

# Instruction Sheet

## TASB Localized Policy Manual Update 91

District      Brackett ISD

Code	Action To Be Taken	Note
ATTN (LOCAL)	No policy enclosed	See explanatory note
AIC (LEGAL)	Replace policy	Revised policy
B (LEGAL)	Replace table of contents	Revised table of contents
BBA (LEGAL)	Replace policy	Revised policy
BBB (LEGAL)	Replace policy	Revised policy
BBFB (LEGAL)	Replace policy	Revised policy
BJCG (LEGAL)	Replace policy	Revised policy
BQ (LEGAL)	Replace policy	Revised policy
BQA (LEGAL)	Replace policy	Revised policy
BQB (LEGAL)	Replace policy	Revised policy
BR (LEGAL)	Replace policy	Revised policy
C (LEGAL)	Replace table of contents	Revised table of contents
CBA (LEGAL)	Replace policy	Revised policy
CCA (LEGAL)	Replace policy	Revised policy
CCG (LEGAL)	Replace policy	Revised policy
CDA (LEGAL)	Replace policy	Revised policy
CDA (LOCAL)	Replace policy	Revised policy
CDB (LEGAL)	Replace policy	Revised policy
CE (LEGAL)	Replace policy	Revised policy
CEA (LEGAL)	ADD policy	See explanatory note
CH (LEGAL)	Replace policy	Revised policy
CHG (LEGAL)	Replace policy	Revised policy
CHH (LEGAL)	ADD policy	See explanatory note
CI (LEGAL)	Replace policy	Revised policy
CJA (LEGAL)	Replace policy	Revised policy
CL (LEGAL)	Replace policy	Revised policy
CMD (LEGAL)	Replace policy	Revised policy
CNA (LEGAL)	Replace policy	Revised policy
CNC (LEGAL)	Replace policy	Revised policy
COB (LEGAL)	Replace policy	Revised policy
CQA (LEGAL)	Replace policy	Revised policy
CV (LEGAL)	Replace policy	Revised policy

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CV	(LOCAL)	Replace policy	Revised policy
CVA	(LEGAL)	Replace policy	Revised policy
CVB	(LEGAL)	Replace policy	Revised policy
CVC	(LEGAL)	Replace policy	Revised policy
CVD	(LEGAL)	Replace policy	Revised policy
CVE	(LEGAL)	Replace policy	Revised policy
CVF	(LEGAL)	Replace policy	Revised policy
D	(LEGAL)	Replace table of contents	Revised table of contents
DBA	(LEGAL)	Replace policy	Revised policy
DBD	(LEGAL)	Replace policy	Revised policy
DC	(LEGAL)	Replace policy	Revised policy
DCA	(LEGAL)	Replace policy	Revised policy
DECB	(LEGAL)	Replace policy	Revised policy
DF	(LEGAL)	Replace policy	Revised policy
DFAA	(LEGAL)	Replace policy	Revised policy
DFAB	(LEGAL)	Replace policy	Revised policy
DFBA	(LEGAL)	Replace policy	Revised policy
DFBB	(LEGAL)	Replace policy	Revised policy
DFBB	(LOCAL)	Replace policy	Revised policy
DFD	(LEGAL)	Replace policy	Revised policy
DFE	(LEGAL)	Replace policy	Revised policy
DG	(LEGAL)	Replace policy	Revised policy
DGC	(LEGAL)	ADD policy	See explanatory note
DLB	(LEGAL)	Replace policy	Revised policy
DMA	(LEGAL)	Replace policy	Revised policy
DP	(LEGAL)	Replace policy	Revised policy
E	(LEGAL)	Replace table of contents	Revised table of contents
EF	(LEGAL)	Replace policy	Revised policy
EFAA	(LEGAL)	Replace policy	Revised policy
EFAA	(LOCAL)	Replace policy	Revised policy
EHAA	(LEGAL)	Replace policy	Revised policy
EHAC	(LEGAL)	Replace policy	Revised policy
EHB	(LEGAL)	Replace policy	Revised policy
EHBAB	(LEGAL)	Replace policy	Revised policy

