



# UNITED INDEPENDENT SCHOOL DISTRICT INFORMATIONAL ITEM

**TOPIC:** Review of LEGAL Policies in TASB Update 113

**SUBMITTED BY:** Gloria S. Rendon **OF:** Associate Superintendent for Administration

**APPROVED FOR TRANSMITTAL TO SCHOOL BOARD:** \_\_\_\_\_

**DATE ASSIGNED FOR BOARD CONSIDERATION:** June 19, 2019

**INFORMATIONAL REPORT:**

**Review of LEGAL Policies in TASB Update 113**

**See Attached List**

# Explanatory Notes

## TASB Localized Policy Manual Update 113

### United ISD

#### **AIA(LEGAL)**

#### **ACCOUNTABILITY: ACCREDITATION AND PERFORMANCE INDICATORS**

Significant changes to this legally referenced policy on accreditation include:

- Moving the list of quality of learning indicators, which are used to prepare performance reports, to AIB;
- Adding detail on campus performance ratings under the local accountability option; and
- Clarifying when the commissioner of education's award of a campus distinction designation is mandatory or discretionary.

#### **AIB(LEGAL)**

#### **ACCOUNTABILITY: PERFORMANCE REPORTING**

Significant changes to this legally referenced policy on performance reporting include:

- Better distinction of the district's obligations regarding hearing requirements, publication, and use of the annual report and the Texas Academic Performance Report (TAPR);
- Clarification of additional information required in the annual performance report;
- Addition of the list of quality of learning indicators used to prepare performance reports, which was previously at AIA; and
- New text to reference the Performance-Based Monitoring Analysis System (PBMAS).

#### **AIC(LEGAL)**

#### **ACCOUNTABILITY: INTERVENTIONS AND SANCTIONS**

Update 113 includes a significant restructuring of this legally referenced policy on interventions and sanctions to add detail as appropriate, reorganize the provisions for better flow, and better reflect the legal content. The revisions also incorporate recent Administrative Code changes addressing:

- Provisions regarding commissioner of education appointment of a board of managers if a district has had a conservator or management team assigned for two consecutive years (effective January 28, 2019);
- Procedures to provide training in effective leadership strategies for a board of managers and subsequently to the board of trustees (effective February 4, 2019);
- Provisions on obtaining an intervention pause by contracting with a partner to operate a campus charter or operating as a designated mathematics innovation zone (effective November 18, 2018); and
- Information regarding when the commissioner may increase the intensity of sanctions (effective December 5, 2018).

#### **AID(LEGAL)**

#### **ACCOUNTABILITY: FEDERAL ACCOUNTABILITY STANDARDS**

In this legally referenced policy on federal accountability, we have added detail about what must be included in the district plan required to receive a Title I, Part A subgrant. For schoolwide programs and targeted assistance schools, the plan must address, where appropriate, educational services outside the district's schools for neglected or delinquent children living in local institutions or attending community day-school programs.

Other changes are to match statutory language.

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#### **BBBA(LEGAL)** ELECTIONS: CONDUCTING ELECTIONS

Citations have been updated throughout this legally referenced policy on elections. In addition, we have made a correction at Notice to Candidates to properly reflect the statutory language.

#### **BBBD(LEGAL)** ELECTIONS: CAMPAIGN ETHICS

This legally referenced policy on campaign ethics has been updated to include existing legal provisions explaining disclosure requirements for political advertising.

#### **BBE(LEGAL)** BOARD MEMBERS: AUTHORITY

Provisions on board member access to information have been updated to include the text of two offenses addressing misuse of government records and information, which address willfully destroying, mutilating, or removing public information without permission; altering public information; or distributing confidential information.

Other changes include:

- A cross-reference to CPC for offenses on destruction or alienation of records and tampering with governmental records;
- A cross-reference to BBFB for offenses on misuse of official information;
- Reordering of provisions for better flow; and
- Revisions to better match statutory language.

#### **BBE(LOCAL)** BOARD MEMBERS: AUTHORITY

A recommended revision to this policy addressing board member access to information clarifies that when a board member is provided access to records or reports that are confidential or not subject to public disclosure, district staff will inform the board member about compliance with the district's applicable information security controls.

