

Explanatory Notes

TASB Localized Policy Manual Update 96

District: Brackett ISD
BAA (LEGAL) BOARD LEGAL STATUS
POWERS AND DUTIES

This legally referenced policy has been reworked to reflect the content and order of provisions in Education Code Chapter 11, Subchapter D, which addresses the powers and duties of the board. Provisions not found in Subchapter D and provisions addressing powers and duties that are conferred on “the district” rather than “the board” have been deleted, as these are included elsewhere in the policy manual.

Several existing provisions from Subchapter D have been added. At MANDATORY POWERS AND DUTIES, item 5 on page 1 states that the board shall collaborate with the superintendent. Item 19 on page 2 states that the board shall carry out other powers and duties as provided by the Education Code or other law.

At DISCRETIONARY POWERS AND DUTIES, beginning on page 2, newly added provisions state that the board may:

- Contract with a public or private entity for educational services (item 7).
- Charge fees per Education Code 11.158 (item 8).
- Change the name of the district (item 9).
- Adopt rules requiring student uniforms (item 10).
- Adopt rules to keep school campuses open after school hours for other uses (item 11).
- Operate a school or program on the campus of an institution of higher education (item 12).
- Operate a school or program outside the boundaries of the district (item 13).

Other newly added provisions address the board’s duties regarding ownership and management of DISTRICT PROPERTY and RESTRICTIONS ON BOARD POWERS AND DUTIES, including the use of district resources in relation to real property not owned by the district or for the operation of a hotel.

Several provisions were reworded to better match statutory language.

BBD (EXHIBIT) BOARD MEMBERS
TRAINING AND ORIENTATION

As a result of amended State Board of Education (SBOE) rules, effective July 2012, we have made several revisions to this exhibit.

The board-adopted Vision:

- Must support the state’s mission, objectives, and goals for education established by law *and/or rule*.
- Must be used by the board to assess the importance of individual issues that come before the board.
- Constitutes the shared vision of the board, and individual board members should not have individual agendas separate and apart from that vision.

In accordance with the board Structure, the board:

- Restricts its involvement in management to the responsibility of oversight.
- Adopts a planning and decision-making process consistent with state law *and/or rule*.
- Evaluates the superintendent’s performance in performing all duties assigned by law *and/or rule in support of the district’s vision*.

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- Adopts policies and standards for hiring, assigning, appraising, *terminating*, and compensating employees.

Regarding Advocacy, the board:

- Ensures an effective communication system with students, *parents*, employees, media, and the community.
- Provides input and feedback to the legislature, SBOE, and TEA regarding proposed changes to ensure maximum effectiveness and benefit to schoolchildren in the district.

To support Unity between the board and superintendent, the board:

- Ensures that its members understand and respect the need to function as a team in governing and overseeing the management of the district.
- Adopts and adheres to policies and procedures for receiving feedback from students, *parents*, employees, and the community.

BDD (LEGAL) BOARD INTERNAL ORGANIZATION ATTORNEY

This new legally referenced policy includes existing statutory provisions addressing legal services. At PROCUREMENT OF LEGAL SERVICES, the policy explains that the competitive procurement provisions at Education Code 44.031 do not apply to a contract for professional services provided by an attorney. In addition, a district may request the assistance of the ATTORNEY GENERAL on any legal matter, but must pay any associated costs.

DAA (LEGAL) EMPLOYMENT OBJECTIVES EQUAL EMPLOYMENT OPPORTUNITY

An existing statutory provision on BANKRUPTCY DISCRIMINATION has been added on page 1. This federal provision explains that a district may not deny employment to, terminate the employment of, or discriminate with respect to employment against a person that is or has been a debtor under federal bankruptcy laws.

DEC (LEGAL) COMPENSATION AND BENEFITS LEAVES AND ABSENCES

As a reminder that employees may use available personal or sick leave for compensation during a term of active military service, we have repeated from DECB(LEGAL), which is not included in this update, the existing Education Code provision allowing such USE DURING MILITARY LEAVE. (See page 2.)