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EHBAD (LEGAL)	Replace policy	Revised policy
EHBK (LEGAL)	Replace policy	Revised policy
EHDD (LEGAL)	Replace policy	Revised policy
EHDE (LEGAL)	Replace policy	Revised policy
EIA (LEGAL)	Replace policy	Revised policy
EIE (LEGAL)	Replace policy	Revised policy
EIF (LEGAL)	Replace policy	Revised policy
EKB (LEGAL)	Replace policy	Revised policy
FBA (LEGAL)	Replace policy	Revised policy
FD (LEGAL)	Replace policy	Revised policy
FEA (LEGAL)	Replace policy	Revised policy
FED (LEGAL)	Replace policy	Revised policy
FFAA (LEGAL)	Replace policy	Revised policy
FFAF (LEGAL)	Replace policy	Revised policy
FFC (LEGAL)	Replace policy	Revised policy
FFG (EXHIBIT)	Replace exhibit	Revised exhibit
FFH (LOCAL)	Replace policy	Revised policy
FL (LEGAL)	Replace policy	Revised policy
FM (LEGAL)	Replace policy	Revised policy
FNCG (LEGAL)	Replace policy	Revised policy
FNCH (LEGAL)	Replace policy	Revised policy
FNCI (LEGAL)	Replace policy	Revised policy
FO (LEGAL)	Replace policy	Revised policy
FO (LOCAL)	Replace policy	Revised policy
FOC (LEGAL)	Replace policy	Revised policy
FOCA (LEGAL)	Replace policy	Revised policy
FOD (LEGAL)	Replace policy	Revised policy
FODA (LEGAL)	Replace policy	Revised policy
FOE (LEGAL)	Replace policy	Revised policy
FOF (LEGAL)	Replace policy	Revised policy
FP (LEGAL)	Replace policy	Revised policy
G (LEGAL)	Replace table of contents	Revised table of contents
GBA (LEGAL)	Replace policy	Revised policy
GBAA (LEGAL)	Replace policy	Revised policy

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GKA (LEGAL)	Replace policy	Revised policy
GKG (LEGAL)	Replace policy	Revised policy
GRA (LEGAL)	Replace policy	Revised policy
GRA (EXHIBIT)	DELETE exhibit	See explanatory note
GRAA (LEGAL)	ADD policy	See explanatory note
GRAA (EXHIBIT)	ADD exhibit	See explanatory note
GRAC (LEGAL)	ADD policy	See explanatory note

# Explanatory Notes

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ATTN (LOCAL) POLICY REVIEW

**Please note:** Unless otherwise noted, references to legislative bills throughout these explanatory notes refer to bills from the 82nd Regular Legislative Session. Bills from the First Called Session of the 82nd Legislature are so noted. All referenced bills have already gone into effect unless otherwise noted.

AIC (LEGAL) ACCOUNTABILITY  
INVESTIGATIONS AND SANCTIONS

New provisions from SB 738 have been added on page 6 at PARENT REQUEST. The parents of a majority of the students enrolled at a campus that has had an unacceptable performance rating for three consecutive years after the campus is reconstituted can sign a petition specifying which action—either repurposing, alternative management, or closure—the commissioner should order. The commissioner must order the specific action requested by the petition unless the school board presents a written request specifying a different action, in which case the commissioner may order the action that the board requested.

B (LEGAL) LOCAL GOVERNANCE

We have revised the B section table of contents to rename BJCG Superintendent, Resignation.

BBA (LEGAL) BOARD MEMBERS  
ELIGIBILITY/QUALIFICATIONS

To be elected as a board member, a person must be a qualified voter. A change from HB 1226 modifies the definition of QUALIFIED VOTER to clarify that a person is not considered to have been finally convicted of a felony and therefore disqualified from voting if criminal proceedings are deferred without an adjudication of guilt.

BBB (LEGAL) BOARD MEMBERS  
ELECTIONS

Multiple bills affected school board elections. Significant changes are described with the relevant bill number in parenthesis. **Please note that the provisions that come from SB 100 are not applicable to November 2011 elections.** TASB Legal Services has published Frequently Asked Questions providing further information on conducting your district's elections under SB 100 available at: [http://www.tasb.org/services/legal/esource/governance/documents/sb100\\_elec\\_related\\_changes\\_aug11.pdf](http://www.tasb.org/services/legal/esource/governance/documents/sb100_elec_related_changes_aug11.pdf).

At ADJUSTMENTS, a board may adopt a resolution by December 31, 2011, to change the length of board member terms, which must consist of staggered three- or four-year terms. Changes are effective with the first regular election occurring after January 1, 2012. (SB 100)

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In addition, the Election Code now permits a local governmental entity to change to a November election date, and adjust terms accordingly, if done by December 31, 2012. See CHANGING TO NOVEMBER ELECTION DATE. (SB 100, HB 1545)

To satisfy JOINT ELECTION requirements, a school district may now hold a joint election with a college district in which the school district is wholly or partly located. (SB 729) Also at this margin note, we have added existing statutory provisions that define the general election for state and county officers and that allow school districts in certain counties to hold joint elections with hospital districts.

