

BOARD MEMBERS

I. BACKGROUND and/or LEGAL REFERENCE

In discharging its duties the Board shall function in accordance with applicable state and federal statutes, controlling court decisions, and applicable regulations promulgated pursuant to statute by state and federal agencies. Opinions of the Attorney General shall be used for guidance in interpretation of applicable law. The Board shall constitute a body corporate and shall have the exclusive power to manage and govern the College District. *Education Code 1.001(a), 130.082(d), 130.084; Texas Ass'n of Steel Importers, Inc. v. Texas Highway Commission, 372 S.W. 2d 525 (Tex. 1963)*

Extent of State and Local Control All authority not vested by the laws of the state in the Coordinating Board or in the Central Education Agency shall be reserved and retained locally in the College District or in the Board as provided in the laws applicable. *Education Code 130.002*

II. POLICY

A. Board Members: Eligibility/Qualifications

1. Eligibility

To be eligible to be a candidate for, or elected or appointed to, the office of College District Trustee, a person must:

- a. Be a qualified (registered) voter. *Education Code 130.082(d); Election Code 11.002*
- b. Take the official oath of office. *Education Code 130.082(d)*
- c. Serve without compensation. *Education Code 130.082(d)*
- d. Reside in the College District. *Texas Constitution, Art. XVI, Sec. 14; Education Code 130.082(d)*

2. Qualified Voter

A person may not be elected Trustee unless the person is a qualified voter. *Education Code 11.061(b)*

"Qualified voter" means a person who:

- a. Is 18 years of age or older;
- b. Is a United States citizen;
- c. Has not been determined mentally incompetent by a final judgment of a court;
- d. Has not been finally convicted of a felony or, if so convicted:
 1. Has fully discharged his or her sentence, including any term of incarceration, parole, or supervision;
 2. Has completed a period of probation ordered by any court; or
 3. Has been pardoned or otherwise released from the resulting disability to vote;

e. Is a resident of this state; and

f. Is a registered voter.

Election Code 11.002

3. Single-Member Districts

A candidate for Trustee representing a single-member district must be a resident of the Trustee district he or she seeks to represent. Trustees shall, during their term of office, reside within the trustee district from which they were elected. *Education Code 130.0821(b)*

4. Official Oaths

After each election or appointment, the elected or appointed Board members shall file their official oaths with the Board President. *Education Code 11.061(a)*

5. Candidate's Residency Term

a. Pre-filed Candidacy

An individual seeking election to the office of Trustee by having his or her name placed on the ballot must have been a resident of the state for 12 months, and a resident of the College District for six months, prior to the last date on which the candidate could file to be listed on the ballot. *Election Code 141.001(a)(5)(A)*

b. Write-in Candidacy

An individual seeking election to the office of Trustee by write-in vote must have been a resident of the state for 12 months and a resident of the College District for six months, prior to the day of the election. *Election Code 141.001(a)(5)(C)*

c. Appointment to Office

An individual appointed to the office of Trustee must have been a resident of the state for 12 months and a resident of the College District for six months, prior to the day on which the appointment is made. A person appointed to fill a vacancy in a trustee district must be a resident of that trustee district. *Election Code 141.001(a)(5)(E); Education Code 130.082(d)*

6. "Residence" Defined

"Residence" shall mean domicile, one's home and fixed place of habitation to which one intends to return after any temporary absence; one does not lose one's residence status by leaving to go to another place for temporary purposes only. *Election Code 1.015*

B. Board Members: Elections

1. Methods of Election

Election of Trustees shall be by at-large positions, except as otherwise provided. *Education Code 130.082(f), (h), 130.0821(b)130.082. 130.0821. 130.0822*

- a. At Large Positions. Either two or three Trustees shall be elected at each election, the number of Trustees depending upon that required to constitute a board of nine (9) members to serve terms of six (6) years. *Education Code 130.082(e), (f), (g), 130.0821(f)*
- b. Single-member Districts. The Board may order that all or a majority of the Trustees of the College District be elected from single-member Trustee districts. The order must be entered not later than the 120th day before the day of the first election of Trustees from single-member Trustee districts.

If the Board orders that Trustees shall be elected from single-member Trustee districts, the Board shall divide the College District into the appropriate number of Trustee districts, based on the number of members of the Board that are to be elected from single-member districts, and shall number each Trustee district.

