

# Explanatory Notes

## TASB Localized Policy Manual Update 84

District: Wylie ISD-Taylor County  
BBB (LEGAL) BOARD MEMBERS  
ELECTIONS

To assist districts holding a SPECIAL ELECTION, we have added existing statutory provisions on this topic. We have also deleted the separate provision on the LOYALTY OATH and included a reference to it at APPLICATION, since the loyalty oath is a part of a candidate's application for a place on the ballot, not a separate requirement.

Also to provide further direction to districts during elections, we have added at BALLOT POSITION an existing statutory provision specifying how districts should determine the order of candidates' names on the ballot.

Finally, we have added a new provision from the Texas Administrative Code, effective January 3, 2008, clarifying that a NEWSLETTER of a public officer of a school district is not considered to be political advertising if the newsletter meets certain criteria. Similar text has been added to CCA(LEGAL), also included in this update.

BJCF (LOCAL) SUPERINTENDENT  
NONRENEWAL

At item 12 in the list of REASONS for nonrenewal, we have made a technical change. The superintendent's contract may be nonrenewed for conviction of or deferred adjudication for certain offenses listed in the policy *or* (policy previously read *and*) for a conviction of a lesser included offense pursuant to a plea when the original charged offense is a felony.

BQA (LEGAL) PLANNING AND DECISION-MAKING PROCESS  
DISTRICT-LEVEL

We have added to this policy an existing statutory provision requiring the district-level planning and decision-making committee to be actively involved in establishing the ADMINISTRATIVE PROCEDURE defining roles and responsibilities regarding planning and decision-making at the district and campus levels.

BQB (LEGAL) PLANNING AND DECISION-MAKING PROCESS  
CAMPUS-LEVEL

We have added to this policy an existing statutory provision requiring the board to ensure that an ADMINISTRATIVE PROCEDURE defines the roles and responsibilities regarding planning and decision-making at the campus level.

C (LEGAL) BUSINESS AND SUPPORT SERVICES

The C section table of contents has been revised to reflect the addition of a new code, CNC, on Transportation Safety.

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### CCA (LEGAL) LOCAL REVENUE SOURCES BOND ISSUES

Beginning on page 1 is a new provision from the Texas Administrative Code, effective January 3, 2008, providing that a NEWSLETTER of a public officer of a school district is not considered to be political advertising if the newsletter meets certain criteria. Similar text has been added to BBB(LEGAL), also included in this update.

### CDA (LEGAL) OTHER REVENUES INVESTMENTS

A clarification has been made at PERSONAL INTEREST on page 3 to reflect the statutory requirement that a district investment officer must file with the school district board of trustees and the Texas Ethics Commission statements revealing:

- a personal business relationship with a business offering to engage in an investment transaction with the district; or
- a personal relationship to an individual seeking to sell an investment to the district.

We have also revised the policy throughout to specifically refer to school districts, in accordance with TASB policy style.

### CDA (LOCAL) OTHER REVENUES INVESTMENTS

At BROKERS/DEALERS on page 3 we have updated a reference—replacing the National Association of Securities Dealers (NASD) with the Financial Industry Regulatory Authority (FINRA). Representatives of brokers/dealers must be in good standing with FINRA in order to handle district investments. Created in 2007 through the consolidation of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange, FINRA is a non-governmental regulator of securities firms.

On page 4, we have deleted unnecessary detail regarding the PORTFOLIO REPORT to give districts more flexibility regarding the contents of the report. The portfolio report is an optional, comprehensive report on the investment program and activity presented annually to the board. If your district does not present such a report to the board, please contact your policy consultant to revise your policy.

### CE (LOCAL) ANNUAL OPERATING BUDGET

The current Texas Education Code provision requiring districts to post a summary of the proposed budget online or, if the district has no Internet Web site, in the district's central administrative office, eliminates the need to include in local policy the text at AVAILABILITY OF PROPOSED BUDGET, which required the district to make the proposed budget available on request. Under current law, interested members of the public may access the summary of the proposed budget on the Internet.

