

Vantage Points

A Board Member's Guide to Update 74



**Your
Viewpoint?**

Vantage Points is an executive summary, prepared for board members, of the TASB Localized Update. The topic-by-topic outline and the thumbnail descriptions survey the update landscape, focusing attention on key issues to assist local officials in studying specific changes found in the policies. The description of policy changes in **Vantage Points** is highly summarized; the Explanatory Notes, found in the update packet, provide significantly greater detail regarding policies affected by this update. Local officials should thoroughly review the policies and Explanatory Notes for information that is presented here in very concise form.

PLEASE NOTE: This Update 74 **Vantage Points** and the Localized Update 74 packet may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.

We welcome your comments or suggestions for improving **Vantage Points**. Please write to us at TASB Policy Service, P.O. Box 400, Austin, TX 78767-0400, or call us at 800-580-7529 or 512-467-0222.

For further information about Policy Service, check out our Web site at <http://www.tasb.org/policy>.

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The Big Picture

Driven by the exposure of fraud and impropriety in corporate America, a comprehensive review and reform of accounting, management, and oversight practices has swept across organizations of all descriptions. School districts are no exception, as evidenced by many of the Update 74 policies.

The Update also addresses the Commissioner's resolution for conflicting statutory and funding provisions for health reimbursement arrangement accounts (HRAs), as well as a miscellany of other board member, staff, and student issues.

Fraud and Related Issues **Budget Oversight**

Considering the board's financial oversight responsibility, a new section has been added to **CE(LEGAL)** requiring board members to verify that expenditures presented for their approval fall within budgetary appropriations. A board member who approves expenditures in excess of the amounts in the District's approved or amended budget commits a misdemeanor.

(LOCAL) POLICY CONSIDERATIONS:

CE

A periodic financial statement is a tool critical to the fulfillment of the board's oversight responsibility. TEA's most recent Financial Accountability System Resource Guide (FASRG) speaks to "periodic updates on budget results," specifically "budget-to-actual comparisons" to "keep the board apprised of issues which may affect the district's performance" and to "prepare them for the next budget cycle."

While the board should clearly convey its expectations as to the substance and frequency of the statements, such guidelines do not necessarily need to be stated in policy. If however, the board would prefer to add the guidelines to its policy, the district's Policy Consultant/Analyst can provide sample text that has been developed by other districts.

**(LOCAL) POLICY CONSIDERATIONS:
CAA**

In 2002, Congress passed the Sarbanes-Oxley Act, requiring private sector companies and their auditors to produce more explicit financial reports aimed at elevating the level of accounting integrity. TEA, prompted by the auditing profession's move to broaden the scope of financial audits through "SAS 99," updated its FASRG in an effort to guide districts in performing their financial responsibilities with heightened diligence. For more details regarding "SAS 99" and the FASRG revisions see the Explanatory Notes in this update.

The new policy at this code—Fiscal Management Goals and Objectives: Financial Ethics—clearly requires prudent management of the district's fiscal resources and defines and prohibits fraud and financial impropriety. The policy conveys the board's expectations for its members, employees, and others involved in the financial operations of the district—to model integrity and diligence in fiscal matters and to deter and monitor for fraud or financial impropriety in the District. To that end, the policy also requires:

- Maintenance of a system of internal controls.
- Reports and investigations of fraud or financial impropriety, with protection from retaliation.
- Disciplinary and legal consequences for substantiated allegations.
- Analysis of possible contributing factors to substantiated fraud or financial impropriety.

Other provisions from the Sarbanes-Oxley Act can be found at:

- Criminal Penalties** ■ **CPC(LEGAL)**—criminal penalties for any person who "alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry . . ." related to a federal investigation or bankruptcy.
- Protection from Retaliation** ■ **DG(LEGAL)**—fine, imprisonment, or both for retaliation against a person who provides a law enforcement officer with information related to any possible federal offense.