#### **BDD(LOCAL)** BOARD INTERNAL ORGANIZATION: ATTORNEY

This local policy on legal counsel has been updated to reflect common practices.

In the first two paragraphs, recommended changes reflect that many law firms use an engagement letter rather than a written agreement or contract to establish the fees and expenses for services.

A revision about reporting legal advice to the entire board recognizes that the board president or board's designee, not just the superintendent, may obtain and report legal advice to the board.

A final change strengthens the wording regarding staff requests for legal advice.

#### **BDF(LEGAL)** BOARD INTERNAL ORGANIZATION: CITIZEN ADVISORY COMMITTEES

From existing statute, we have added the requirement for the School Health Advisory Council's annual report to the board to include any recommendations made by the physical activity and fitness planning committee.

#### **BF(LEGAL)** BOARD POLICIES

This legally referenced policy addressing waivers has been updated to include waivers applicable to a district or campus required to have a student achievement improvement plan. Other changes are to better match statutory language.

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#### **BJCD(LLEGAL)** SUPERINTENDENT: EVALUATION

A new Administrative Code rule effective January 24, 2019, has been added to this legally referenced policy on superintendent evaluation. The rule allows completion of the Lone Star Governance superintendent evaluation to satisfy the commissioner of education's superintendent appraisal process.

#### **BJCD(LOCAL)** SUPERINTENDENT: EVALUATION

Recommended revisions streamline this local policy on superintendent evaluation by deleting specifics about the evaluation instrument and the list of board objectives in conducting the evaluation. These changes were prompted by recently updated Administrative Code rules. The changes also clarify that although the evaluation typically takes place in a closed meeting, the superintendent may request an open meeting.

An overview of legal requirements and links to TASB's Superintendent Evaluation Instrument are available on the [TASB Leadership Team Services](#) website.

#### **CBB(LLEGAL)** STATE AND FEDERAL REVENUE SOURCES: FEDERAL

Additional provisions have been added from the Office of Management and Budget (OMB) Uniform Guidance, which establishes uniform requirements for federal awards to non-federal entities, such as school districts. The provisions include standards for federally owned property, property acquired or improved with federal awards, and equipment and supplies acquired under a federal award.

In addition, we have updated the Note on page 5 with additional resources on the micro-purchase threshold and the simplified acquisition threshold.

#### **CDA(LLEGAL)** OTHER REVENUES: INVESTMENTS

Throughout this legally referenced policy on investments, we have added statutory language that gives districts flexibility to take certain actions by "rule, order, ordinance, or resolution." Other changes are to better match statutory language.

#### **CDB(LLEGAL)** OTHER REVENUES: SALE, LEASE, OR EXCHANGE OF SCHOOL-OWNED PROPERTY

We have added a Note at the beginning of this policy reminding districts that specific legal requirements apply to the disposal of real property acquired with federal funds. Provisions on Civil Order 5281 have been deleted. Other changes are to better match statutory language.

#### **CDH(LLEGAL)** OTHER REVENUES: PUBLIC AND PRIVATE FACILITIES

Additional detail from existing statute has been added regarding public facility corporations and public and private facilities and infrastructure partnerships.

#### **CFEA(LLEGAL)** PAYROLL PROCEDURES: SALARY DEDUCTIONS AND REDUCTIONS

This legally referenced policy on salary deductions has been revised to include more detail from existing law on each of the listed deductions.

#### **CG(LLEGAL)** BONDED EMPLOYEES AND OFFICERS

This legally referenced policy on bonded employees and officers has been deleted, since the content is addressed at other codes.

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#### CI(LOCAL) SCHOOL PROPERTIES DISPOSAL

This local policy authorizes the superintendent to declare district materials, equipment, and supplies to be unnecessary. In response to questions, we have clarified that the scope of this authority includes district vehicles and other district personal property. Corresponding changes have also been made to the disposal provisions.