If the district's FISCAL YEAR is not accurately reflected in the policy, please contact your policy consultant.

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### CI (LOCAL) SCHOOL PROPERTIES DISPOSAL

To ensure clear delegation of authority regarding disposal of property that is no longer needed by the district, we recommend adoption of a local policy at this code. The enclosed policy delegates to the superintendent or designee the authority to determine when property is unnecessary. In disposing of any unnecessary property, the superintendent must obtain fair market value. If the unnecessary property has no value, the superintendent or designee may dispose of property according to administrative discretion.

If the board does not wish to delegate this authority to the superintendent or wishes to only delegate authority to the superintendent to dispose of property valued up to a certain amount, contact your policy consultant.

### CNA (LEGAL) TRANSPORTATION MANAGEMENT STUDENT TRANSPORTATION

Safety-related provisions on WIRELESS COMMUNICATION DEVICES, STUDENT SAFETY, SCHOOL BUS EMERGENCY EVACUATION TRAINING, and DISRUPTION OF TRANSPORTATION have been moved to CNC(LEGAL), a new code addressing various aspects of transportation safety. [See the explanatory note for CNC(LEGAL).]

At CRIMINAL HISTORY RECORD, beginning on page 5, we have added provisions regarding criminal history checks of individuals employed by an entity that contracts with the district. If a district contracts with a commercial company for transportation services, the company must comply with these provisions in addition to the criminal history record provisions already included in the policy from Texas Education Code section 22.084.

### CNB (LEGAL) TRANSPORTATION MANAGEMENT DISTRICT VEHICLES

Provisions on SAFETY STANDARDS, SEAT BELTS, NOTICE OF ACCIDENTS, and ACCIDENT REPORTS have been moved to CNC(LEGAL), a new code addressing various aspects of transportation safety. [See the explanatory note for CNC(LEGAL).]

### CNC (LEGAL) TRANSPORTATION MANAGEMENT TRANSPORTATION SAFETY

Safety-related provisions from CNA and CNB(LEGAL) have been moved to this new code for ease of reference. In addition, the text at NOTICE TO TEA, previously at CNB(LEGAL), has been revised to reflect new Texas Administrative Code provisions effective August 28, 2008. The rules provide guidance on which bus accidents the district needs to report.

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

Effective September 1, 2008, House Bill 735 from the 80<sup>th</sup> Texas Legislature repealed provisions in the Texas Education Code that required districts to adopt an Internet use policy restricting minors' access to obscene material in order to receive Telecommunications Infrastructure Fund (TIF) grants. These Texas Education Code provisions are no longer needed in statute due to discontinuation of the TIF. Accordingly, we have deleted these provisions, formerly at STATE FUNDING, from this policy. Similar requirements from the Children's Internet Protection Act remain in the policy.

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CV (LEGAL) FACILITIES CONSTRUCTION

At CRIMINAL HISTORY, beginning on page 3, we have added provisions regarding criminal history checks of individuals employed by an entity that contracts with the district. If a district contracts with an entity for construction services, the company must comply with certain criminal background check provisions as outlined in this material.

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

We have updated this code to reflect commissioner rules on criminal background checks, effective December 30, 2007. At NONCERTIFIED EMPLOYEES and SUBSTITUTE TEACHERS, we have added provisions from the rules clarifying that a noncertified employee or substitute teacher may begin working for the district once the information required to conduct a criminal history check has been sent to DPS and TEA. If the criminal history check reveals that the individual is not eligible for employment, however, the district must terminate employment, as reflected at EMPLOYMENT PENDING REVIEW. The definition of a substitute teacher has also been added from the rules. For clarity, we have revised several margin notes and added the cross-reference at NONCERTIFIED EMPLOYEES.