Conflict of Interest

(LOCAL) POLICY CONSIDERATIONS:

DBD

While the policy continues to require an employee to disclose a conflict of interest, the language has been clarified and an affidavit requirement established. Prior to the district's awarding a contract or authorizing payment, an employee must file an affidavit disclosing his or her "substantial interest in a business entity or interest in real property" if he or she is in a position to influence the district's decision. "Substantial interest" is defined, as for board members, at BBFA(LEGAL).

For districts that did not have policy language governing employee endorsements of products or use of employee position for private gain, we have included those provisions.

Insurance Broker

When district insurance contracts have a premium aggregate of \$10,000 or more in a 12-month period, the district is not permitted to designate a broker to make the purchase. The Attorney General's Opinion cited in **CR(LEGAL)** points out that allowing a broker to make the decision does not guarantee that the district will receive the best value, as required by statute. Contracts under \$10,000 may be purchased by a broker, but only if the board can ensure that the use of the broker is in the district's best interest and if the broker is selected in a manner that the district determines is reflective of good management practice.

Registered Architect

CV(LEGAL) includes clarification of the Texas Board of Architectural Examiners rules. While the amount of the thresholds requiring the use of a registered architect remain the same for specified types of construction projects, those amounts are now the "total projected" costs at the "commencement of construction."

HRAs

Conflicting legislation enacted during the 78th Regular Session delayed action on health reimbursement arrangements (HRAs). HB3257 called for a state contribution to each district employee's HRA in the amount of \$1,000—or an amount specified in the General Appropriations Act. HB3459, on the other hand, directed TRS to provide a "pass through" to school districts of \$500 for full-time employees and \$250 for part-time employees.

In response to a request from the Lieutenant Governor and the Speaker of the House, the Attorney General's office recently resolved the conflict by determining that neither bill received funding in the General Appropriations Act, but that the mechanism established for funding the earlier bill—providing a "pass through"—was still in effect. As a result of the determination, TRS suspended implementation of HRAs and instead turned its attention to administering the supplemental compensation. Consequently, the HRA provisions have been deleted and the "pass through" provisions reinstated at both **CRD(LEGAL)** and **DEA(LEGAL)**.

Elections

Preclearance

Districts have discretion in calling numerous types of elections—a board exercises its discretion even by choosing the next regular election date. Because the elections are discretionary, preclearance through the Department of Justice is required in accordance with the Voting Rights Act. This federal provision has been added to the following policies, along with the changes:

Board Members

- **BBC(LEGAL)**—the temporary replacement of a board member called up for more than 30 days of active military service. This Texas constitutional amendment was authorized by voters in September 2003.

Bonds

- **CCA(LEGAL)**—bond elections. The Election Code now requires the call for an election to be made at least 62 days, rather than 45 days, preceding the elections.

Rollback

- **CCG(LEGAL)**—rollback elections. Legislation from the 78th Regular Session made the Election Code, rather than the Tax Code, the controlling statute for rollback elections. Consequently, if an election is triggered, it must:
 - Occur between 30 and 90 days after the rate adoption.
 - Be held on a uniform election date, if one falls within the time restriction.
 - Not be held within 30 days before or after the November uniform date.

The homestead exemption for disabled homeowners has also been added at this code. This exemption became effective January 1, 2004.

Staff
Master Teachers

Following the addition of master reading teachers, **DBA(LEGAL)** has been organized, consolidating where possible the provisions that address master reading, mathematics, technology, and science teachers. Provisions for grants to fund stipends for these positions are also included.

(LOCAL) POLICY CONSIDERATIONS:
DBA

Because grants do not prorate funding for partial months of service by master teachers, districts are directed to determine by (LOCAL) policy how partial months will be reported to TEA for stipend purposes. Districts must also determine by policy the circumstances under which it will distribute master teacher stipends when the number of stipends is less than the number of eligible teachers. Accordingly, the enclosed policy specifies that:

- Master teachers serving in that capacity for more than ten days will be reported to TEA as having accrued a full month's credit.
- If the number of master teachers exceeds the grants allocated:
 - Teachers in the second or third years of the program will be assured a stipend.
 - Other master teachers will receive a stipend, to the extent funds are available, based on the length of time teaching in the subject area, and seniority, as measured from the employee's most recent date of hire.