The Trustee districts must be compact and contiguous and must be as nearly as practicable of equal population according to the last preceding federal census. Trustee districts must be drawn not later than the 90th day before the day of the first election of Trustees from single-member districts.

The Board may provide for Trustees holding office on the date of the initial election of Trustees from single-member districts to serve the remainder of their terms and to represent a Trustee district for that term without having residency in that Trustee district.

Unless the Board has made provision for Trustees to complete their term, as described above, residents of each Trustee district are entitled to elect one Trustee to the Board. A candidate for Trustee must be a resident of the Trustee district the candidate seeks to represent.

Not later than the 90th day before the day of the first regular Trustee election at which Trustees may officially recognize and act on the last preceding federal census, the Board shall redivide the College District into the appropriate number of Trustee districts if the census data indicates that the population of the most populous district exceeds the population of the least populous district by more than ten percent. Redivision of the College District shall be in the manner provided for the initial division of the College District.

After each redistricting, all positions on the Board shall be filled unless the Board determines that Trustees shall be elected from the new Trustee districts as provided by Education Code 130.0826. The Trustees then elected shall draw lots for staggered terms as provided by Education Code 130.082.

The Board of any college district that elects some or all of its members from single-member districts and in which the Trustees serve staggered terms may provide for the Trustees in office at the first election after the College District is redistricted to serve for the remainder of their terms in accordance with Education Code 130.0826.

If the Board provides for the Trustees in office to serve for the remainder of their terms in accordance with Education Code 130.0826, the Trustee districts established by the

redistricting plan shall be filled as the staggered terms of Trustees in office expire. When the Board adopts a redistricting plan, the Board shall determine from which new Trustee district the position of each Trustee in office will be filled as it becomes vacant.

Education Code 130.0826 does not authorize a Trustee of the College District to continue in office after a redistricting plan takes effect if the member no longer resides in the district from which the Trustee was elected.

This method of election does not apply to a college district to which Education Code 130.081, 130.083, 130.0821, or 130.088 applies, or to a college district required by other law to elect Trustees from single-member districts. This method of election does not apply to the election of Trustees in any college district in which the election of Trustees is governed by a court order so long as that order remains in effect. This method of election does apply to an independent school district junior college district governed by a separate board.

Education Code 130.082, 130.0822, 130.0826

2. Election by Position

A college district that elects a governing board of seven members, with four members elected from respective commissioner precincts and three members elected at large, may order that the Board members elected at large be elected instead by position. The order must be entered not later than the 120th day before the first election of a Trustee by position. The Board may provide for Trustees holding office on the date of the initial election of Trustees by position to serve the remainder of their terms and to represent a position for that term. *Education Code 130.0823*

3. Notice to Voter Registrar

A college district that changes its boundaries or the boundaries of college districts used to elect members to the Board shall not later than the 30th day after the date the change is adopted;

- a. Notify the voter registrar of the county in which the area subject to the boundary change is located of the adopted boundary change; and
- b. Provide the voter registrar with a map of an adopted boundary change in a format that is compatible with the mapping format used by the registrar's office.

Election Code 42.0615

4. Filing Information

A candidate for any position may have his or her name printed on a ballot for election to any position to be filled at each regular election by filing a written statement, signed by the candidate, with the Secretary of the Board not later than 5:00 p.m. of the 45th day before the day of the election. An application may not be filed earlier than the 30th day before the date of the filing deadline. The application must state the number of the position for which the candidate is filing or the name of the incumbent member of the Board holding the position sought. The application shall include all statutorily required information, including a statement that the candidate is aware of the nepotism law. The location on the ballot of the names of the candidates for each position shall be chosen by lot by the Board. The candidate shall be eligible to run for only one position in each election. *Education Code 130.082(g); Election Code 31.0021, 141.031; 144.005*

5. Write-in Voting

In a general or special election for members of the governing body of the College District, a write-in vote may not be counted for a person unless the person has filed a declaration of write-in candidacy with the Secretary of the Board in the manner provided for write-in candidates in the general election for state and county officers. A declaration of write-in candidacy must be filed not later than 5:00 p.m. of the fifth day after the date for a place on the ballot is required to be filed, except for an election to be held on the general election date for state and county officers, when the day of the filing deadline is the 67th day before election day. Subchapter B, Chapter 146, Election Code, applies to write-in voting in an election for members of the governing body except to the extent of a conflict with this section. *Education Code* ~~130.0825~~130.0825, 146.054

6. Election of Unopposed Candidate

The Board may declare each unopposed candidate elected to the office if:

- a. Each candidate for an ~~office~~at-large position that is to appear on the ballot is unopposed, and
- b. No at-large proposition is to appear on the ballot.