DEA (LEGAL) COMPENSATION AND BENEFITS  
SALARIES AND WAGES

As described in correspondence from TASB Policy Service sent to the district in July 2008, shortly after Update 83 was mailed to districts the IRS issued updated guidance on its 409A rules regarding nonqualified deferred compensation plans and annualized pay. That guidance exempted most educators from the 409A rules and eliminated the need for policy provisions on this issue in school district policy manuals. As a result, we have deleted the text at ANNUALIZED COMPENSATION.

DFAA (LEGAL) PROBATIONARY CONTRACTS  
SUSPENSION/TERMINATION DURING CONTRACT

At HEARING, we have added a reference to suspension without pay to better track the statutory language. A probationary contract employee may request a hearing before an independent hearing examiner if the district notifies the employee of a proposed termination or suspension without pay.

DFBB (LOCAL) TERM CONTRACTS  
NONRENEWAL

At item 15 in the list of REASONS for nonrenewal, we have made a technical change. An employee's contract may be nonrenewed for conviction of or deferred adjudication for certain offenses listed in the policy *or* (policy previously read *and*) for a conviction of a lesser included offense pursuant to a plea when the original charged offense is a felony.

At SUPERINTENDENT'S RECOMMENDATION, we have removed the provision requiring the superintendent to submit evaluations for the board to consider when voting to propose nonrenewal. The law requires the board to consider the most recent evaluation, if relevant, before voting to nonrenew an employee's contract but does not require consideration of evaluations before voting to propose nonrenewal.

Other nonsubstantive changes have been made for clarity.

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**Please note:** TASB Policy and Legal Services consider DFBB to be an employment policy that must be made available to educators pursuant to the Texas Education Code. Please distribute this revised policy in accordance with your current practice for distribution used at the beginning of the school year.

### DG (LEGAL) EMPLOYEE RIGHTS AND PRIVILEGES

At WHISTLEBLOWER COMPLAINTS, beginning on page 2, we have added two Texas Government Code provisions addressing lawsuits by employees under the Whistleblower Act to explain the effect of timing on the employee's claim and to clarify that an employee's report does not insulate the employee from adverse action if the district has independent grounds for the action.

The first provision, at BURDEN OF PROOF, specifies that if an employee brings a whistleblower lawsuit, he or she will have the burden of proving that the district took an adverse personnel action against the employee because the employee made a report protected by the Whistleblower Act. If, however, the district took the adverse personnel action against the employee within 90 days of the employee's report, it is presumed that the district took that personnel action because the employee made the report. The second provision, at AFFIRMATIVE DEFENSE, explains that the district may provide evidence that it would have taken the adverse personnel action against the employee based on information not related to the report protected by the Whistleblower Act.

### E (LEGAL) INSTRUCTION

The E section table of contents has been updated to reflect the revised subtitle of EHBAB, ARD Committee and Individualized Education Program, and to include new code EKBA: State Assessments, LEP Students.

### EEH (LOCAL) INSTRUCTIONAL ARRANGEMENTS HOMEBOUND INSTRUCTION

In the 2008–2009 Student Attendance Accounting Handbook (SAAH), TEA revised eligibility criteria for general education homebound instruction. A student is still eligible if confined for a minimum of four weeks, but the four weeks of confinement no longer have to be consecutive. We have revised the first sentence of this policy accordingly and have added a reference to the SAAH to identify where the homebound instruction criteria may be found.

### EEL (LEGAL) INSTRUCTIONAL ARRANGEMENTS CONTRACTS WITH OUTSIDE AGENCIES

Detailed information on residential placements of STUDENTS WITH DISABILITIES has been deleted in favor of a cross-reference to EHBA, where provisions on placement of special education students in alternate settings are already found.

### EGA (LEGAL) CURRICULUM DEVELOPMENT INNOVATIVE AND MAGNET PROGRAMS

Revisions to commissioner rules on innovative courses, magnet programs, and dual language immersion programs (DLIP) resulted in significant changes to this policy.