Although a county elections administrator must usually provide ELECTION SERVICES for a school district if requested to do so, a new provision provides that a county elections administrator is not required to provide election services for an election held in May in an even-numbered year. (SB 100)

The dates by which a district must complete its ELECTION ORDERS were revised. For an election held on a date other than the November uniform date, the election must be called not later than the 71st day before election day. For an election held on the November election date, the election must be called by the 78th day, rather than the 70th day, before election day. (SB 100) The election order and the ELECTION NOTICE now only have to state the location of the *main* rather than *each* early voting polling place. (HB 2817)

At PUBLICATION, the notice of election must now be preserved for six months after election day, rather than 22 months. (HB 2817)

A district must post the filing NOTICE TO CANDIDATES not later than the 30th day before the *last* day (rather than the *first* day) on which a candidate may file an application for a place on the ballot. In addition, for a general election for state and county officers, a school district is no longer required to post filing information for candidates. (HB 2817)

The filing dates for GENERAL ELECTIONS and SPECIAL ELECTIONS are now earlier, as are the deadlines to submit a declaration of WRITE-IN CANDIDACY. (SB 100)

At ELECTION JUDGES AND CLERKS, a new provision states that the nepotism prohibitions do not apply to an appointment of an election clerk if the clerk is not related within the first degree by blood or marriage to an elected official of the district. (HB 2194)

We have deleted the factors that the director of the federal census uses to determine whether a district is required to provide bilingual education materials, since the district does not make this determination. If the federal census director determines that a district must provide election materials in a language other than English or Spanish, the district must provide the materials in the same manner in which the district would be required to provide materials in Spanish, to the extent practicable. See BILINGUAL MATERIALS — OTHER LANGUAGES. (HB 2477)

BBFB	(LEGAL)	ETHICS
		PROHIBITED PRACTICES

As a result of SB 6 (First Called Session), we have revised provisions on textbook violations, beginning on page 5, to refer to instructional materials and instructional materials funds.

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### BJCG (LEGAL) SUPERINTENDENT RESIGNATION

Provisions from SB 8 (First Called Session) specify that if a board declares a financial exigency, the board may amend the terms of the superintendent's term contract. If the board amends the superintendent's contract, the superintendent may resign without penalty by providing notice to the board and may continue to work for the district during the notice period under the terms of the prior contract.

Also, the subtitle of this legally referenced policy has been changed to Resignation to better reflect the content.

### BQ (LEGAL) PLANNING AND DECISION-MAKING PROCESS

This legally referenced policy has been reorganized into several major sections: the requirement for a district to establish a district- and campus-level planning and decision-making process, general requirements that apply to both district- and campus-level plans, and specific provisions governing the district plan and campus plans.

In addition, the following changes were made:

- Existing statutory text requiring the DISTRICT IMPROVEMENT PLAN to address performance of students in special education programs has been added on page 2.
- From SB 471, the district improvement plan (see item 11) must now include a program to address maltreatment, defined as abuse and neglect, of children in addition to the existing requirement to address child sexual abuse.

### BQA (LEGAL) PLANNING AND DECISION-MAKING PROCESS DISTRICT-LEVEL

In addition to the reorganization of several provisions in this policy, the following changes were made:

- SB 778 adds a requirement that, if practicable, the PROFESSIONAL STAFF on the district-level planning and decision-making committee will include an individual with the primary responsibility for educating students with disabilities.
- Throughout, the text was revised to better match statutory language and to delete text repeated from BQ(LEGAL).

### BQB (LEGAL) PLANNING AND DECISION-MAKING PROCESS CAMPUS-LEVEL

In addition to the reorganization of several provisions in this policy, the following changes were made:

- SB 778 adds a requirement that, if practicable, the PROFESSIONAL STAFF on the campus-level planning and decision-making committee will include an individual with the primary responsibility for educating students with disabilities.
- Throughout, the text was revised to better match statutory language and to delete text repeated from BQ(LEGAL).

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### BR (LEGAL) REPORTS

Pursuant to SB 1618, all district reports to TEA will be submitted electronically.

SB 6 (First Called Session) repealed the requirement for the superintendent to report a district's maximum attendance to the commissioner for textbook requisition purposes, and we have deleted that item from the list of reports.

At item 24, SB 149 amends the district reporting requirements regarding the college credit program. Districts must annually report to TEA the number of students who participated in the program, not just those who earned credit, and the courses in which students earned high school credit.