In the case of an election in which any members of the Board are elected from single-member districts, the unopposed candidate procedures can apply to the election in a particular single-member district if each candidate for an office that is to appear on the ballot in that College District is unopposed and the other requirements described above are met.

Election Code 2.051

The Board may declare each unopposed candidate elected to the office upon receipt of certification from the authority responsible for having the official ballot prepared. The ~~written~~ certification must state that if the election were held, only the votes cast for that candidate in the election for that office may be counted. If the Board makes such a declaration, the election is not held. A copy of the order or ordinance must be posted on election day at each polling place that would have been used in the election. *Election Code* 2.051, 2.052, 2.053(a), (b)

7. ~~Loyalty Oath~~Requirements for Application

Before a candidate can have his or her name placed on the ballot, he or she must ~~execute and have notarized the loyalty oath~~submit an application meeting the requirements of Education Code Section 141.031, *Election Code* 141.031; *The Socialist Workers Party v. Martin*, 345 F. Supp. 1132 (S.D. Tex. 1972), *aff'd* 483 F.2d 554 (5th Cir. 1973)

8. Nepotism

A candidate shall not take any affirmative action to influence a College District employee or current Trustee regarding the appointment, reappointment, employment, confirmation, reemployment, change in status, compensation, or dismissal of a person related to the candidate within a prohibited degree of relationship under the nepotism law. ~~[See DBE(EXHIBIT)]~~ However, this prohibition does not apply to a candidate's actions taken with respect to a bona fide class or category of employees or prospective employees. *Gov't Code* 573.042

9. General Election Dates

Election of Trustees of the College District shall be on one of the following dates:

- a. The ~~second~~first Saturday in May in an even-numbered year, or

- b. The first Tuesday after the first Monday in November

Election Code 41.001

Changing Election Dates. ~~The Board~~ If the Board holds its general election on a date other than the November uniform election date, it may, not later than December 31, ~~2005~~2016, change the date on which it holds its general election for officers to ~~another authorized~~ the November uniform election date. *Election Code 41.0052(a)*

10. Notice

The Board shall call the election not later than the 62nd day before election day, except that for an election to be held on the date of the general election for state and county officers, the election shall be called not later than the 70th day before the election day. Notice of the election shall be posted in ~~at least three public places~~ a place in the College District ~~and~~ at least 21 days before election day, or by mailing a copy of the notice to each registered voter in the College District at least 10 days before election day. Notice shall also be published at least once, not earlier than the 30th day or later than the tenth day before election day, in a newspaper published within the College District's boundaries or in a newspaper of general circulation in the College District if none is published within the College District's boundaries. *Election Code*

3.005, 4.003(a)(1); Education Code 130.082(f)

The notice shall state the nature and date of the election, the location of each polling place, ~~and~~ the hours the polls will be open, ~~and any other information required by law~~. The Board shall retain a copy of the published notice that contains the name of the newspaper and the date of publication and shall preserve that copy at least ~~22~~six (6) months after election day. *Election Code 4.004, 4.005, 66.058(a)*

~~The Board shall also deliver notice of the election to the county clerk of each county in which the College District is located not later than the 60th day before election day. *Election Code 4.008*~~

- a. ~~Posting~~. In addition to the notice described above, the College District shall, not later than the 21st day before election day, post a copy of the notice on the bulletin board used for posting notices of the meetings of the Board. The notice must include the location of each polling place. The person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the Board after the last posting is made. *Election Code 4.003(b), 4.004, 4.005*

~~The Board shall also deliver notice of the election to the county clerk of each county in which the College District is located not later than the 60th day before election day. *Election Code 4.008*~~

11. Ballot and Election Officials

The ballot shall be printed in the form required by law. The Board shall appoint election judges, set the maximum number of election clerks, and designate polling places. *Election Code ~~32.005(a), 32.033(a), 43.034~~32.005, 32.033, 43.004, 52.061-.064, 52.069, 52.093-.094*

12. Posting Signs at Polling Places Prohibited

A person other than an election officer commits an offense if the person posts a sign, card, poster, or similar material at a polling place, including the area within 100 feet of an outside door through which a voter may enter the building in which the polling place is located. *Election Code 62.013(b)*