In addition, we recommend adding a statement that instructional materials must be disposed of in accordance with law, as the Education Code requires the board to determine that the materials are not needed by the district.

Finally, a change clarifies that property obtained with federal funds or as federal surplus must be managed in accordance with federal law.

Please note that because BJA(LOCAL) permits the superintendent to delegate responsibilities to other employees, we have removed language referring to the superintendent's designee. Contact the district's policy consultant if the board wants to specifically authorize someone other than the superintendent regarding the duties addressed in this policy.

If the board has delegated to the superintendent full authority for disposal of unnecessary personal property, please contact your policy consultant for alternate policy text.

#### CNC(LEGAL) TRANSPORTATION MANAGEMENT: TRANSPORTATION SAFETY

The offense pertaining to firearms on buses has been deleted from this legally referenced policy on transportation, as the offense is already included at GKA(LEGAL). Other changes are to better match statutory language.

#### CO(LOCAL) FOOD AND NUTRITION MANAGEMENT

A recommended revision to this local policy expands the provision authorizing the superintendent to develop regulations on donation of food to refer to other disposal methods for leftover food that the district might want to permit, such as implementing a sharing table or selling leftovers. The Texas Department of Agriculture offers [guidance](#) on this topic.

#### COA(LEGAL) FOOD AND NUTRITION MANAGEMENT: PROCUREMENT

We have added a Note on page 2 referring to the Texas Department of Agriculture's Food and Nutrition Division *Administrator's Reference Manual* for information on contracts regarding consultants, food service management companies, and vended meals.

#### COA(LOCAL) FOOD AND NUTRITION MANAGEMENT: PROCUREMENT

This local policy is recommended for inclusion in the district's policy manual to comply with state and federal procurement rules on use of child nutrition funds. The text assigns responsibility to the superintendent to oversee the use of federal child nutrition funds to procure goods and services as appropriate and to develop and enforce financial management systems, internal control procedures, procurement procedures, and other procedures to comply with state and federal requirements.

The policy also includes provisions that authorize the superintendent to determine whether the district will apply a geographic preference when procuring unprocessed, locally grown or raised agricultural products to determine the types of products to which the preference would apply and to define the relevant geographic area.

Contact your policy consultant if the board will authorize a position other than the superintendent to perform these responsibilities.

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#### **COB(LEGAL)**

#### **FOOD AND NUTRITION MANAGEMENT: FREE AND REDUCED-PRICE MEALS**

This legally referenced policy on free and reduced-price meals has been updated with additional provisions from existing law that address U.S. Department of Agriculture standards for eligibility hearings and nondiscrimination and confidentiality. A link provides the required nondiscrimination statement posting in a variety of languages.

#### **COB(LOCAL)**

#### **FOOD AND NUTRITION MANAGEMENT: FREE AND REDUCED-PRICE MEALS**

This new local policy is recommended for inclusion in the district's policy manual to address elements of the federal free and reduced-price meal programs.

The policy reflects the district's participation in the community eligibility provision meal program.

New text addresses student and parent appeals regarding eligibility for free or reduced-price meal programs. Federal law requires a district to provide a hearing process that meets certain requirements, as described in COB(LEGAL). The local policy provides an avenue for appeal of the hearing official's decision in accordance with FNG(LOCAL).

As reflected at Civil Rights Complaints, federal and state guidance also requires districts to inform individuals alleging discrimination in school meal programs based on race, color, national origin, sex, age, or disability of the procedures and right to file a complaint with the Texas and U.S. Departments of Agriculture. Any such complaints must be forwarded to the Texas Department of Agriculture.

#### **CPC(LEGAL)**

#### **OFFICE MANAGEMENT: RECORDS MANAGEMENT**

This legally referenced policy on records management has been updated to include the criminal offenses of destruction or alienation of records and tampering with governmental records.

#### **CR(LEGAL)**

#### **INSURANCE AND ANNUITIES MANAGEMENT**

This legally referenced policy on insurance has been updated to better match statutory language.

