

# Vantage Points

A Board Member's Guide to Update 85

***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 85 ***Vantage Points*** and the Localized Update 85 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.

For further information about Policy Service, check out our Web site at <http://www.tasb.org/services/policy>.

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Update 85 addresses federal regulatory changes affecting the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and the Family Educational Rights and Privacy Act (FERPA), as well as other policy changes relating to disciplinary alternative education programs (DAEPs), criminal history checks of employees who work for entities that contract with the district, Internet safety, use of district vehicles, and board elections.

**Nondiscrimination**

The ADA (Americans with Disabilities Act) Amendments Act of 2008 resulted in changes throughout the update. Congress intended this Act to expand protection of disabled individuals. At DAA(LEGAL), provisions have been added repeating the prohibition against discrimination on the basis of disability and requiring districts that receive assistance under the Individuals with Disabilities Education Act (IDEA) to make efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted by the IDEA. In addition, expanded definitions of “disability” and “major life activities” extend protection from discrimination to a wider range of individuals, while another new provision prohibits employment qualification standards based on a person’s uncorrected vision unless the vision standard is shown to be job related and consistent with business necessity.

Congress made similar revisions to Section 504 of the Rehabilitation Act, and as a result the expanded definitions of “disability” and “major life activities” have also been added at FB(LEGAL) regarding students.

***DBB(LOCAL) POLICY CONSIDERATIONS:***

The ADA Amendments Act prompted changes to DBB(LOCAL), regarding employee medical examinations, as well. Revisions to the policy clarify the circumstances under which a superintendent or designee may require an employee to undergo a medical examination and allow the district to place the employee on paid administrative leave while evaluating the results of the exam. New provisions also explain how the superintendent or designee should proceed, after receiving the results of the examination, in assessing whether the employee’s impairment, if any, requires reasonable accommodation.

In addition to the changes resulting from the ADA Amendments Act, this local policy has also been revised to distinguish between temporary disability leave requests initiated by an employee and involuntary temporary disability leave. Since the Education Code requires board action in the case of an involuntary placement, the policy requires the superintendent to make a recommendation to the board so the board has appropriate information on which to base its decision.

## Employee Issues

### Employee Leaves and Absences

New comprehensive regulations from the Department of Labor (DOL) regarding the FMLA have prompted a major restructuring of the policy manual's leaves and absences provisions. Policy DEC(LEGAL) has been split into three codes: DEC(LEGAL) now covers general information on leaves and absences. New code DECA(LEGAL) contains provisions on family and medical leave, formerly at DEC, now greatly expanded with details from the DOL regulations. Another new code, DECB(LEGAL), has been created to house leave provisions applicable to an employee's military service.

Policy Service has developed a **Leaves and Absences Starting Points** policy development toolkit to incorporate changes from the new FMLA regulations into DEC(LOCAL). A copy of the **Starting Points** worksheet was included with districts' Update 85 materials.

#### **CRE(LOCAL) POLICY CONSIDERATIONS:**

Adopted by some districts that allow employees on workers' compensation to use available paid leave in partial amounts to supplement workers' compensation wage benefits, this local policy has been deleted since its provisions are already addressed at DEC(LOCAL).

### Other Administrative Issues

New TEA rules at DEA(LEGAL) clarify eligibility requirements and define "full time" and "part time" for purposes of the support staff compensation supplement.

At DEAA(LEGAL), new Commissioner's rules have been incorporated governing the District Awards for Teacher Excellence (DATE) program and master teacher grant programs. The new DATE rules address district application requirements, permissible exclusions of certain teachers, and guidelines for awards. The new master teacher grant program rules include provisions on teacher eligibility, use of funds, and other issues.

## Student Issues

### Student Records

New Department of Education rules regarding FERPA have resulted in extensive revisions at FL(LEGAL). Significant changes include added details on the disclosure of education records in an emergency when it concerns the health or safety of a student or other individual, as well as new provisions requiring a district to use reasonable methods to authenticate the identity of individuals to whom it discloses education records. In addition, the new rules expressly prohibit a district from listing as directory information students' social security numbers. However, a district may list student identification num-

bers as directory information, as long as the student identification number cannot be used by itself (that is, without a separate password) to access education records.

***FL(LOCAL) POLICY CONSIDERATIONS:***

The new FERPA regulations are also reflected at FL(LOCAL). Significant changes to this local policy include the addition of grievance records to the list of types of education records and a new provision limiting a school official's access to education records to situations when the school official has a legitimate educational interest in the records. Other revisions address authentication of requestors' identities, procedures regarding parent access to student records, record transfer requirements, and time lines for amendment of records.

As mentioned in the (LEGAL) policy, a district has the option of including student identification numbers in its list of directory information if the number cannot be used by itself to gain access to education records.