### C (LEGAL) BUSINESS AND SUPPORT SERVICES

We have revised the C section table of contents to reflect a new code, CEA, Financial Exigency.

In addition, the CV series has been rearranged to match the structure of new Government Code Chapter 2267 on facilities construction, as follows:

- Construction Manager-Agent has been moved to CVC.
- Construction Manager-At-Risk has been moved to CVD.
- Design-Build has been moved to CVE.

### CBA (LEGAL) STATE AND FEDERAL REVENUE SOURCES STATE

SB 8 (First Called Session) requires, by July 1 of each year, the commissioner to determine whether each district is estimated to receive less funding under the foundation school program for maintenance and operations for the following school year than the district received for the 2010–11 school year. If the funding will be less, the commissioner will certify the percentage decrease in funding. A district must receive this certification from the commissioner in order to implement a furlough as allowed by SB 8. See FUNDING LEVELS.

### CCA (LEGAL) LOCAL REVENUE SOURCES BOND ISSUES

As reflected on pages 2–3, SB 100 changed the deadline for a district to make a CALL FOR ELECTION for a bond election on the November uniform election date to the 78th day before election day rather than the 70th day. However, for an election held on a uniform election date other than the November uniform date, the election must be called not later than the 71st day before election day. Please note that these provisions from SB 100 are not applicable to November 2011 bond elections.

In each bond PROPOSITION, HB 360 requires a district to state the total principal amount of the bonds to be issued and a general description of the purposes of the bonds. See page 4.

Effective March 7, 2011, new Administrative Code rules add additional requirements regarding ELIGIBILITY and APPLICATION for credit enhancement of bonds. See pages 6–7.



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### CCG (LEGAL) LOCAL REVENUE SOURCES AD VALOREM TAXES

In the Note on page 1, we have added a link for easy access to the comptroller's Web site.

In addition, several bills affected this legally referenced policy:

- SB 1 (First Called Session) provides that if a district has a DECREASE IN DEBT SERVICE RATE after the publication of the required notice of the budget and tax rate meeting, the board president is not required to post another notice or call another meeting to discuss and adopt the budget and the proposed lower rate. A conforming change requires the TAX RATE to be based on the *calculated* rather than the *published* debt service rate. See page 3.
- HB 360 requires a PROPOSITION submitted to the voters for imposition of a new tax or a tax increase to state the amount of the tax or the maximum tax rate.
- SB 100 changed the deadline for a district to make a CALL FOR ELECTION on the November uniform election date to the 78th day before election day rather than the 70th day. However, for an election held on a uniform election date other than the November date, the election must be called not later than the 71st day before election day. See page 5. Please note that these provisions from SB 100 are not applicable to November 2011 elections.
- Each year after the district adopts a tax rate, it must provide information related to the tax rate to the county assessor-collector for each county in which any part of the district is located for posting on the county's Web site. This change at TAX INFORMATION TO COUNTY beginning on page 5 is from HB 2338.
- At RESCISSION on page 6, HB 2169 authorizes a board to rescind a tax discount previously adopted by the board.
- HB 499 allows a district to collect ADDITIONAL PENALTIES on delinquent taxes. See page 9.
- HB 2853, SB 627, and SB 1 (First Called Session) amended the Tax Increment Financing Act as reflected at REINVESTMENT ZONES/TAX INCREMENT FINANCING beginning on page 11. HB 2853 removes provisions requiring notice to the district and the opportunity to comment prior to the designation. An existing provision on when a county or municipality may designate a reinvestment zone was added in its place. The bills change provisions on appointing membership to the zone board and collection and deposit of tax increments.
- SB 1 (First Called Session) amended the tax exemption for GOODS-IN-TRANSIT, reflected on page 13. To tax goods-in-transit, a district must take official action on or after October 1, 2011, even if the district had previously taken action to provide for the taxation.

Existing statutory text was added at NOTICE OF OPTIONAL EXEMPTION on page 11. This provision requires a district to notify the appraisal office of exemptions within 30 days of adopting, amending, or repealing an exemption.

Citations were updated throughout, and we deleted a provision about split payment of taxes that applies only to districts in Galveston County.

### CDA (LEGAL) OTHER REVENUES INVESTMENTS

HB 2226 made several changes to district investment provisions.

