The informer or the informer's spouse consents to disclosure of the informer's name.
- b. The informer planned, initiated, or participated in the possible violation.

"Informer" means a student or former student or an employee or former employee of the District who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the District or the proper regulatory enforcement authority.

*Gov't Code 552.135*

23. Information in a commercial book or publication purchased or acquired by the District for research purposes, if the book or publication is commercially available to the public. The District is not required to make copies of commercially available information, but the District shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of the District.

*Gov't Code 552.027*



PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

GBA  
(LEGAL)

24. Information that relates to economic development negotiations involving the Board and a business prospect that the Board seeks to have locate, stay, or expand in or near the District, if that information relates to:
  - a. A trade secret of the business prospect; or
  - b. Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.
25. Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to a business prospect by the Board or by another person.

After an agreement is made, information about a financial or other incentive being offered is no longer exempted from public disclosure if the information is about a financial or other incentive being offered to the business prospect:

- a. By the Board; or
- b. By another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by the District or a reduction in revenue received by the District from any source.

*Gov't Code 552.131*

26. Information that relates to computer network security or to the design, operation, or defense of a computer network. The following information is confidential:
  - a. A computer network vulnerability report; and
  - b. Any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or software of the District or of a contractor of the District is vulnerable to unauthorized access or harm, including an assessment of the extent to which the District's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

*Gov't Code 552.136*

MILITARY DISCHARGE  
RECORDS

27. A military veteran's Department of Defense Form DD-214 or other military discharge record that first comes into the possession of the District on or after September 1, 2003. The

PUBLIC INFORMATION PROGRAM  
ACCESS TO PUBLIC INFORMATION

GBA  
(LEGAL)

record is confidential for the 75 years following the date it comes into the possession of the District in accordance with Government Code Section 552.140. A district that obtains information from the record shall limit the use and disclosure of the information to the purpose for which the information was obtained. *Gov't Code 552.140*

SOCIAL SECURITY  
NUMBERS

28. The social security number of a living person. The social security number is not confidential, however. The District may redact the social security number of a living person from any information the District discloses to the public without the necessity of requesting a decision from the attorney general. *Gov't Code 552.147*

INVESTMENT  
INFORMATION

29. Certain District investment information, as specified by Government Code 552.143, is not public information and is excepted from disclosure. *Gov't Code 552.143*

RELATIONS WITH GOVERNMENTAL ENTITIES  
LOCAL GOVERNMENTAL AUTHORITIES

GRA  
(LOCAL)

CHILD ABUSE  
INVESTIGATION

When a representative of the Department of Family and Protective Services or another lawful authority desires to question or interview a student at school as part of a child abuse investigation, the principal shall cooperate fully with the official's requests regarding the conditions of the interview or questioning.

OTHER QUESTIONING  
OF STUDENTS

When law enforcement officers or other lawful authorities desire to question or interview a student at school for any purpose other than a child abuse investigation, the following guidelines shall apply:

1. The principal shall verify and record the identity of the officer or other authority and request an explanation of the need to question or interview the student at school.
2. The principal ordinarily shall make reasonable efforts to notify the student's parents or other person having lawful control of the student. If the interviewer raises what the principal considers to be a valid objection to the notification, parents shall not be notified.
3. The principal or a designee ordinarily shall be present during the questioning or interview. If the interviewer raises what the principal considers to be a valid objection to a third party's presence, the interview shall be conducted without that person's presence.

STUDENTS TAKEN  
INTO CUSTODY

Before a student at school is arrested or taken into custody by a law enforcement officer or other legally authorized person, the principal shall verify the official's identity. To the best of his or her ability, the principal shall verify the official's authority to take custody of the student [see GRA] and then shall deliver over the student.

The principal shall immediately notify the Superintendent and ordinarily shall notify the parents or other person having lawful control of the student. If the officer or other authorized person raises what the principal considers to be a valid objection to notifying the parents at that time, the principal shall not notify the parents.