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DEC (LOCAL) COMPENSATION AND BENEFITS LEAVES AND ABSENCES

Changes to this policy on leaves and absences are recommended based on a recent Commissioner decision, *Jaworski v. South San Antonio ISD*, which affects how state leave is accrued and the calculation of pay deductions for unearned leave. The Commissioner held that accrual of *state personal leave* is based solely on days of employment, not on the number of days that an employee performs work. Therefore, if an individual remains an employee for the entire school year, he or she is entitled to five days of state personal leave, regardless of whether the employee was in an unpaid status for part of the year. If your district had a practice of making salary deductions for *state personal leave* that an employee had taken but not earned because of unpaid status, it is recommended that you discontinue that practice in accordance with *Jaworski*.

Per *Jaworski*, districts may continue to make salary deductions at the end of the year for *local leave* the employee took but had not earned. When an employee separates from employment before the end of the school year, *Jaworski* also allows districts to continue their practice of prorating the amount of state and local leave an employee is entitled to and deducting pay for leave used in excess of the prorated amount.

The changes recommended in this update retain the district's ability to make deductions for use of unearned leave to the extent permitted by *Jaworski*. As an overview, the policy included in this update:

- Removes the option reflected in the district's current policy of allowing a salary deduction at the end of the year for *state personal leave* when an employee used more than he or she had earned (based on unpaid status) but was employed for the full year. *Jaworski* does not permit salary deductions under these circumstances.
- Retains the option reflected in the district's current policy of allowing salary deductions for *state personal leave* that the employee used but was not entitled to based on length of employment when an employee separates from employment before the end of the school year.
- Retains the option reflected in the district's current policy of allowing salary deductions for *local leave* that the employee used but had not earned because of unpaid status or length of employment when an employee separates from employment before the end of the school year.

The specific recommended changes based on your previous local policy decisions are as follows:

- In several instances throughout the policy, we have replaced the term *workday* with *leave day*, which more accurately describes the concept of what constitutes a day of leave for an employee for purposes of earning, use, and recording. A LEAVE DAY is based on the number of hours equivalent to the employee's usual assignment.
- At EARNING LOCAL LEAVE, we have revised the provision on earning leave to limit its application to local leave. Previously this provision, which stated that an employee would not earn leave while in unpaid status, applied to both state and local leave; however, per *Jaworski*, the amount of state personal leave an employee is entitled to is determined by dates of employment and is not affected by unpaid status.
- Consistent with the revision at EARNING LOCAL LEAVE, we have deleted a provision from the policy describing how an employee would earn state personal leave. Per *Jaworski*, an employee is entitled to five days of state personal leave if he or she remains employed for the entire year.

Provisions on how the district will calculate DEDUCTIONS have also been revised.

- At LEAVE WITHOUT PAY, we have clarified that the district will make deductions from an employee's pay for unapproved absences.

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- Provisions at LEAVE PRORATION, EMPLOYED FOR LESS THAN FULL YEAR explain how the district will calculate leave and salary deductions when an employee does not work for the district for the entire year. In this circumstance, the district will prorate state personal leave based on length of employment and will make deductions from the employee's final paycheck for state personal leave taken beyond that amount.

At NON-DISCRETIONARY USE, we have recommended a change to clarify that non-discretionary use of state personal leave includes leave *related to the birth or placement of a child* taken within the first year after the child's birth, adoption, or foster placement. The revised language is better aligned with the wording of the Family and Medical Leave Act rules than the previous wording, which referred to leave for *well-baby care*.

Please carefully review all provisions in this policy to ensure they reflect district practice. If your district does not currently deduct for unearned local leave based on unpaid status and does not intend to do so, please contact your policy consultant for alternate policy text to reflect that practice.

EFAA (LEGAL) INSTRUCTIONAL MATERIALS SELECTION AND ADOPTION

At LOCAL SELECTION on page 2, we have revised the provisions to better match statutory text. The revised provisions clarify that for subjects in the FOUNDATION CURRICULUM and ENRICHMENT CURRICULUM, the board must notify the State Board of Education of the materials it selects from the instructional materials list, including the Commissioner's instructional materials list. However, not all selected materials must be from these lists.

EFAA (LOCAL) INSTRUCTIONAL MATERIALS SELECTION AND ADOPTION

This local policy on selection and adoption of instructional materials has been significantly revised to reflect the new instructional materials allotment system put in place by SB 6 during the 82nd Legislative Session (2011).