**Special  
Education**

New IDEA regulations from the Department of Education regarding consent to special education services have been incorporated at two policies. At EHBA(LEGAL), new provisions outline a district's obligations if a parent fails to give or refuses consent for services or revokes consent for services. At EHBAE(LEGAL), the new regulations make clear that if a parent does revoke consent after a student has already begun receiving special education services, the district does not have to delete references to those services from the student's educational records.

**DAEP Placement**

New rules from TEA regarding DAEPs are incorporated at FOCA(LEGAL), including new provisions allowing districts to contract with third parties for DAEP services and allowing districts to serve DAEP students and non-DAEP students together in summer school programs. In accordance with the new rules, the student-to-teacher ratio in DAEPs cannot exceed 15 to 1, and teachers must receive mandatory training. In addition, entrance and transition services to DAEP programs must address academic services. The new rules require that a student in a DAEP be given an opportunity to complete a foundation course in which the student was enrolled, not just "coursework," as previously required. The new TEA rules also require districts participating in shared services arrangements for DAEP services to address certain objectives regarding the performance of DAEP students in district- and campus-level improvement plans, as reflected at BQ(LEGAL).

**Child Abuse Investigations**

***GRA(LOCAL) POLICY CONSIDERATIONS:***

Text at this local policy has been reordered to clarify that the procedures a district must follow when a student is interviewed or questioned at school as part of a child abuse investigation are different from those for other types of investigations. The name of the Department of Family and Protective Services has also been updated in this policy.

**District Operations**

**Criminal History Checks**

Previously scattered among several codes, provisions regarding criminal history checks of individuals who work for entities that contract with the district are now gathered in a new code, CJA(LEGAL), dedicated to that topic. Existing provisions from CH(LEGAL), CNA(LEGAL), and CV(LEGAL) have been moved to this new code along with new rules from TEA that define terms and expand district and contractor responsibilities regarding obtaining criminal history record information.

**Internet Safety**

Amendments to the Children’s Internet Protection Act (CIPA), reflected at CQ(LEGAL), require districts that participate in the E-Rate program or receive certain ESEA funding to educate students about appropriate online behavior on social networking sites and chat rooms and to teach students about cyberbullying. Districts must certify to the FCC that these requirements are part of their Internet safety policies.

***CQ(LOCAL) POLICY CONSIDERATIONS:***

The CIPA requirements regarding teaching appropriate online behavior and cyberbullying awareness have been added to this local policy on electronic communication and data management.

**Facility Standards**

Amended Commissioner’s rules concerning facility standards are reflected at CS(LEGAL), where existing language has been added to the list of information that must be included in educational specifications for new school facilities or major space renovations. At CL(LEGAL), provisions of the Virginia Graeme Baker Pool and Spa Safety Act have been added requiring a swimming pool or spa that is open to the public to meet certain drain cover standards. At CV(LEGAL), existing statutory text has been added to clarify that only registered architects may prepare architectural plans or specifications for certain construction projects.

**District Vehicles**

**CNB(LOCAL) POLICY CONSIDERATIONS:**

To clarify provisions regarding use of district vehicles, this local policy now distinguishes between nonschool- and school-related use of all district vehicles, not just buses, and reflects the district’s choice of whether nonschool use is allowed. A new provision gives the superintendent or designee the authority to approve the use of district vehicles by certain entities in emergencies. The policy also requires the superintendent or designee to develop administrative regulations regarding school-related use of district vehicles.

**Please note:** Districts that allow nonschool use of district vehicles should ensure that they have appropriate insurance coverage, since some insurance providers do not cover nonschool use.

**Board Issues**

**Elections**

Policy BBB(LEGAL), which houses provisions regarding board member elections, has undergone a major reorganization at this update to better match the flow of the elections process, and a table of contents has been added for ease of use. While most of the text at BBB(LEGAL) remains unchanged, several existing statutory provisions, including language regarding the election order and various notice requirements, have been added for clarity. In addition, provisions addressing election ethics were moved to a new code, BBBB(LEGAL), specifically dedicated to that topic, and provisions on mock elections by students were moved to the more appropriate code EHBK(LEGAL), on other instructional initiatives.

**Board Meetings**

As reflected at BE(LEGAL), a recent attorney general opinion concluded that the common-law voting standard—that a majority vote is determined from a majority of those present and voting, excluding abstentions—still applies to school boards and that the 2007 legislative changes to the Education Code regarding majority voting were not intended to change the common-law rule.

Another recent attorney general opinion reflected at BE(LEGAL) reiterates that board meeting agendas and notices must list the specific subject of a report or update by district staff or a member of the board in order to satisfy Texas Open Meetings Act requirements.

**Eligibility**

Finally, existing statutory provisions and case law have been incorporated at BBA(LEGAL) to clarify that a temporary residence does not qualify as a person’s residence for purposes of board candidate and board member eligibility and that the issue of residency is ultimately determined by the courts.

**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.