

# Vantage Points

A Board Member's Guide to Update 84

***Vantage Points*** is an executive summary of the TASB Localized Update prepared specifically for board members. 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.

**PLEASE NOTE:** This Update 84 ***Vantage Points*** and the Localized Update 84 packet may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.

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](mailto:policy.service@tasb.org), or call us at 800-580-7529 or 512-467-0222.

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Update 84 addresses a variety of topics, including numerous student instructional issues affected by commissioner of education rules, as well as redeveloped policies on special education, student transportation, disposal of district property, and student use of telecommunications and other electronic devices.

## **Student Issues**

### **Special Education**

Because of new Individuals with Disabilities Education Act (IDEA) regulations, we have reorganized for clarity provisions throughout the entire EHBA(LEGAL) series of policies and have updated the text to match statutory and regulatory language. At policy FOF(LEGAL), the new IDEA regulations have resulted in changes governing a district's obligations when a student with disabilities is removed from his or her regular placement for violating a student code of conduct. A district's obligations vary based on the length of removal and whether the removal constitutes a change in placement. If there are a series of removals that cumulatively exceed ten days, a district must determine on a case-by-case basis whether the removals are a change in placement.

### **Instruction and Assessment Requirements**

#### **LEP Students**

Provisions regarding state assessments for limited English proficiency (LEP) students have been grouped together at a new code, EKBA(LEGAL), and include changes from recently revised commissioner rules regarding state assessment exemption standards for immigrant students and accommodations and exemptions for LEP students in special education.

#### **Innovative and Dual Language Immersion Programs**

Added at EGA(LEGAL) are revised commissioner rules providing that districts may now offer any state-approved innovative course without additional approval from the State Board of Education or commissioner. Also at EGA(LEGAL) are new commissioner rules addressing various aspects of dual language immersion programs, such as goals, implementation, curriculum, enrollment, staffing, and effectiveness.

#### **Physical Activity and Fitness**

Exemptions from physical activity requirements as reflected in new commissioner rules have been added at EHAC(LEGAL) allowing a middle school student to qualify for an exemption by participating in "structured activities" (a term defined in the policy) certified by the board and providing proof of participation. Also reflecting commissioner rules are new factors for assessing students' physical fitness, listed at FFAA(LEGAL).

#### **Parenting Awareness**

New State Board of Education rules requiring a district to implement a parenting awareness program as part of any health education credit have been added at EHAC(LEGAL). The parenting awareness instruction must emphasize parenting and relationship skills, as well as skills related to preventing family violence.

**Homebound Instruction**

***EEH(LOCAL) POLICY CONSIDERATIONS:***

While a student must be confined for a minimum of four weeks to be eligible for general education homebound instruction, the period of confinement no longer has to be consecutive. This change, at EEH(LOCAL), reflects revised eligibility criteria from the 2008–2009 TEA Student Attendance Accounting Handbook.

**Dropout Prevention**

From the 80<sup>th</sup> Texas Legislature and commissioner rules and included at EHBC(LEGAL), provisions addressing dropout prevention now require districts with high dropout rates to submit dropout prevention strategy plans to TEA. Existing statutory provisions requiring districts that have high dropout rates, and that receive certain funding, to participate in Communities in Schools (CIS) programs have also been added at EHBC(LEGAL).

**Telecommunications Devices**

***FNCE(LOCAL) POLICY CONSIDERATIONS:***

A district is required to have a local board policy if it confiscates telecommunications devices and if it charges a fee for their release or disposes of the devices. We have issued this recommended local policy to all districts and have reworked the policy to clarify districts’ practices regarding confiscation and fees. The newly developed policy allows campuses to determine confiscation and retrieval practices for telecommunications devices in accordance with board policy. In addition, because a district may not charge a fee for devices that are not legally defined as “telecommunications devices,” we have added a reference to rules in the student handbook regarding other electronic devices.

**DAEP Placement**

An existing provision from the Texas Education Code has been added at FOC(LEGAL). The language states that a district may allow a student to appeal to the board or designee a principal’s DAEP placement order, but the decision of the board or designee may not be appealed. The ***TASB Model Student Code of Conduct*** permits appeals to the board through FNG(LOCAL), the student and parent grievance policy, but specifies that disciplinary consequences will not be deferred pending the outcome of an appeal. If a district’s board-adopted student code of conduct includes this provision, no additional local policy is needed.

**No Pass, No Play**

At FM(LEGAL), new commissioner rules define courses that are exempt for purposes of eligibility to participate in extracurricular activities and allow districts to indicate additional honors courses in certain subject areas, as long as they do so before the beginning of the semester.

**Student Expression**

Two policies have been affected by court decisions regarding student expression:

- FMH(LEGAL) has been revised as a result of recent litigation in the *Does 1-7 v. Round Rock Independent School District* case. In that case a federal district court judge found that a district policy allowing graduating seniors to vote on whether to have a student read a prayer at commencement was an impermissible majoritarian election on religion. *Round Rock* is not included in the policy because it does not have statewide application; however, this case influenced us to add more detail on *Santa Fe Independent School District v. Doe*, the United States Supreme Court case relied upon in the *Round Rock* case. Another case currently included in the policy, *Jones v. Clear Creek Independent School District*, a 1992 Fifth Circuit Court of Appeals case that approved a policy allowing a graduating class to select a student volunteer to deliver nonproselytizing invocations, has not been expressly overruled but has been called into question by the *Santa Fe* and *Round Rock* cases, as noted in the policy.
- FNA(LEGAL) has been updated to reflect a recent Fifth Circuit Court of Appeals case holding that threats of violence by a student against a student body or school are not protected by the First Amendment, allowing school officials to discipline the student without proof that the threats would cause a disruption.

