

Explanatory Notes

TASB Localized Policy Manual Update 85

District: Brackett ISD
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(LLEGAL), CNA(LLEGAL), and CV(LLEGAL) 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 broadened the district's current prohibition on nonschool use to cover all district vehicles, rather than just buses. An exception allows the superintendent or designee to authorize use of district vehicles by certain entities in emergencies or disasters. We have retained the district's locally developed provision allowing other districts to request use of district vehicles in emergency situations.

The superintendent or designee is still required to develop administrative regulations governing SCHOOL-RELATED USE, which now should address all school vehicles. 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. We have retained your locally developed text regarding MONITORED USE by members of the public.

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

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:

Explanatory Notes

TASB Localized Policy Manual Update 85

- 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.

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. This policy has been revised as follows:

Explanatory Notes

TASB Localized Policy Manual Update 85

- 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 ADA 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 ADA, 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.

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.

Explanatory Notes

TASB Localized Policy Manual Update 85

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 ADA, 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.

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.

Explanatory Notes

TASB Localized Policy Manual Update 85

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.

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/.

Explanatory Notes

TASB Localized Policy Manual Update 85

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.

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.
- 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.

Explanatory Notes

TASB Localized Policy Manual Update 85

- 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.

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.

Explanatory Notes

TASB Localized Policy Manual Update 85

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.

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.

Explanatory Notes

TASB Localized Policy Manual Update 85

- 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.
- 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.

Explanatory Notes

TASB Localized Policy Manual Update 85

- 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.
- 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.

Explanatory Notes

TASB Localized Policy Manual Update 85

- 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.
- 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.

Explanatory Notes

TASB Localized Policy Manual Update 85

- 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.