The policy now refers to the establishment of an INSTRUCTIONAL MATERIALS ALLOTMENT TEAM that will select instructional materials and technological equipment to be purchased with the district's instructional materials allotment for the board's consideration. Selections must be based on the district's instructional needs and any administrative regulations guiding the selection.

So that the district may make the CERTIFICATION OF INSTRUCTIONAL MATERIALS required by law, the team must ensure that the selected materials and any other materials in use by the district cover the essential knowledge and skills.

At BOARD ACTION, the board must approve the final selections and ratify the district's certification of instructional materials.

A note at the beginning of the policy refers to policy code CMD for provisions regarding purchasing procedures that are applicable to instructional materials.

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FEA (LEGAL) ATTENDANCE COMPULSORY ATTENDANCE

This legally referenced policy on compulsory attendance has been revised based on Attorney General Opinion GA-946, which held that a student 18 years of age or older cannot commit the offense of failure to attend school, even if the district has adopted a policy requiring the student to attend school until the end of the school year. As a result, we have deleted from page 1 the provision that applied the offense of failure to attend school to STUDENTS 18 AND OVER.

The list of EXEMPTIONS from compulsory attendance has been revised to include a student's enrollment in the Texas Academy of International Studies. (See HIGH SCHOOL REPLACEMENT PROGRAMS on page 3.)

FEB (LEGAL) ATTENDANCE ATTENDANCE ACCOUNTING

Changes to this legally referenced policy result from amended State Board of Education rules, effective August 23, 2012.

- The rules allow for more flexibility in record storage and permit storage of attendance RECORDS at a secure location separate from the campus. (See page 1.)
- At ATTENDANCE FOR STATE FUNDING PURPOSES, attendance is determined in the second or fifth *instructional hour* rather than *period*. The board can adopt a policy, as previously allowed by rule, or has a new option of delegating to the superintendent the authority to establish procedures for recording absences in an alternate hour. See FEB(LOCAL), below.
- The rules deleted the EXCEPTION allowing a Medicaid eligible student who is participating in the Early and Periodic Screening, Diagnosis, and Treatment Program to be considered in attendance even though the student is not on campus when attendance is taken.
- The rules added an EXCEPTION for a student to be considered in attendance even though the student is not on campus when attendance is taken. The new exception includes an absence permitted by other conditions related to OFF-CAMPUS INSTRUCTION (see page 4) described in the *Student Attendance Accounting Handbook*.
- At PARENTAL CONSENT TO LEAVE CAMPUS on page 4, in order to count a student in attendance when the student left campus during part of the school day, the board can adopt a policy addressing parental consent, as previously allowed by rule, or has a new option of delegating to the superintendent the authority to establish procedures addressing parental consent. The policy or procedures must be distributed to staff and parents. See FEB(LOCAL), below.

FEB (LOCAL) ATTENDANCE ATTENDANCE ACCOUNTING

Recommended revisions to this policy on attendance accounting reflect the flexibility included in recently amended SBOE rules.

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Previously, a campus could take attendance at a time other than the second or fifth instructional hour of the day only if the board had adopted a local policy authorizing the campus to record absences at an alternate hour. As reflected in the revisions at ALTERNATE RECORDING TIME, the amended rules now allow a board to delegate to the superintendent the authority to establish procedures for recording absences at an alternate hour. The recommended text includes a delegation for this purpose and authorizes the superintendent, when appropriate, to develop procedures to permit a campus to specify an alternate time for taking attendance. Any alternate time for recording attendance shall be determined in accordance with the *Student Attendance Accounting Handbook*.

The revised SBOE rules also provide flexibility regarding attendance procedures when a student leaves campus for part of the school day. Previously, the rules required the board to adopt local policy addressing parental consent for a student to leave campus in order to count the student in attendance. The revised rules permit the board to delegate to the superintendent the authority to establish procedures addressing parental consent to leave campus, including procedures for documenting a student's absence. This delegation is reflected at PARENTAL CONSENT TO LEAVE CAMPUS. To meet the requirement in the rules that the procedures be distributed to staff and parents, the recommended text specifies that the procedures will be communicated in the employee and student handbooks.

We recommend for deletion the provision that required the superintendent to make an annual report to the board about the district's attendance system, as this is not required by statute.