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- Districts must include in their investment policies procedures to monitor rating changes in investments and to take prudent measures to liquidate investments that do not meet minimum ratings. See WRITTEN POLICIES on page 1.
- In current law, the chief financial and investment officers must attend investment training every two years. HB 2226 clarifies that the two-year period begins on the first day of the district's fiscal year and includes the two consecutive fiscal years after that date. See ONGOING on page 3.
- The mandatory QUARTERLY REPORTS are no longer required to be prepared in compliance with generally accepted accounting principles or state the additions and changes to the market value during the period covered by the report. References to these requirements have therefore been deleted. See pages 4-5.
- AUTHORIZED INVESTMENTS (at item 1) now include obligations fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the full faith and credit of the United States. HB 2226 also amended the criteria to invest in certificates of deposit and fully collateralized repurchase agreements. See items 2 and 3.

Also at AUTHORIZED INVESTMENTS, at item 11, SB 1543 permits a district that qualifies as an *issuer* to invest in corporate bonds. The definition of *issuer* is included in the policy manual at CCF(LLEGAL), which is not included in this update.

Existing statutory language was added at LOSS OF REQUIRED RATING. An investment that requires a minimum rating does not qualify as an authorized investment during the period that the investment does not meet the minimum rating. A district must take all prudent measures consistent with its investment policy to liquidate an investment that does not have the minimum rating.

### CDA (LOCAL) OTHER REVENUES INVESTMENTS

We recommend new text at MONITORING RATING CHANGES to satisfy the requirement from HB 2226 for districts to include in their investment policies procedures to monitor rating changes in investments and to take prudent measures to liquidate investments that do not meet minimum ratings. The recommended text requires, in accordance with the Government Code, that the investment officer develop procedures to monitor investment ratings and to liquidate investments that do not maintain satisfactory ratings.

As mentioned in the explanatory note for CDA(LLEGAL), a district that qualifies as an *issuer* may invest in corporate bonds. To be an issuer, a district must have an ADA of 50,000 or more or have (1) a principal amount of at least \$100 million in outstanding long-term indebtedness, proposed indebtedness, or a combination thereof; and (2) some amount of long-term indebtedness outstanding or proposed to be issued that is rated in one of the four highest rating categories for long-term debt instruments by a nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with the obligation. [See CCF in your policy manual.] If your district meets these criteria and will permit investment of district funds in corporate bonds, please contact your policy consultant for appropriate text.

If your district does not present an annual comprehensive report on the district's investment program to the board, please contact your policy consultant to adjust your policy.

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CDB (LEGAL) OTHER REVENUES  
SALE, LEASE, OR EXCHANGE OF SCHOOL-OWNED PROPERTY

Changes at PUBLICATION OF NOTICE AND BIDDING REQUIREMENTS and HIGHER EDUCATION INSTITUTIONS are to better reflect statutory language.

At OTHER POLITICAL SUBDIVISIONS on page 2, HB 2690 adds an exception to the rule requiring that before land owned by a school district can be sold or exchanged, notice to the general public must be published in a newspaper. The notice and bidding requirements do not apply to a donation or sale of the property or interest in the property for less than fair market value to another political subdivision if the land will be used in carrying out a purpose that benefits the public interest of the district, the donation or sale is made under terms that effect and maintain the public purpose, and the title and right to possession of the land or interest revert to the district if the acquiring political subdivision ceases to use the land in carrying out the public purpose.

A cross-reference to CQA for information regarding geospatial data projects has been added in the Note on page 4.

CE (LEGAL) ANNUAL OPERATING BUDGET

A new provision from HB 628 allows a district to enter into an agreement regarding IMPROVEMENTS TO REAL PROPERTY not owned or leased by the district if the improvement *benefits* real property owned or leased by the district. Benefits include highways, roads, streets, sidewalks, crosswalks, utilities, and drainage improvements.

SB 764 prohibits a school district from using district funds or resources or acquiring property for the design, construction, renovation, or operation of a HOTEL.

SB 1 (First Called Session) provides that if a district has a DECREASE IN DEBT SERVICE RATE after the publication of the required notice of the budget and tax rate meeting, the board is not required to post another notice or call another meeting to discuss and adopt the budget and the proposed lower rate. See page 4.

CEA (LEGAL) ANNUAL OPERATING BUDGET  
FINANCIAL EXIGENCY

This new policy includes provisions on financial exigency from SB 8 (First Called Session). The bill requires a board to adopt a resolution to declare a financial exigency, limits the duration of the declaration to the end of the fiscal year unless the board adopts another resolution, requires notice to the commissioner, and requires the commissioner to set the minimum standards for the financial conditions that must exist for a declaration of financial exigency.