- At INNOVATIVE COURSES AND PROGRAMS, districts may now offer any state-approved innovative course without additional approval from the State Board of Education or the commissioner.

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- At DUAL LANGUAGE IMMERSION PROGRAM (DLIP), provisions have been added to address goals, implementation rules, curriculum and enrollment requirements, staffing guidelines, and evaluation procedures to determine program impact.

### EHAC (LEGAL) BASIC INSTRUCTIONAL PROGRAM REQUIRED INSTRUCTION (SECONDARY)

New commissioner rules regarding EXEMPTIONS from physical activity requirements have been incorporated into this policy. Exemptions are allowed for middle school students participating in structured extracurricular activities certified by the board of trustees if the student provides proof of participation in the activity. The rules provide a definition of "structured activity," which has been included in the policy. Please note that because of changes to the Texas Administrative Code included at Update 83, the district is no longer required to include a list of exemptions in local board policy.

At PARENTING AWARENESS PROGRAM, we have included the required elements of such a program as specified in State Board of Education rules, effective April 27, 2008. Instruction in parenting awareness must include, at a minimum, parenting skills and responsibilities, relationship skills, and skills relating to the prevention of family violence.

### EHBA (LEGAL) SPECIAL PROGRAMS SPECIAL EDUCATION

Revisions to the IDEA regulations in state and federal law have resulted in reworking at Update 84 of all the special education policies, including EHBA.

We have moved provisions on RELATED SERVICES for special education students, such as transportation and developmental, corrective, and other supportive services, from EHBAC(LEGAL) to this code because related services are part of a district's obligation to provide a free appropriate public education to special education students.

Because they addressed obligations of TEA rather than the school district, we have deleted provisions on transferring assistive technology devices when a special education student no longer attends school in the district that purchased the device.

We have streamlined the provisions at EXTENDED SCHOOL YEAR (ESY) SERVICES since the details of these provisions are included in State Board rules.

Citations throughout the policy have been updated. [See the explanatory note for EHBAC(LEGAL).]

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

Changes to this policy on the initial identification of students for special education include:

- A new format to list the groups of children for whom the district must engage in the CHILD FIND process.
- At PRIVATE SCHOOL STUDENTS, a school district's obligation to consult with private schools is now limited to those private schools located within the district's boundaries. Previously, a district's obligation depended on whether the parent of a student enrolled in a private school lived within the district.
- The ages of students addressed at PRESCHOOL STUDENTS have been clarified to include students who are at least three and younger than six.

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- At CONSENT FOR INITIAL EVALUATION, we have reworded the first paragraph. A district must make reasonable efforts to obtain consent for the evaluation. By law, the consent is not required to be in writing, although obtaining written consent is advisable. We have deleted a provision addressing a parent's revocation of consent, which is no longer found in the regulations.
- A provision at PSYCHOLOGICAL EXAMINATIONS directs districts to obtain parental consent for additional examinations or tests needed for the evaluation.
- We have deleted the section FIRST-TIME REFERRALS, which dealt with development of the IEP rather than the initial evaluation for special education services.
- We have added a provision requiring parental consent for REEVALUATIONS unless the district took reasonable measures to obtain consent and the parent failed to respond.

Throughout the policy, we have made revisions for clarity and to better track statutory or regulatory language.