#### **CRB(LOCAL)**

#### **INSURANCE AND ANNUITIES MANAGEMENT: LIABILITY INSURANCE**

This local policy addressing the various types of insurance the district will purchase is recommended for deletion, as these decisions are typically made during the budget process and there is no requirement to reflect these decisions in board policy.

#### **CRF(LEGAL)**

#### **INSURANCE AND ANNUITIES MANAGEMENT: UNEMPLOYMENT INSURANCE**

Additional detail from existing statute has been added to this legally referenced policy on unemployment insurance to provide more information about reasonable assurance.

#### **DEC(LEGAL)**

#### **COMPENSATION AND BENEFITS: LEAVES AND ABSENCES**

At Compliance with a Subpoena, a new Note includes case law explaining that one federal district court concluded that governmental entities, such as school districts, have immunity from liability for claims of retaliatory discharge of an employee for complying with a subpoena.

Additional supporting case law has also been added to the provisions explaining that uniform enforcement of a reasonable absence-control rule does not constitute retaliatory discharge.

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#### DFE(LEGAL)

#### TERMINATION OF EMPLOYMENT: RESIGNATION

To assist districts in deciding whether to report an employee who has abandoned a contract to the State Board for Educator Certification (SBEC), we have included the factors that SBEC considers when determining whether the educator had good cause to abandon the contract.

#### E(LEGAL)

#### INSTRUCTION

The E section table of contents has been revised to reflect the deletion of codes EFC, on community instructional resources, and EFD, on field trips. Information regarding visitors to campuses is addressed at GKC, while content on all student travel, including field trips, is now found at FMG.

#### EHBAF(LEGAL)

#### SPECIAL EDUCATION: VIDEO/AUDIO MONITORING

This legally referenced policy has been updated to include revised Administrative Code rules effective January 31, 2019, on video surveillance of special education settings. The rules add detail on reporting possible abuse or neglect seen in a recording, use of recordings in employee disciplinary actions, local policy requirements, procedures to appeal the denial of a request for video installation or to view a recording, and the Texas Education Agency expedited review process.

#### EHBAF(LOCAL)

#### SPECIAL EDUCATION: VIDEO/AUDIO MONITORING

Recommended revisions to this local policy on video and audio monitoring of special education classrooms are from revised Administrative Code rules effective January 31, 2019. Changes include:

- Clarification that requests for cameras to be installed the following school year must be in writing;
- At Installation and Operation, the addition of an affirmative statement that the district must operate the cameras during the instructional day at all times when "one or more" students are in the classroom;
- The revision of language regarding areas used for changing a student's clothes to match language in the rules, also at Installation and Operation;
- The reference to "release" of video recordings to specified individuals at Confidentiality of Recordings; and
- At Complaints, new provisions addressing the ability of a parent, staff member, or district administrator to request an expedited review of certain complaints by the Texas Education Agency.

#### EHBAF(EXHIBIT)

#### SPECIAL EDUCATION: VIDEO/AUDIO MONITORING

Our records indicate that you have an exhibit at this code that you may need to review and revise in light of the changes in this update. Please advise us:

- If this exhibit is obsolete and should be deleted from your localized policy manual; or
- If you have revisions that you wish to submit for editorial and legal review and incorporation into your localized policy manual.

#### EHBF(LEGAL)

#### SPECIAL PROGRAMS: CAREER AND TECHNICAL EDUCATION

This legally referenced policy on career and technical education has been updated to include information on district participation requirements under the Carl D. Perkins Career and Technical Education Act, effective July 1, 2019. The Act updated the definition of a member of a special population to whom a district must provide support to ensure program accessibility and assist in overcoming barriers.

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#### **EHBI(LLEGAL)**

#### **SPECIAL PROGRAMS: ADULT AND COMMUNITY EDUCATION**

Updates to this legally referenced policy on adult education are from amended rules effective December 16, 2018. The policy now refers to the Administrative Code for the essential program requirements. Diploma requirements were deleted from rule and deferred to TEA.

#### **EKB(LLEGAL)**

#### **TESTING PROGRAMS: STATE ASSESSMENT**

Revisions to this legally referenced policy on state assessments include amended rules effective January 8, 2019, that clarify and update provisions on substitute assessments used to satisfy the state's end-of-course (EOC) graduation requirements.