13. Notice of Voting Rights Hotline

A notice of voters' rights, in the form prescribed by the secretary of state and including information required by the secretary of state, shall be publicized as provided by the secretary of state. The notice shall, in part, inform voters of the telephone number and purpose of the secretary of state's toll-free hotline for reporting existing or potential abuse of voting rights. *Election Code 31.0055, 62.0115*

14. **Polling Places**

~~Each polling place shall be accessible to and usable by the elderly and physically disabled. *Election Code 43.034*~~

1514. Voting Machines and Punch-card Ballots

Effective January 1, 2006, a voting system may not be used in an election if the system uses mechanical voting machines or a punch-card ballot or similar form of tabulating card. *Election Code 122.001(d)*

1615. ~~Voters with Disabilities~~Accessibility of Polling Place

~~Not later than January 1, 2006, e~~Each polling place must provide at least one voting station that complies with Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments and Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments, and the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) and its subsequent amendments, and that provides a practical and effective means for voters with physical disabilities to cast a secret ballot.

~~This requirement applies only to a polling place that uses an electronic voting system unless the secretary of state certifies that federal law requires application to all forms of voting at a polling place. *Election Code 61.012*~~

Each polling place shall be accessible to and usable by the elderly and physically disabled, *Election Code 43.034*

1716. Bilingual Materials

The College District shall provide bilingual election materials, as specified by law, when the director of the federal census determines that:

- a. More than five percent of the citizens of voting age of the College District are members of a single language minority and are limited-English proficient, or more than 10,000 of the citizens of voting age of the College District are members of a single language minority and are limited-English proficient; and
- b. The illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate, illiteracy defined as the failure to complete the fifth primary grade.

The term "limited-English proficient" means unable to speak or understand English adequately enough to participate in the electoral process.

The term "language minorities" or "language minority group" means people who are American Indian, Asian American, Alaskan natives, or of Spanish heritage.

42 U.S.C. 1973aa-1a

Except as provided by Election Code 272.003, bilingual election materials shall be used in each election precinct situated wholly or partly in a county in which five percent or more of the

inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census that may be officially recognized or acted upon by the state or political subdivisions.

An election precinct may be exempt from the bilingual requirement if official census information or other information indicates that persons of Spanish origin or descent comprise less than five percent of the precinct's inhabitants. **In order to exempt an election precinct, the Board Chair must follow the procedure set forth in Election Code Section 272.003.**

42 U.S.C. 1973aa-1a; Election Code 272.002, 272.003

1817. Early Voting

The Board shall provide for early voting in Board elections as provided by law. *Election Code 81.001, ~~88.004~~, 101.001-112.010*

1918. Canvass Returns

Except as provided below, the Board shall canvass the returns at the time set by the presiding officer not earlier than the eighth day or later than the 11th day after election day.

For an election held on the uniform election date in May, the local canvass must occur not later than the 11th day after election day and not earlier than the later of:

- a. The third day after election day;
- b. The date on which the early voting ballot board has verified and counted all provisional ballots, if a provisional ballot has been cast in the election; or
- c. The date on which all timely received ballots cast from addresses outside of the United States are counted, if a ballot to be voted by mail in the election was provided to a person outside of the United States.

The canvass shall be conducted in accordance with the procedures set forth in Election Code Section 67.004. Two members of the Board constitute a quorum for purposes of canvassing an election.

Election Code 67.003, 67.004

2019. Certificate of Election

After the completion of a canvass, the presiding officer shall prepare a certificate of election for each candidate who is elected to an office for which the official result is determined by that authority's canvass. A certificate of election must contain:

- a. The candidate's name;
- b. The office to which the candidate is elected;
- c. A statement of election to an unexpired term, if applicable;
- d. The date of the election;
- e. The signature of the officer preparing the certificate; and
- f. Any seal used by the officer preparing the certificate to authenticate documents that the officer executes or certifies.

The authority preparing a certificate of election shall promptly deliver it to the person for whom it is prepared, subject to the submission of a recount petition.

A recount petition shall delay the issuance of a certificate of election and qualification for the office involved in the recount pending completion of the recount. A candidate may not qualify for an office involved in a recount before completion of the recount. A candidate who has received a certificate of election and qualified for an office before the submission of a recount petition shall not be affected by the recount petition.

A certificate of election may not be issued to a person who has been declared ineligible to be elected to the office.

