

Vantage Points

A Board Member's Guide to Update 96

Vantage Points is an executive summary, prepared specifically for board members, of the TASB Localized Update. The topic-by-topic outline and the thumbnail descriptions focus attention on key issues to assist local officials in understanding changes found in the policies. The description of policy changes in *Vantage Points* is highly summarized and should not substitute for careful attention to the significantly more detailed, district-specific Explanatory Notes and the policies within the localized update packet.

This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations.

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

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Among the topics addressed in Update 96 are board member powers and duties, the Framework for School Board Development, legal services for districts, bankruptcy discrimination, use of leave while on military duty, selection of instructional materials, and student attendance. Local policy issues focus on the accrual of state personal leave and salary deductions for unearned leave, selection of instructional materials, and student attendance accounting.

Board Issues

Powers and Duties

At this update, legally referenced policy BAA(LEGAL) has been extensively revised to better reflect the mandatory and discretionary powers and duties of the board as established by Education Code Chapter 11, Subchapter D. Provisions that are not found in Subchapter D or that address powers and duties conferred on "the district," rather than "the board," have been deleted, since these are included elsewhere in the policy manual, while existing provisions on the board's duties regarding ownership and management of district property, as well as provisions regarding restrictions on the board's powers, have been added.

Framework for School Board Development

The Framework for School Board Development, included at BBD(EXHIBIT), has been revised to reflect amended State Board of Education (SBOE) rules, effective July 2012. The amendments clarify the role of the local board of trustees and local board members and enhance communication between local boards and relevant state agencies.

Legal Services

Existing statutory provisions addressing legal services have been added to the policy manual in a new legally referenced policy at BDD(LEGAL). The policy clarifies that the competitive procurement provisions at Education Code 44.031 do not apply to a contract for professional services provided by an attorney, and it also provides that a district may request the assistance of the attorney general on any legal matter but must pay any costs associated with the assistance.

Employment

Bankruptcy Discrimination

At DAA(LEGAL), an existing federal provision has been added explaining that a district may not discriminate with respect to employment against a person who is or has been a debtor under federal bankruptcy laws.

Leaves and Absences

At DEC(LEGAL), we have repeated existing Education Code provisions, already included at DECB(LEGAL), that allow an employee to use available personal or sick leave for compensation during a term of active military service. This would include state personal leave, any local leave provided by the district, and state sick leave accumulated prior to the 1995–96 school year.

DEC(LOCAL) POLICY CONSIDERATIONS

Recommended changes to this local policy on leaves and absences are based on a recent Commissioner decision, *Jaworski v. South San Antonio ISD*, which affects how state personal leave is accrued and how pay deductions for unearned leave are calculated.

In *Jaworski*, 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. Accordingly, a recommended change to the district's current DEC(LOCAL) removes the previous option of allowing a salary deduction at the end of the year for state personal leave when an employee who was employed for a full year used more leave than he or she had earned, based on unpaid status.

For districts that provide local leave, *Jaworski* continues to permit those districts 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 or is hired after the beginning of the year, *Jaworski* also allows districts to continue the 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. Recommended changes to the policy add details on salary deductions and leave proration to reflect these concepts and clarify that the district will make salary deductions for unapproved absences.

Instructional Materials

Provisions at EFAA(LEGAL), regarding instructional materials selection and adoption, have been revised to better match statutory text and to clarify that, for subjects in the foundation and enrichment curricula, the board must notify the SBOE of the materials it selects from the instructional materials list, including the Commissioner's instructional materials list. Not all the selected materials must be from these lists, however.

EFAA(LOCAL) POLICY CONSIDERATIONS

Extensive recommended revisions to the local policy on selection and adoption of instructional materials 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 a team that will select instructional materials and technological equipment to be purchased with the district's instructional materials allotment. The district must be able to certify to the SBOE that the selected materials, along with any other materials used by the district, cover the essential knowledge and skills, as required by law, and the board must approve the final selections and ratify the district's certification of instructional materials.

Student Attendance

As a result of Attorney General Opinion GA-946, which held that a student 18 or older cannot commit the offense of failure to attend school, even if a district has adopted a policy requiring the student to attend until the end of the school year, we have deleted from FEA(LEGAL), the policy code addressing compulsory attendance, a provision making the offense of failure to attend school applicable to students 18 or older.

At FEB(LEGAL), regarding attendance accounting, changes were prompted by amended SBOE rules, effective August 23, 2012. For state funding purposes, attendance is now determined in the second or fifth "instructional hour," rather than "period." The board may adopt a policy on recording absences in an alternate hour, as already allowed by state rule, or may now delegate to the superintendent the authority to establish such procedures. Similarly, the board may now also delegate to the superintendent the authority to establish procedures addressing parental consent for a student to leave campus during any part of the school day.

FEB(LOCAL) POLICY CONSIDERATIONS

Recommended changes to this local policy correspond to the changes outlined above regarding FEB(LEGAL).

As noted above, a campus could previously take attendance at a time other than the second or fifth instructional hour only if the board had adopted a local policy authorizing the campus to do so. The recommended local policy text implements revised SBOE rules by including a board delegation to the superintendent to establish, when appropriate, procedures for recording absences at an alternate hour as determined in accordance with the *Student Attendance Accounting Handbook*.

The recommended local text also includes a board delegation to the superintendent to establish procedures addressing parental consent for a student to leave campus, including procedures for documenting a student's absence.

Because the revised SBOE rules require that those procedures be distributed to staff and parents, the recommended text specifies that the procedures be communicated in both the employee and student handbooks.

In addition, a provision requiring the superintendent to make an annual report to the board regarding the district's attendance system is recommended for deletion, as it is not required by statute.

More Information

For further information on these policy changes, refer to the policy-by-policy Explanatory Notes—customized for each district's policies—and the policies themselves, found in your localized update packet.