**Employee Issues**

**Nonrenewal**

***DFBB(LOCAL) POLICY CONSIDERATIONS:***

DFBB(LOCAL) no longer requires a superintendent to submit evaluations for the board to consider when voting to propose nonrenewal of an employee. While the law requires a board to consider the most recent evaluation, if relevant, before voting to nonrenew an employee's contract, it does not require consideration of evaluations before voting to *propose* nonrenewal.

**Criminal History Checks**

At DBAA(LEGAL), we have added language from TEA rules providing that noncertified employees and substitute teachers may begin working for a district once information required for a background check has been sent to the Department for Public Safety, but the employee must be terminated if the background check later reveals that he or she is ineligible for employment. At CNA(LEGAL) and CV(LEGAL), new language provides that companies with which a district contracts for services, such as transportation or construction, must comply with additional criminal background check provisions.

**Whistleblower Complaints**

Texas Government Code provisions at DG(LEGAL) require that, if an employee brings a whistleblower lawsuit, the employee has the burden of proving that a district took adverse personnel action because of the whistleblower report. If a district took the adverse action within 90 days of the report, however, it is presumed that the adverse action was because of the employee's whistleblower report. A second provision allows a district to provide an affirmative defense that it would have taken adverse personnel action based on information not related to the whistleblower report.

**Annualized Compensation**

Recent guidance from the IRS exempts most educators from its 409A rules and eliminates the need for provisions on annualized compensation to be included in district policy manuals. We have deleted those provisions from DEA(LEGAL).

**District Operations**

**Investments**

Language at CDA(LEGAL) has been revised to reflect a statutory requirement that a district's investment officer must file with the board and the Texas Ethics Commission statements disclosing either a personal business relationship with an organization offering to engage in an investment transaction with the district, or a personal relationship to any individual seeking to sell an investment to the district.

***CDA(LOCAL) POLICY CONSIDERATIONS:***  
We have updated CDA(LOCAL) to require representatives of brokers/dealers to be in good standing with the newly created Financial Industry Regulatory Authority (FINRA) in order to handle investments on behalf of a district. We have also deleted, from those local policies that contained such provisions, unnecessary detail regarding the portfolio report presented annually to the board.

**Budget**

***CE(LOCAL) POLICY CONSIDERATIONS:***

Current Education Code provisions require a district to post a summary of its proposed budget online or in the central administrative office. Therefore, we have deleted from CE(LOCAL) text requiring a district to make the entire proposed budget available to the public on request.

**Disposal of School Property**

***CI(LOCAL) POLICY CONSIDERATIONS:***

Clarifications have been made at CI(LOCAL) regarding disposal of unnecessary school property. A delegation provision has been added giving a superintendent the authority to declare property unnecessary. The policy requires the superintendent to obtain fair market value when disposing of such property. This recommended policy is also being issued to districts that were previously without a local policy at this code to ensure that districts have a clear delegation of authority in board policy.

**Transportation Safety**

Safety-related provisions, including transportation safety standards and provisions regarding accidents, formerly at CNA and CNB, have been consolidated into one newly created code, CNC. At CNC(LEGAL), new Texas Administrative Code provisions on reporting bus accident statistics to TEA have also been added.

***CNA(LOCAL) POLICY CONSIDERATIONS:***

In keeping with the reorganization of policy provisions on transportation safety, information on school bus safety precautions has been deleted from CNA(LOCAL). That material is more appropriately addressed in driver safety training and administrative procedures.

**Elections**

Existing statutory provisions have been added to BBB(LEGAL) regarding special elections and specifying the order of candidates' names on an election ballot. From the Texas Administrative Code, a new provision has been added to BBB(LEGAL) and CCA(LEGAL) clarifying that a newsletter of a public officer of a school district is not considered political advertising if the content and layout meet certain criteria.

**Community  
Relations**

**Nondiscrimination**

Existing statutory provisions prohibiting a district from refusing access to facilities or participation in activities to any individual based on race, religion, color, sex, national origin, or disability have been added at GA(LEGAL).

**Public  
Information**

In the categories of information excepted from public disclosure listed at GBA(LEGAL), we have revised the item regarding “drafts and working papers involved in the preparation of proposed legislation” to match statute. The revision clarifies that the exception does not apply to proposed policy, as previously indicated. To address disclosure of policymaking documents, additional information was added to the exception for interagency or intra-agency memoranda.

**Volunteers**

At GKG(LEGAL), Senate Bill 82, from the 80<sup>th</sup> Texas Legislature, provides immunity to volunteers who assist with extracurricular activities for civil damages related to extracurricular safety requirements of the Education Code, unless the individual acts willfully or is wantonly negligent.

**Outdoor  
Advertising**

House Bill 412 from the 80<sup>th</sup> Texas Legislature amended rules regarding outdoor advertising to now make it an offense for a person to allow advertising to be erected or maintained on the person’s property in violation of Transportation Code Chapter 391. This provision has been added at GKB(LEGAL).

***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.