The presiding officer of the canvass shall also prepare a report of the precinct results as contained in the election register and shall deliver the report to the secretary of state as required by law.

Election Code 67.016, 67.017, 212.0331

2420. Certificate of Election for Unopposed Candidate

A certificate of election shall be issued to each unopposed candidate in the same manner and at the same time as provided for a candidate elected at the election. The candidate must qualify for the office in the same manner as provided for a candidate elected at the election. **On receipt of certification, the Board may declare each unopposed candidate elected to the office.** *Election Code 2.053(e)*

2221. Plurality

To be elected to a public office, a candidate must receive a plurality of votes, more votes than any other candidate, except as otherwise provided by law. *Election Code 2.001*

2322. Voting System Malfunction

If no private vendor supports the College District's voting system, the College District must give notice to the secretary of state within 24 hours of a malfunction of the College District's voting system software or equipment in an election. The notice may be verbal or in writing. *1 TAC 81.64*

2423. Runoff Elections

If no candidate receives a majority of the votes cast for all candidates for a position, then the two candidates receiving the highest number of votes shall run against each other for the position. The runoff election for all positions shall be held not earlier than the 20th day or later than the 45th day after the date the final canvass of the main election is completed. *Education Code 130.082(g); Election Code 2.025*

2524. Tie Votes

- a. **Second Election.** If two or more candidates for the same office tie for the number of votes required to be elected, a second election to fill the office shall be held, unless the candidates agree to cast lots, one candidate withdraws, or an automatic recount resolves the tie. Not later than the fifth day after the automatic recount is completed or the final canvass following the automatic recount is completed, if applicable, the Board shall order the second election. This election shall be held not less than 20 nor more than 30 days after the automatic recount is completed or the final canvass following the automatic recount is completed, if applicable. Notice of the second election shall be given in the same manner as for the first election except that a notice under section 4.003(b) of the Texas Election Code must be posted not later than the 15th day before election day. Only

the names of the tying candidates shall be printed on the ballot; write-in votes shall not be permitted. *Election Code 2.002(a)-(e)*

- b. Casting Lots. The tying candidates may agree to cast lots to resolve the tie. The agreement shall be filed with the Board, and the Board President shall supervise the casting of lots. *Election Code 2.002(f)*
- c. Withdrawal of Candidate. A tying candidate may resolve the tie by filing with the Board a written statement of withdrawal signed and acknowledged by the candidate. On receipt of the statement of withdrawal, the remaining candidate is the winner, and a second election or casting of lots is not held. *Election Code 2.002(g)*
- d. Recount. If a tie vote is not resolved by casting lots or by a candidate withdrawing, an automatic recount shall be conducted in accordance with Election Code Chapter 216. *Election Code 2.002(i)*

2625. Officer's Statement

Newly elected and appointed Trustees, before taking the oath or affirmation of office and entering upon the duties of office, shall sign the required officer's statement. The statement shall be retained with the official records of the office. *Tex. Const. Art. XVI, Sec. 1(b)* [See ~~BBB(EXHIBIT)~~]

2726. Oath of Office

After the statement has been signed and certificates of election have been issued, but before entering upon the duties of the office, the Trustee shall take the oath or affirmation of office and shall file it with the President of the Board. *Tex. Const. Art. XVI, Sec. 1(a); Education Code 11.061* [See ~~BBB(EXHIBIT)~~]

The oath may be administered and a certificate of the fact given by:

- a. A judge, retired judge, or clerk of a municipal court.
- b. A judge, retired judge, senior judge, clerk, or commissioner of a court of record.
- c. An associate judge, magistrate, master, referee, or criminal law hearing officer.
- d. ~~b.~~ A notary public.
- e. ~~———— A justice of the peace or clerk of a justice court.~~
- d. ~~———— The secretary of state of Texas.~~
- e. ~~The speaker~~ A justice of the ~~House of Representatives~~ peace or clerk of a justice court.
- f. The ~~lieutenant governor~~ secretary of state or former secretary of state of Texas.
- g. The ~~governor of Texas~~ speaker of the House of Representatives.
- h. The lieutenant governor or former lieutenant governor of Texas.
- i. The governor or former governor of Texas.
- hj. A legislator or retired legislator ~~-i~~.
- k. The attorney general or former attorney general of Texas.