#### **ELA(LLEGAL)**

#### **CAMPUS OR PROGRAM CHARTERS: PARTNERSHIP CHARTERS**

Changes to this legally referenced policy on partnership charters are based on new rules addressing implementation of the accountability intervention pause eligible districts may obtain by entering into partnerships to operate a district campus or through designation as a mathematics innovation zone.

#### **F(LLEGAL)**

#### **STUDENTS**

The F section table of contents has been revised to reflect that FNF has been renamed Investigations and Searches.

#### **FFG(LLEGAL)**

#### **STUDENT WELFARE: CHILD ABUSE AND NEGLECT**

Revisions to this legally referenced policy on child abuse and neglect provide additional detail on the disciplinary actions SBEC may take against an educator for failure to comply with child abuse and neglect reporting requirements. Other changes are to better match statutory language.

#### **FNF(LLEGAL)**

#### **STUDENT RIGHTS AND RESPONSIBILITIES: INVESTIGATIONS AND SEARCHES**

This legally referenced policy on student searches has been updated to include case law on intrusive searches, such as a search of a student's underwear. The cases establish the standard that such searches are impermissibly intrusive unless the school officials reasonably suspect that the object of the search is dangerous or likely to be hidden in the student's underwear.

Legal guidance on student searches is outlined in TASB Legal Service's article, [Legal Issues in Student Searches](#).

#### **FNF(LOCAL)**

#### **STUDENT RIGHTS AND RESPONSIBILITIES: INVESTIGATIONS AND SEARCHES**

This local policy on student investigations and searches has been significantly revised to align with common practices and current case law.

The first section affirms that district officials may question a student about the student's or another student's conduct, and students may not refuse to answer questions based on the right not to incriminate themselves.

Provisions about district property inform students that they have no expectation of privacy in district property and such property may be searched at any time without notice. This would include, for example, blanket searches. Students are responsible for any prohibited items found in district property provided to them.

General search provisions have been added and outline the district's authority to conduct searches of students, their belongings, and vehicles in accordance with law and in a reasonable and nondiscriminatory



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manner. The policy explains when district officials may initiate a search and the standard for conducting a reasonable-suspicion search.

The policy permits but does not require the district to conduct metal detector searches, including those using handheld wands, and to use trained dogs to screen a student's belongings or an area.

To avoid conflict between policy and administrative procedures on random drug testing, we recommend that the details of the district's drug-testing program for extracurricular activity participants be removed from board policy. The recommended policy text addresses the board's authorization of the program, students subject to testing, topics to be addressed in procedures, and appeals. Sample administrative procedures are provided in the *Regulations Resource Manual*.

We also recommend that provisions addressing any voluntary drug-testing program be removed from board policy. The details of any such program may be more appropriately addressed in administrative procedures and communicated to students and parents in the student handbook.

If you have questions about moving your district's drug-testing details to administrative procedures, please contact your policy consultant.

Legal guidance on student searches, including legal concerns seen in local policies, is addressed in TASB Legal Service's *Legal Issues in Update 113* memo. Review this document to determine if your practices reflect best practices for student searches.

### **FOA(LLEGAL)**                      **STUDENT DISCIPLINE: REMOVAL BY TEACHER OR BUS DRIVER**

Several existing statutory provisions have been added to this legally referenced policy addressing teacher removal of a student from class. The provisions address the required removal conference, appeals, and placement length.

For clarity, provisions regarding mandatory removal have been moved to the beginning of the policy.

### **FODA(LLEGAL)**                      **EXPULSION: JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM**

This policy is being issued to reflect updated information at the bottom of the document. There are no changes to the text of this legally referenced policy.

### **FOF(LLEGAL)**                      **STUDENT DISCIPLINE: STUDENTS WITH DISABILITIES**

Provisions on manifestation determinations for students with disabilities have been updated to add an existing statutory provision. If the student's conduct is determined to be the direct result of the district's failure to implement the student's IEP, the district must take immediate steps to remedy the deficiencies.