TASB Legal Services has a Frequently Asked Questions on SB 8 available at:  
[http://www.tasb.org/services/legal/esource/personnel/documents/sb8\\_flexibilities\\_reducing\\_costs\\_july11.pdf](http://www.tasb.org/services/legal/esource/personnel/documents/sb8_flexibilities_reducing_costs_july11.pdf).

CH (LEGAL) PURCHASING AND ACQUISITION

Changes to this legally referenced policy on purchases of goods and services are from HB 628 unless otherwise noted. HB 628 created Government Code Chapter 2267 to address purchasing methods used for construction contracts. See CV series, below.

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In addition to reordering existing provisions, the substantive changes include:

- For PURCHASES VALUED AT OR ABOVE \$50,000, the law specifies that the list of purchasing methods applies to *goods and services*. Two of the listed methods—competitive bidding and competitive sealed proposals—specify that they are for services other than construction services.
- In awarding a contract, a district must consider a new FACTOR—whether the vendor has its principal place of business in or employs at least 500 people in Texas. This requirement does not apply to contracts for telecommunications and information services, building construction and maintenance, or instructional materials.
- Certified public accountants and engineers are considered PROFESSIONAL SERVICES to which Education Code Chapter 44 does not apply. See page 4.
- Specific procedures have been added for COMPETITIVE BIDDING and COMPETITIVE SEALED PROPOSALS, on pages 5–7. These new procedures specify that when using competitive bidding, a board may take into account the SAFETY RECORD of the bidder to determine who is a responsible bidder. If so, the board must adopt a written definition and criteria for determining the safety record of the bidder, give notice in the bid specifications that safety records will be considered, and ensure its determinations are not arbitrary and capricious. Unlike construction contracts, for which there is a generally recognized list of safety factors to consider [see CVA(LOCAL), not included in this update], the diversity of non-construction related purchases that can be made pursuant to CH makes identification of safety criteria difficult to establish in advance. For example, on a contract for bus services, a board may wish to consider the number of moving traffic violations or employee reprimands for safety violations, whereas on a contract for maintenance services, a board may wish to consider injury reports. For this reason, we recommend that if the district wishes to consider the safety record of bidders in determining to whom to award a contract, the board adopt a definition of safety record and criteria through a resolution prior to publication of the bid specifications, which will allow customization of the definition for the contract at issue.
- New limitations on district-approved CHANGE ORDERS specify that if a change in plans or specifications is necessary after performance has begun, the district may approve change orders. However, the total contract price may not be increased unless additional money is approved from available money or is provided for through time warrants. A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a contract originally for less than \$1 million is increased to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price. See page 11.

CHG            (LEGAL)            PURCHASING AND ACQUISITION  
REAL PROPERTY AND IMPROVEMENTS

Changes to EMINENT DOMAIN, beginning on page 2, are from the addition of existing statutory provisions and include the following changes from SB 18:

- Districts may use eminent domain to construct school buildings or for any other *public use* necessary for the district. Previously the law permitted the use of eminent domain to secure sites on which to construct school buildings or for any other purpose necessary for the district.
- Private property cannot be taken by eminent domain if it is not for a public use.
- Specific PROCEDURES for use of eminent domain are at Government Code Chapter 2206 and Property Code Chapter 21.

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- New provisions on REPURCHASE OF REAL PROPERTY require the district to provide notice to the previous property owner so the owner may repurchase the property if the public use for which the property was acquired is cancelled, no actual progress is made toward the public use, or the property becomes unnecessary for the public use.
- A district will lose the authority to exercise eminent domain if by December 31, 2012, it does not submit a letter to the comptroller stating the district's authority and identifying each provision of the law that grants the district that authority. See NOTICE OF RIGHT.

#### CHH (LEGAL) PURCHASING AND ACQUISITION FINANCING PERSONAL PROPERTY PURCHASES

We are sending for inclusion in the district's manual this legally referenced policy containing existing statutory provisions that give the board the authority to execute, perform, and make payments under a contract with a person regarding personal property, or the financing of personal property, in accordance with the Public Property Finance Act. Definitions of *contract* and *personal property* are included. SB 1393 clarifies that *personal property* now includes electricity.

#### CI (LEGAL) SCHOOL PROPERTIES DISPOSAL

A new provision from SB 6 (First Called Session) requires a board to dispose of INSTRUCTIONAL MATERIAL AND TECHNOLOGICAL EQUIPMENT in accordance with Education Code 31.105. See CMD(LEGAL) below.