1. A county treasurer.

Gov't Code 602.002, 602.006

2827. Voting Rights Act

The Board, being subject to the provisions of the Voting Rights Act of 1965, shall submit any changes that affect elections to the U.S. Justice Department for pre-clearance and shall implement such changes unless the Justice Department interposes an objection within 60 days after the date of submission. *42 U.S.C. 1973c; 28 CFR 51.6; Garza v. Gates, 482 F. Supp. 1211 (D.C. Tex. 1980)*

2928. Reporting Campaign Funds

Candidates for the Board shall file the designation of a campaign treasurer and all required financial statements with the Secretary of the Board in accordance with applicable law and directives from the Texas Ethics Commission. *Election Code 251.001-254.001 et seq.*

3029. Termination of Campaign Treasurer Appointment

In accordance with statute, the Board by ordinance or order may adopt a process by which the secretary may terminate the campaign treasurer appointment of an inactive candidate or political committee that is required to file a campaign treasurer appointment with the secretary. *Election Code 252.0131*

C. Board Members: Vacancies and Removal from Office

1. Vacancy

Single-member Districts. Any vacancy occurring on the Board through death, resignation, or otherwise, shall be filled by a special election ordered by the Board or by appointment by resolution or order of the Board. ~~If the vacancy occurs on a Board whose members are elected at large/by position, the~~ A person appointed to fill a vacancy in a trustee district must be a resident of that district. A person appointed to fill a vacancy in the representation of the College District at large must be a resident of the district at large. The person appointed to fill the unexpired term shall serve until the next regular election of members to the Board, at which time the position shall be filled by election for a term appropriately shortened to conform with what regularly would have been the length of the term for that position. *Education Code 130.082(d)*

Except as provided in Education Code 130.0822(l), in single-member districts, any vacancy on the Board shall be filled by appointment made by the remaining members of the Board. The appointed person shall serve for the unexpired term. *Education Code 130.0822(i), (l)*

2. Optional Appointment Consideration

An appointment to the Board shall be made as required by applicable law and may be made with the intent to ensure that the Board is representative of the constituency served by the Board. The Board that chooses this optional appointment consideration shall adopt procedures for its implementation. *Local Gov't Code 180.005(b), (c)*

3. Special Election

A special election shall be conducted in the same manner as the general election on the next uniform election date that will afford enough time to hold the election in the manner required by law. *Election Code 41.001(a), 41.004(a)* **[See BBB]**

a.——Pre-clearance Required. A special election is subject to federal pre-clearance

requirements to the extent that the College District makes changes in the practices or procedures to be followed. Any discretionary setting of the date for a special election or scheduling of events leading up to or following a special election is subject to the pre-clearance requirement. 28 CFR 51.17 [See BBB]

4. Resignation

To be effective, a Board member's resignation must be in writing and signed by the officer and must be delivered to the Board for acting on the resignation. The Board may not refuse to accept a resignation. ~~If a Trustee submits a resignation, whether to be effective immediately or at a future date, a vacancy occurs on the date the resignation is accepted by the Board or on the eighth day after the date of its receipt by the Board, whichever is earlier.~~ *Election Code 201.001(a); 201.023*

5. Non-residence

A person elected to serve as a Board member must remain a resident of the District throughout the term of office. A Board member who ceases to reside in the District vacates his or her office. *Tex. Const., Art. XVI, Sec. 14; Education Code 130.082(d); Whitmarsh v. Buckley, 324 S.W.2d 298 (Tex. Civ. App. 1959)*

- a. — Single-member Districts. Except for a Trustee allowed to complete the remainder of his or her term after the initial election from single-member districts, a Trustee vacates the office if he ceases to reside in the trustee district he represents. *Education Code 130.082(d), 130.0822(h)*

6. Removal from Office

Board members may be removed from office for:

- a. "Incompetency," which means:
 1. Gross ignorance of official duties;
 2. Gross carelessness in the discharge of those duties; or
 3. Unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of election.
- b. "Official misconduct," which means intentional, unlawful behavior relating to official duties by a Trustee entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of a Trustee to perform a duty imposed on the Trustee by law and conviction of an offense relating to violation of purchase procedures. [See CH]
- c. Intoxication on or off duty caused by drinking an alcoholic beverage, but not if it was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician.
- d. Conviction of a Trustee by a jury for any felony or for misdemeanor official misconduct.
- e. Nonattendance of Board meetings if the member is absent from more than half of the regularly scheduled Board meetings that the member is eligible to attend

during a calendar year, not counting an absence for which the member is excused by a majority vote of the Board.