### EHBAB (LEGAL) SPECIAL EDUCATION ARD COMMITTEE AND INDIVIDUALIZED EDUCATION PROGRAM

The new IDEA regulations resulted in numerous changes to this policy on IEPs and ARD committees, including:

- Clarification that the RESPONSIBILITIES OF THE ARD COMMITTEE include disciplinary changes in placement and development of accelerated instruction.
- Additional requirements regarding the COMMITTEE MEMBERS for children with auditory or visual impairments, with limited English proficiency, or who are enrolled in career and technology education.
- At MEMBERSHIP FOR TRANSITION MEETINGS, a requirement that a district obtain parental consent, or consent from the student if the student is an adult, for a representative of another agency to attend an ARD committee meeting at which transition services will be discussed.
- At PARENT INVOLVEMENT, districts must send parents notice of any meetings early enough to ensure that they have an opportunity to attend. If neither parent can attend, the district must use ALTERNATE MEANS OF MEETING PARTICIPATION, such as individual or conference calls.
- At MEETINGS, we have added a statement requiring the ARD committee to determine a child's placement once a year.
- New requirements for the INDIVIDUALIZED EDUCATION PROGRAM (IEP) include a statement as to why a child cannot take the regular state assessment test and why the alternative assessment selected is appropriate for the child.
- Extensive amendments to the strategies that the ARD committee must consider for a student with AUTISM/PERVASIVE DEVELOPMENTAL DISORDER.

Throughout the policy, we have made revisions to better track statutory and regulatory language. For clarity, we have also adjusted the subtitle, ARD Committee and Individualized Education Program.

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

This policy on special education students in nondistrict placement has been revised as follows:

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- We have moved provisions on related services for special education students, such as transportation and developmental, corrective, and other supportive services, from this policy to EHBA(LEGAL) because related services are part of a district's obligation to provide a free appropriate public education to special education students. [See the explanatory note for EHBA(LEGAL).]
- We have added margin notes and text regarding students in PRIVATE SCHOOL to clarify a district's obligations in each of three circumstances: when the public school district places a child in private school, when a parent places in private school a disabled child who is then referred to the public school district for evaluation, and when a parent places a child in private school after the child has received services from the district.
- We have expanded provisions regarding a district's development of the INDIVIDUALIZED SERVICES PLAN (ISP) and decisions about the services that it will provide to students enrolled in private schools.
- At RESPONSIBLE DISTRICT is an exception to the general rule that the school district in which the private school is located is obligated to provide services. When a student's parents choose dual enrollment in both public and private school, the district where the student resides must provide the services.
- The details on the responsibilities of districts when students are placed in RESIDENTIAL FACILITIES have been deleted and replaced by a cite to the Texas Administrative Code.
- A provision at IN-STATE TRANSFERS, requiring a district that negotiated a residential contract to continue to pay for the contract for the remainder of the school year after a student moves to another district, has been deleted from the regulations and the policy.

Throughout the policy, we have made revisions for clarity and to better track statutory and regulatory language.

### EHBAD (LEGAL) SPECIAL EDUCATION TRANSITION SERVICES

The new IDEA regulations added more detail about transition planning as reflected at INDIVIDUAL TRANSITION PLANNING. Beginning with the IEP in effect when a student turns 16, the IEP must include measurable post-secondary goals and a list of transition services needed to assist the student in reaching the goals. Previously, certain transition service obligations began when a student turned 14.

### EHBAE (LEGAL) SPECIAL EDUCATION PROCEDURAL REQUIREMENTS

For this policy on special education procedural requirements, we have:

- Reorganized the text at PROCEDURAL SAFEGUARDS to reflect the organization and language of the new regulations;
- Added a definition of parental CONSENT;
- Added a provision allowing ELECTRONIC DELIVERY OF NOTICES;
- At PRIOR NOTICE AND CONSENT, added the requirement for a district to provide written notice to parents before the district changes or refuses to change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child and added a list of information that must be included in the notice.
- Deleted language at CONSENT TO SERVICES that no longer appears in the regulations.



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- Added parental consent provisions for reevaluations and additional examinations or tests at CONSENT TO REEVALUATION and PSYCHOLOGICAL EXAMINATIONS AND TESTS.
- Revised the COMPLAINT PROCEDURES to reflect the one-year time period for parental complaints as provided by state law.
- Updated the 'STAY PUT' provisions to reflect that during a proceeding to challenge a disciplinary change of placement or manifestation determination, the district is not required to keep the child in the current educational placement.
- Added provisions on the RESOLUTION PROCESS, under which a district must convene a meeting with the parent who filed the due process complaint and the IEP team to attempt to resolve the dispute without a hearing.