#### CJA (LEGAL) CONTRACTED SERVICES CRIMINAL HISTORY

At DISQUALIFYING CONVICTION, HB 398 and SB 1042 establish the same standards for acceptable criminal history for a person employed by a contractor with the district as currently apply to a district employee. An employee of the contractor cannot provide services at a district if the individual has been convicted of a Title 5 felony or an offense requiring registration as a sex offender when the victim was a minor or a student at the time of the offense.

#### CL (LEGAL) BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT

Provisions at REDUCTION OF ENERGY CONSUMPTION are amended by HB 1728, which specifies that the strategies for achieving energy efficiency in a district's long-range energy plan must include facility design and construction. A board may explore with the State Energy Conservation Office whether any state or federal tax incentives are available.

HB 1728 also clarifies that an energy savings performance contract may address *new or existing* facilities. Per HB 628, the new construction procurement provisions in Government Code Chapter 2267 do not apply to energy savings performance contracts. See ENERGY OR WATER CONSERVATION MEASURES beginning on page 1.

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HB 1728 also gives districts greater flexibility in FINANCING energy savings performance contracts. At CONTRACT PROCUREMENT, a board may contract with the provider of energy or water conservation measures to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of the energy savings performance contract.

CMD (LEGAL) EQUIPMENT AND SUPPLIES MANAGEMENT  
INSTRUCTIONAL MATERIALS CARE AND ACCOUNTING

SB 6 (First Called Session) significantly changed the law on instructional materials, as reflected in this legally referenced policy, including:

- References to *textbooks* have been changed to *instructional materials* throughout.
- At INSTRUCTIONAL MATERIALS on page 1, districts may not charge students a fee for materials purchased with the instructional materials allotment (IMA), except if a student fails to return materials in an acceptable condition. In addition, the district rather than the state owns materials purchased with the IMA.
- At FUNDING on page 1, each district is entitled to an annual IMA for each student enrolled in the district on a date during the preceding year specified by the commissioner. The commissioner determines the amount of the IMA based on the money available in the state instructional materials fund. However, there may be an ALLOTMENT ADJUSTMENT for changes in enrollment.
- IMA funds may be used as specified at PERMITTED EXPENDITURES, and the district must make a CERTIFICATION OF ALLOTMENT USE, as reflected on page 3, that the funds were used only for permitted expenses. Notably, IMA funds can be used to pay for staff training and for salary and other expenses of an employee who provides technical support for use of technological equipment. The ORDER OF PURCHASE is specified by statute, however. First districts must purchase materials that cover all elements of the essential knowledge and skills, except physical education. Then districts can purchase other materials or equipment as needed by the district. For the next biennium, districts must use IMA funds to purchase materials that will assist the district in meeting performance standards on STAAR.
- The commissioner will maintain an INSTRUCTIONAL MATERIALS ACCOUNT for each district. The district will requisition materials to be purchased through the ONLINE REQUISITION SYSTEM by June 1 of each year.
- SUPPLEMENTAL INSTRUCTIONAL MATERIALS and BILINGUAL INSTRUCTIONAL MATERIALS will be purchased with IMA funds rather than textbook credits. See page 4.
- The CERTIFICATION requirements beginning on page 4 have been amended to provide a list for a district to use in determining whether each student has instructional materials that cover all elements of the TEKS.
- At OWNERSHIP on page 5, the requirement that books be covered has been deleted.
- A district must determine appropriate SALE OR DISPOSAL of instructional material and technological equipment, beginning on page 6.

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**CNA            (LEGAL)            TRANSPORTATION MANAGEMENT  
STUDENT TRANSPORTATION**

A new provision from SB 1 (First Called Session) at TRANSPORTATION FUNDING FOR ELIGIBLE STUDENTS authorizes a district to charge a student a reasonable transportation fee if the district does not receive any transportation allotment funds or participate in a county transportation system for which a transportation allotment is provided for the student.

HB 3506 permits a district to use transportation allotment funds to provide BUS PASSES OR CARDS for another transportation system to each student who is eligible to use the regular transportation system but for whom the regular system is not a feasible method of providing transportation.

**CNC            (LEGAL)            TRANSPORTATION MANAGEMENT  
TRANSPORTATION SAFETY**

A school district is required to equip school buses with a three-point seat belt for each passenger, including the operator, only to the extent that the legislature has appropriated money for the purpose of reimbursing these expenses. However, no funds were appropriated for the biennium beginning September 1, 2011. This change at REQUIRED ON BUSES is from SB 1610.

HB 359 provides that students in grade 6 or below who engage in DISRUPTION OF TRANSPORTATION may no longer be charged with a misdemeanor offense.