Actions for removal of Board members must be brought before the judge of the district court holding jurisdiction, except that any court convicting a Trustee of a felony or official misconduct shall order immediate removal.

Tex. Const., Art. V, Sec. 24; Local Gov't Code 87.011, 87.012, 87.013, 87.031; Education Code 44.032(e), 130.0845.

7. Temporary Replacement of Board Member on Military Active Duty

A Board member who enters active duty in the armed forces of the United States as a result of being called to duty, drafted, or activated does not vacate the office held, but the Board may appoint a replacement to serve as a temporary Board member if the elected or appointed Board member will be on active duty for longer than 30 days.

The Board member who is temporarily replaced may recommend to the Board the name of a person to temporarily fill the office. The Board shall appoint the temporary Board member to begin service on the date specified in writing by the Board member being temporarily replaced as the date the Board member will enter active military service.

A temporary Board member has all the powers, privileges, and duties of the office as the Board member who is temporarily replaced. A temporary Board member shall perform the duties of office for the shorter period of:

- a. The term of the active military service of the Board member who is temporarily replaced; or
- b. The term of office of the Board member who is temporarily replaced.

"Armed Forces of the United States" means the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, the United States Coast Guard, any reserve or auxiliary component of any of those services, or the National Guard.

Tex. Const., Art. XVI, Sec. 72

D. Board Members: Orientation and Training

1. Texas Higher Education Coordinating Board Training

~~A member of the Board of an institution of higher education, the members of which are elected, may attend a~~ The Coordinating Board shall establish a training program for members of the governing boards of institutions of higher education. Each Board member shall attend, during the member's first year of service as a member of the Board, at least one training program as established by law. *Education Code 61.084(a)*

The training program must include a seminar held annually in Austin to be conducted by the staff of the Coordinating Board. The staff of the Coordinating Board may obtain assistance from representatives of the office of the attorney general, the office of the comptroller of public accounts, the office of the state auditor, and the Texas Ethics Commission, and from other training personnel the Coordinating Board deems necessary. The Coordinating Board by rule may prescribe an alternative training program for members of governing boards for whom attendance at a seminar held in Austin would be a hardship. The alternative training program need not be in the form of a seminar but must include substantially the same information included in the seminar held in Austin. *Education Code 61.084(b)*

The content of the instruction at the training program shall focus on the official role and duties of members of governing boards and shall provide training in the areas of budgeting, policy development, and governance.

Topics covered by the training program may include:

- a. Auditing procedures and recent audits of institutions of higher education;
- b. The enabling legislation that creates institutions of higher education;
- c. The role of the governing board at institutions of higher education and the relationship between the governing board and the institution's administration, faculty and staff, and students;
- d. The mission statements of institutions of higher education;
- e. Disciplinary and investigative authority of the governing board;
- f. The requirements of the open meetings law, Chapter 551, Government Code, and the open records law, Chapter 552, Government Code;
- g. The requirements of conflict of interest laws and other laws relating to public officials;
- h. Any applicable ethics policies adopted by institutions of higher education or the Texas Ethics Commission; ~~and~~
- i. ~~Any other topic relating to higher education the Coordinating Board considers important.~~ The requirements of laws relating to the protection of student information under the Family Educational Rights & Privacy Act of 1974 or any other federal or state law relating to the privacy of student information;

~~Education Code 61.084(d)~~

- k. Best practices in campus financial management, financial ratio analysis, and case studies using financial indicators; and
- l. Any other topic relating to higher education the Coordinating Board considers important.

~~The Coordinating Board shall provide training for Board members as required by law. The Coordinating Board may prescribe an alternative training program as permitted by law. A registration fee shall be paid by seminar participants in an amount adequate to cover the costs incurred by the Coordinating Board and other state agencies in providing the program. Such amount shall be determined prior to each seminar minutes of the last regular meeting held by the Board during a calendar year must reflect whether each member of the Board has completed the training required under this policy.~~

~~Chapter 1, Subchapter A, Section 1.9 of the Texas Administrative Code provides for the training of members of governing boards and trustees for public institutions of higher education; however, members of community/junior college governing boards may not be required to attend a training session.~~

~~Education Code 61.084~~

2. Public Funds Investment Act Training

~~Education Code 61.084; 19 TAC 1.9, 9.25~~

Each Board member shall attend at least one training session relating to the Public Funds Investment Act within six months after taking office or assuming duties. Training must include education in investment controls, security risks, market risks, diversification of investment portfolios, and compliance with the Public Funds Investment Act. The Coordinating Board shall provide training to satisfy this requirement. *Gov't Code 2256.007*

23. Specific Open Meetings Training

Within 90 days of taking the oath of office, each Board member shall complete a course of training regarding the responsibilities of the Board and its members under Chapter 551 of the Texas Government Code. The office of the attorney general may provide the training and may also approve other acceptable sources of training.