Throughout the policy, we have made revisions for clarity and to better track statutory and regulatory language.

### EHBC (LEGAL) SPECIAL PROGRAMS COMPENSATORY/ACCELERATED SERVICES

On page 2, we have added provisions on DROPOUT PREVENTION STRATEGIES passed by the 80<sup>th</sup> Texas Legislature and with details from commissioner rules. A district with a high dropout rate must submit to TEA a dropout strategy plan that describes how the district will use its compensatory education and high school allotments to work on strategies for dropout prevention.

In anticipation of new commissioner rules on COMMUNITIES IN SCHOOLS (CIS) programs, we have added the Texas Education Code requirement for a district to participate in a CIS program if the district has at least ten percent of its students at risk of dropping out of school and receives funding for CIS programs.

Revised Texas Administrative Code provisions are reflected at OPTIONAL EXTENDED-YEAR PROGRAM. The provisions clarify student eligibility and provide a definition of an extended year program.

### EI (LEGAL) ACADEMIC ACHIEVEMENT

We have revised this policy at ATTENDANCE FOR CREDIT to reflect the statutory option for a student to earn credit in accordance with a principal's plan. If a district offers this option, a student may be given credit for a course by completing a plan approved by the school's principal that provides for the student to meet the instructional requirements of the class.

### EJ (LEGAL) ACADEMIC GUIDANCE PROGRAM

At NOTICE OF GRANT PROGRAMS and NOTATION ON TRANSCRIPT OR DIPLOMA, we have revised the text to better match the statutory language.

### EKB (LEGAL) TESTING PROGRAMS STATE ASSESSMENT

Provisions on state assessment testing for limited English proficiency students have been moved to EKBA, a new code created for that topic.

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EKBA      (LEGAL)      STATE ASSESSMENT  
LEP STUDENTS

This new code includes provisions on state assessment testing for limited English proficiency students that were previously at EKB. Changes to the provisions are from recently revised commissioner rules, effective May 11, 2008:

- At SECOND AND THIRD YEARS, the rules state that if an immigrant LEP student achieves an "advanced high" rating on the English language proficiency assessment in reading during the first school year of enrollment in U.S. schools, the student is not eligible for an exemption in the second or third school years. The rule previously referred to the reading proficiency test in English.
- For LEP STUDENTS IN SPECIAL EDUCATION, the rules specify that the ARD committee and the LPAC must work together regarding the selection of assessments and appropriate accommodations and exemption from the English language proficiency assessment.

F            (LEGAL)      STUDENTS

The F section table of contents has been revised to reflect a subtitle change at FNCE, now Telecommunications/Electronic Devices.

FDB        (LOCAL)      ADMISSIONS  
INTRADISTRICT TRANSFERS AND CLASSROOM  
ASSIGNMENTS

We have added a **Note** at this policy referencing transfer provisions at other codes that may apply in certain circumstances, such as when a student is a victim of bullying, attends a persistently dangerous school, or becomes a victim of a violent criminal offense or sexual assault.

FFAA      (LEGAL)      WELLNESS AND HEALTH SERVICES  
PHYSICAL EXAMINATIONS

At PHYSICAL FITNESS ASSESSMENT, we have listed the factors on which districts must assess students' physical fitness, which include aerobic capacity; body composition; and muscular strength, endurance, and flexibility. These factors come from commissioner rules, effective December 18, 2007.

FFG        (EXHIBIT)     STUDENT WELFARE  
CHILD ABUSE AND NEGLECT

This exhibit has been updated to reflect a new Internet address for the Child Protective Services (CPS) division of the Texas Department of Family and Protective Services.

