



Texas Association of School Boards • Legal Services
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Serving Texas Schools Since 1949

August 11, 2016

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

Mr. Rickie R. Harris
Superintendent
West Orange-Cove CISD
P.O. Box 1107
Orange, TX 77631-1107

Dear Mr. Harris:

Elvia Garcia Donaldson has submitted material for legal review as part of Local District Update #2016.03, previously mailed under separate cover. The purpose of this legal review is to identify to the board potential legal problems that may arise as a result of the district's local policy choices.

Scope of Review:

When TASB Legal Services reviews a district's local policies, the district receives the benefit of our unique, statewide view of policy trends and legal issues. By the nature of this review, however, the reviewing attorney has no background information regarding local circumstances in your district that might influence your policy choices. Therefore, this review is intended as a complement to, but not a substitute for, periodic comprehensive review by the district's own attorney, who is better able to consider the board's policy manual as a whole in light of local circumstances.

Most comments from TASB Legal Services address potential legal risks arising from the express language of the policies. Your district may also receive comments about significant application issues evident from the policy language. Because the potential legal issues arising from the application of policy language are so numerous, Legal Services cannot comment on every possible application issue. The district should contact its attorney or TASB Legal Services if it needs legal advice about how to apply any of its policies in specific circumstances.

Review of Your Policies:

For this review, we have examined only the following code(s): **DEC(LOCAL)**. We have the following comments:

DEC(LOCAL): At LOCAL LEAVE DONATION, the district has created a local leave donation process. The process does not state that the need for the donated leave must be due to a catastrophic illness or injury. The IRS requires that donated leave programs be limited to mental or physical conditions that necessitate a prolonged absence from work and could result in substantial loss of income because an employee has exhausted all available paid leave. If the district allows leave for purposes other than catastrophic illness or injury, the employee who donates the leave may have to pay income tax on the donated leave. I.R.S. Priv. Ltr. Rul. 2007-20017 (May 18, 2007). TASB Legal Services recommends that the district amend this portion of the policy to reflect that it applies to catastrophic illnesses or injuries.

At CERTIFICATION OF LEAVE, this policy states that if an employee suffers from a chronic or long-term condition under continuing supervision of a health-care provider, the district may require certification no more often than every 30 days, unless the circumstances described by the previous certification have changed significantly or the district received information that casts doubt upon the employee's reason for the absence. This portion of the policy also contains provisions for obtaining a second and third opinion. An employer may not request recertification every 30 days if the original certification indicates that the minimum duration of the condition is more than 30 days. 29 C.F.R. § 825.308(b). In such case, the employer must wait until that minimum duration expires before requesting recertification, unless one of the

exceptions in the regulations applies. If, for example, medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the employer must wait 40 days before requesting a recertification. TASB Legal Services recommends that this policy be revised to conform to the regulations.

Changes to Your Policies

Ultimately the content of local policy is the board's choice. As the board makes its policy decisions, it should consider the recommendations of district administrators, input from TASB Policy and Legal Services, and the advice of the district's school attorney. If the district wishes to make changes to its policy, contact Elvia Garcia Donaldson.

Sincerely,

TASB Legal Services

By: _____
Rachel Dedman Shores