

To: District Superintendent and Policy Contact

From: TASB Policy and Legal Services

Hurricane season for the Texas coast began June 1. Each year, districts that close because of hurricanes or other disasters face difficult questions regarding payment of employees' wages during the closure. Many districts wish to continue paying employees their regular wages while the district is closed in order to increase morale and reduce employee turnover. Equity may also influence a district to pay a premium to employees who do work during the disaster, especially if the district continues to pay other employees who are idled.

A district may pay employees whom it is not legally obligated to pay if the district complies with the rules relating to public funds. Specifically, the board must: (1) determine that the expenditure serves a public purpose; (2) retain sufficient control over the expenditure to ensure that the public purpose is accomplished; and (3) ensure that the school district receives a return benefit. Op. Tex. Att'y Gen. GA-76 (2003). Including in local policy provisions addressing payment of wages during a disaster is one way to satisfy this requirement.

Districts that intend to seek reimbursement of labor costs through the Federal Emergency Management Agency (FEMA) will also need a written policy. The relevant FEMA policy provides that if, as a result of a disaster covered by a federal disaster declaration, a district incurs labor costs above what it would have incurred absent the disaster, the district may be eligible for reimbursement of those labor costs that are provided for in written policy *prior* to the disaster. See http://www.fema.gov/government/grant/pa/9525_7.shtm.

For these reasons, we are providing the sample local policy text below as a starting place for districts that wish to adopt a disaster pay provision in DEA(LOCAL).

SEE: [Proposed DEA \(Local\)](#)

As with all sample policy provisions, it is essential that you adjust this text to match the district's practices, including whether the district wishes to broaden this text to apply to exempt employees, whether the district will pay employees who are required to work during a disaster a higher rate than time and a half, and whether the premium rate of pay will apply during any disaster as indicated in the above language or only during a federally declared disaster.

We recommend that the district consult with its attorney and policy consultant in tailoring the sample policy text. Please submit any disaster pay provision developed by the district to your TASB policy consultant for inclusion in your

policy manual. If you have questions concerning the text above, please contact your policy consultant at 800-580-7529. **Your consultant will be happy to work with you on a draft before you take it to the board.** If you have legal questions, contact TASB Legal Services at 800-580-5345 or the district's attorney.