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### FM (LEGAL) STUDENT ACTIVITIES

Effective June 23, 2008, the commissioner adopted new rules defining EXEMPT COURSES for purposes of no pass, no play. Exempt courses include AP and International Baccalaureate courses in all disciplines; high school/college concurrent enrollment classes in the areas of English language arts, languages other than English, mathematics, science, and social studies; and certain other listed courses. Districts may also identify additional honors courses in these subject areas as long as they identify such courses before the beginning of the semester. Please note that the district is no longer required to indicate in local board policy which courses will be exempt.

### FMH (LEGAL) STUDENT ACTIVITIES COMMENCEMENT

We have revised this policy as a result of recent litigation in the *Does 1-7 v. Round Rock Independent School District* case. At issue in that case was a district policy allowing graduating seniors to vote on whether to have a student read a prayer at commencement. The federal district court judge refused to dismiss the lawsuit brought against the district, finding that the policy was an impermissible majoritarian election on religion. We have not cited this case in the policy because it does not have statewide application. Its outcome, however, influenced us to make revisions to this policy. At SCHOOL-SPONSORED SPEECH, we have provided more detail on *Santa Fe Independent School District v. Doe*, the United States Supreme Court case relied upon in the *Round Rock* case regarding majoritarian elections on religion. In addition, we have moved to the **Note** information about *Jones v. Clear Creek Independent School District*, a 1992 Fifth Circuit Court of Appeals case that approved a policy allowing a graduating class to select a student volunteer to deliver nonproselytizing invocations. Although not expressly overruled, *Jones* has been called into question by the *Santa Fe* and *Round Rock* cases.

If you have questions about the applicability of the *Round Rock* case to your district, please contact TASB Legal Services or the district's attorney.

At PRIVATE STUDENT SPEECH, we have repeated a provision from FNA(LEGAL) requiring a district to adopt a policy establishing a limited public forum for student speakers.

### FNA (LEGAL) STUDENT RIGHTS AND RESPONSIBILITIES STUDENT EXPRESSION

At FREEDOM OF SPEECH, we have added a recently decided Fifth Circuit Court of Appeals case, *Ponce v. Socorro*, which held that when a student threatens violence against a student body or school, that speech is not protected by the First Amendment and school officials may take disciplinary action without having to show a reasonable belief that disruption would occur as a result of the speech.

At PRAYER AT SCHOOL ACTIVITIES, we have added a cross-reference to FMH for provisions on invocations and benedictions at commencement.

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### FNCE (LOCAL) STUDENT CONDUCT TELECOMMUNICATIONS/ELECTRONIC DEVICES

Districts are required to have a local board policy if they confiscate telecommunications devices, which are defined by law, and if they either charge a fee for the student or parent to obtain release of the device or dispose of the device. This recommended policy provides that the district may confiscate telecommunications devices used in violation of applicable campus rules. Once confiscated, devices will be returned to the student or parent, as designated in the student handbook, for a fee. If the student or parent fails to retrieve the device, the device will be disposed of after the district provides the notice required by law. This text provides maximum flexibility for individual campuses to determine confiscation and fee rules. For example, some campuses may allow students to retrieve confiscated devices and pay the fee, while other campuses may require the student's parent to do so. The district may also wish to develop administrative procedures to guide staff in this area.

Because districts are not authorized to charge a fee for the return of confiscated devices falling outside the definition of "telecommunications devices," we have added a separate provision on OTHER ELECTRONIC DEVICES referring to rules in the student handbook.

If your district either does not charge a fee for the return of confiscated telecommunications devices or does not dispose of telecommunications devices that it confiscates, please contact your policy consultant.

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

On page 4, we have included an additional provision at PROCESS FOR REMOVAL. After the principal issues a DAEP placement order, district policy may permit the student to APPEAL the decision to the board or designee. The decision by the board or designee is final and may not be appealed. The **TASB Model Student Code of Conduct** permits appeals to the board through FNG(LOCAL), the student and parent grievance policy, but specifies that disciplinary consequences will not be deferred pending the outcome of an appeal. If the district's board-adopted Student Code of Conduct includes this provision, no additional local policy is needed.