To address deadlines that might have been required in a contract or other agreement, we have included—for all professionals—an additional requirement for possession of valid credentials within the schedule established by the district.

Appraisals
Teachers

In addition to reorganizing **DNA(LEGAL)**, we have added a new Commissioner's rule for less-than-annual teacher appraisals. The Commissioner has:

- Defined the area of deficiency as a domain.
- Clarified options available to districts, including the board's authority at the end of the school year to revise its appraisal policy. Districts have the authority to apply the policy changes to all teachers regardless of their participation in less-than-annual cycle options in previous years.

Administrators

The Commissioner's rules for appraisal of administrators have been deleted from **DNB(EXHIBIT)** and incorporated into **DNA(LEGAL)**. The provision for less-than-annual appraisals, however, was deleted; the Commissioner's rules issued this spring applied the term "teacher" exclusively to classroom teachers rather than the broader application used in the Education Code.

RIFs

(LOCAL) POLICY CONSIDERATIONS:

DFF

Previously, this policy required a district executing a reduction in force (RIF) to consider an employee subject to a RIF for other openings in the district until the date of an employee-requested RIF hearing. Revisions based on a recent Commissioner's decision now place the responsibility on the employee for reviewing posted vacancies and submitting an application for an available position for which he or she is qualified. The district must then offer the position to the employee if the employee:

- Meets the district's objective criteria; and
- Is the most qualified internal applicant for the position.

The employee enjoys this advantage only until the date of the requested RIF hearing.

A couple of additions have been made to the criteria for RIF decisions:

- Under certification, "highly qualified status."
- Under seniority, "as measured from the employee's most recent date of hire."

Staff Development

Legislation from the 78th Regular Session eliminated the requirement for Commissioner's rules to guide staff development, giving districts more latitude. The rules previously in effect have been deleted from **DMA(LEGAL)**.

Sanctions

At **DFF(LEGAL)**, we have added new SBEC rules pertaining to sanctions against an educator who appears to have "abandoned" a Chapter 21 contract. SBEC will not pursue sanctions unless the board:

- Determines that there was not good cause for the employee to abandon the contract; and
- Submits a written complaint to SBEC within 30 days of the employee's separation from the district.

Students Foreign

FD(LEGAL) now includes provisions from INS and from the Enhanced Border Security and Visa Entry Reform Act that address "nonimmigrant aliens." The Federal Educational Rights and Privacy Act (FERPA) grants an exception to the confidentiality of student records and requires districts to seek approval to enroll such students with F, J, or M visas and to enter certain information, including "no shows," on the Internet-based tracking system, the Student and Exchange Visitor Information System. TASB Legal Services will soon be releasing a FAQ addressing this topic on the TASB Web site.

Anonymous Forms	FM(LEGAL) has been reorganized with minor revisions; of substance is the inclusion of a Commissioner's decision stating that anonymously prepared student evaluation forms used to determine whether a student may participate in a school-related program are subject to disclosure.
Special Education	The 60-day time line for completing an initial evaluation for special education services, beginning at the time of referral, has been deleted from EHBA(LEGAL) . As a result of legislation during the 78th Regular Session, the clock now begins ticking when the district receives the signed written consent for the evaluation.
Miscellaneous	Other provisions addressed in this update include the following:
Closed Meetings	Deleted from BEC(LEGAL) is a statement requiring the board to reconvene from closed meeting into open meeting prior to adjourning. The provision did not specifically appear in statute; in effect, however, it was consistent with the prohibition against board action in closed session, thereby forcing the board to adjourn in open session.
Trustee Eligibility	A candidate for the board must be a "qualified voter"—i.e., an eligible, registered voter—to be elected to office. Because the person does not have to be a "qualified voter" at the time of filing, however, BBA(LEGAL) has been revised accordingly.
Volunteers	To clarify the immunity enjoyed by a volunteer for the district, the exception for intentional misconduct or gross negligence has been included at GKG(LEGAL) .
Facility Use	GKD(LEGAL) now includes, from the Texas Civil Practices and Remedies Code, a longstanding provision that prohibits unlawful discrimination regarding such things as use of District facilities open to the public, or participation in District programs.