Gov't Code 551.005

3.4. Specific Open Records Training

Within 90 days of taking the oath of office, each Board member shall complete a course of training regarding the responsibilities of the College District and College District officers and employees under Chapter 552 of the Texas Government Code. The office of the attorney general may provide the training and may also approve other acceptable sources of training.

A Board member may designate a public information coordinator to satisfy the training requirements of Government Code 552.012 for the Board member if the public information coordinator is primarily responsible for administering the responsibilities of the Board member or College District under Government Code Chapter 552. The designated public information coordinator shall complete a course of training regarding the responsibilities of the College District and of its officers and employees under Chapter 552 of the Texas Government Code within 90 days of assuming duties as a public official.

Gov't Code 552.012

45. Fees

A Trustee shall pay from private funds the required fee and the Trustee's costs of travel, including transportation, lodging, and meals. Neither the required fee nor a Trustee's travel costs shall be reimbursed from appropriated funds, other than grants and donations of private funds available for that purpose. *Education Code 61.084(c)*

56. Conventions and Workshops

Board members may attend regional, state, or national conventions or workshops without such gatherings being construed as "meetings" under the Open Meetings Act. However, no formal action shall be taken at such conventions or workshops concerning College District business, and any discussion of public business shall be merely incidental to the convention or workshop. *Gov't Code 551.001(4)*

E. ~~Board Members: Authority~~

1. ~~Board Actions~~

~~Because the Board is a body corporate, members can perform no valid act except as a body at meetings properly convened and conducted. *Toyah ISD v. Pecos-Barstow ISD*, 466 S.W.2d 377 (Tex. Civ. App. San Antonio, 1971, no writ); *Buchele v. Woods*, 528 S.W.2d 95 (Tex. Civ. App. Tyler, 1975, no writ)~~

2. ~~Right of Access~~

~~Individual Trustees, in their official capacity as public officers entrusted with governing and~~

~~overseeing the management of the District, have an inherent right of access to records maintained by the District, under Board policies for orderly access. Atty. Gen. Op. No. JM 119 (1983); Education Code 11.151 [See FL, GAA]~~

~~Each Board member shall have the legal responsibility of a fiduciary in the management of funds under the control of colleges subject to the Board's control and management. Education Code 51.352(e)~~

3. ~~Protections for Acting on a Legislative Measure~~

~~A Board member may not be subject to disciplinary action or a sanction, penalty, disability, or liability for:~~

- ~~a. An action permitted by law that the officer takes in the officer's official capacity regarding a legislative measure;~~
- ~~b. Proposing, endorsing, or expressing support for or opposition to a legislative measure or taking any action permitted by law to support or oppose a legislative measure;~~
- ~~c. The effect of a legislative measure or of a change in law proposed by a legislative measure on any person; or~~
- ~~d. A breach of duty, in connection with the member's practice of or employment in a licensed or regulated profession or occupation, to disclose to any person information, or to obtain a waiver or consent from any person, regarding the officer's actions relating to a legislative measure; or the substance, effects, or potential effects of a legislative measure.~~

Gov't Code 572.059

4. ~~Board Member Immunities~~

~~The statutory immunity detailed below is in addition to and does not preempt the common law doctrine of official and governmental immunity. Education Code 22.051(b)~~

- ~~a. State Law Immunities. A Board member is not personally liable for any act that is incident to or within the scope of the duties of the Board member's position and that involves the exercise of judgment or discretion. Education Code 22.051(a)~~

FE. Board Members: Compensation and Expenses

1. ~~Members' Expenses~~

Board members shall not receive any remuneration or emolument of office.

Board members shall be entitled to reimbursement for their actual expenses incurred in performing their duties, to the extent authorized and permitted by the Board.

Education Code 130.082(d)

2. ~~Travel Services~~

An officer of a College District who is engaged in official business may participate in the Texas Building and Procurement Commission's contract for travel services. *Gov't Code 2171.055(f); 1 TAC 125.1*