At PLACEMENT OF YOUNGER STUDENTS on page 3, we have deleted a provision prohibiting placement of elementary school students in a DAEP with non-elementary students. This provision is already included at FOCA(LEGAL), which addresses operation of DAEPs.

### FOF (LEGAL) STUDENT DISCIPLINE STUDENTS WITH DISABILITIES

Extensive changes to this policy on student discipline of students with disabilities are based on the new IDEA regulations:

- Beginning on page 1, the district's obligations when a student is removed from his or her current placement are dependent on the length of removal. For each type of removal, we have included the district's requirements on providing services during removal.
  - Removal for ten days or less is still permissible, as are additional periods of removal for ten days or less for separate incidents of misconduct as long as the removals are not a change in placement.

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- Districts still must conduct a manifestation determination when a change in placement occurs, but the guidance on when a change in placement occurs has been revised. When there are a series of removals, the district determines whether the pattern of removals is a change in placement. Parents can challenge the determination through due process and litigation.
- If the conduct was a manifestation of the student's disability, the district may still remove the student to an interim alternative setting if SPECIAL CIRCUMSTANCES exist (see page 4). These include weapons and drug offenses, and when the student has inflicted serious bodily injury on someone else. These terms are defined in federal law and thus have been deleted from the policy.
- Beginning on page 6, text at BEHAVIOR MANAGEMENT TECHNIQUES has been rearranged for clarity.
- Text at RESTRAINT, on page 7, has been streamlined by deleting the list of conduct that is not considered restraint and the list of documentation requirements. This information is in the Texas Administrative Code as cited in the policy.

In addition, the material at STUDENTS WITH DISABILITIES UNDER SECTION 504 on page 1 has been simplified, and other clarifications to reflect revised regulatory language have been made throughout the policy.

### GA (LEGAL) ACCESS TO PROGRAMS, SERVICES, AND ACTIVITIES

Two existing state law provisions regarding access to programs, services, and activities have been added to this policy. The first provision, at NONDISCRIMINATION, prohibits an officer or employee of the district from refusing facility use, program participation, or benefits to individuals based on race, religion, color, sex, or national origin. The second provision, at INDIVIDUALS WITH DISABILITIES, STATE PROHIBITION, similarly prohibits discrimination based on disability.

### GBA (LEGAL) PUBLIC INFORMATION PROGRAM ACCESS TO PUBLIC INFORMATION

To better reflect current law regarding whether district policymaking is considered INFORMATION EXCEPTED FROM PUBLIC DISCLOSURE (beginning on page 5), we have revised items 6 and 12. Item 6 lists the exception for drafts and working papers involved in preparation of proposed legislation. This exception has not been interpreted to apply to district policymaking. At item 12, however, we have added information from a Texas Supreme Court case concluding that communications related to a governmental agency's policymaking are excepted from public disclosure under that statutory provision.

### GKB (LEGAL) COMMUNITY RELATIONS ADVERTISING AND FUND RAISING IN THE SCHOOLS

House Bill 412, passed by the 80<sup>th</sup> Texas Legislature and effective September 1, 2007, amended the provision at OUTDOOR ADVERTISING. It is now an offense if a person allows advertising in violation of the outdoor advertising rules found in Chapter 391 of the Transportation Code to occur on property owned by the person.

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GKG (LEGAL) COMMUNITY RELATIONS  
SCHOOL VOLUNTEER PROGRAM

A provision giving immunity to individuals who volunteer to assist with EXTRACURRICULAR ACTIVITIES has been added. These individuals are not liable for civil damages arising from complying with or failing to comply with extracurricular safety provisions as listed in the Education Code unless the individual acts willfully or is wantonly negligent.