**COB            (LEGAL)            FOOD SERVICES MANAGEMENT  
FREE AND REDUCED-PRICE FOOD PROGRAM**

SB 89 repeals the previous summer nutrition program and creates a new program administered by the Texas Department of Agriculture (TDA). The new program:

- Requires a district in which 50 percent or more of the students qualify for free and reduced-price lunch to provide or arrange for a summer nutrition program for at least 30 days during the summer. Former law required a summer program if 60 percent of a district's students were eligible for free and reduced-price lunch.
- Requires TDA to notify districts that are subject to the requirement.
- Allows a board to request a waiver by January 31st. However, the board must notify the school health advisory council of its intentions and the reasons for seeking a waiver by November 30th of the prior year.
- Includes new waiver standards.

**CQA            (LEGAL)            TECHNOLOGY RESOURCES  
DISTRICT, CAMPUS, AND CLASSROOM WEB SITES**

HB 1147 requires that if, in certain circumstances, an Internet Web site contains geospatial data or a map or includes information about a service involving geospatial data or a map, the district must include a specific disclaimer statement on the site. See GEOSPATIAL DATA PRODUCTS beginning on page 2.

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### CV (LEGAL) FACILITIES CONSTRUCTION

Changes to this legally referenced policy on facilities construction are from HB 628 unless otherwise noted. HB 628 created Government Code Chapter 2267 to address purchasing methods used for construction contracts.

In addition to reordering existing provisions, we have made substantive changes from HB 628, which include:

- A new statement establishing the BOARD'S AUTHORITY to adopt rules necessary to implement Chapter 2267 and a new DELEGATION OF AUTHORITY statement. The board may delegate its authority regarding an action authorized or required by Chapter 2267 to a designated representative, committee, or other person. Notice of the delegation must be included in the request for bids, proposals, or qualifications. Because of these changes, we have deleted the specific provision from Education Code Chapter 44 allowing delegation in the case of a disaster and authorizing individuals to request an injunction for contracts made in violation of Chapter 44 of the Education Code. A Note on page 1 now refers readers to CH(LEGAL) for these provisions.
- The list of purchasing methods at CONTRACTS VALUED AT OR ABOVE \$50,000 has been revised. Although HB 628 did not add any new methods, the statutory language was amended slightly.
- In considering and SELECTING A CONTRACTING METHOD other than competitive bidding, the board must, before advertising, determine the method that provides the best value for the district.
- The reverse auction procedure may not be used on a public work contract that requires a payment or performance bond. See EXCEPTIONS on page 2.
- The CONTRACT SELECTION CRITERIA, beginning on page 2, have been amended to require a district to consider any existing laws related to historically underutilized businesses and the use of women- or minority-owned, small, or disadvantaged businesses. In addition, the list of factors that the district may consider in awarding a contract was revised.
- In PUBLISHING CRITERIA on which to evaluate offerors, the district must provide the applicable weighted value for each criterion.
- New limitations on district-approved CHANGE ORDERS specify that if a change in plans or specifications is necessary after performance has begun, the district may approve change orders. However, the total contract price may not be increased unless additional money is approved from available money or is provided for through time warrants. A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a contract originally for less than \$1 million is increased to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price. See page 4.
- A district must provide or contract separately for construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district. See INSPECTION, VERIFICATION, AND TESTING.
- ENERGY SAVINGS PERFORMANCE CONTRACTS are not subject to Chapter 2267.
- ARCHITECTS AND ENGINEERS must be selected on the basis of demonstrated competence and qualifications—the process used for procuring professional services.



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- As reflected at ENFORCEMENT ACTIONS on page 11, a school district that files suit to recover damages for defective design, construction, renovation, or improvement of an instructional facility financed through the Instructional Facilities Allotment must provide written notice of the action to the commissioner. The commissioner may join the action, and a district must send the comptroller any portion of the state's share not used to remedy the defect.

Citations have been updated throughout.

#### CV (LOCAL) FACILITIES CONSTRUCTION

As mentioned above, HB 628 establishes limitations on district-approved change orders for construction contracts. As a result, at CHANGE ORDERS we recommend adding clarifying language that change orders *permitted by law* will be approved prior to changes being made in the plans or construction of a facility.

Your district's policy requires the superintendent to submit to the board for approval construction contracts valued at or above the dollar amount stated in your policy. Please confirm that this dollar amount is still appropriate for your district. If changes are needed, contact your policy consultant.

Other recommended changes at FINAL PAYMENT are editorial in nature.

**Please note:** HB 628 adds two other local policy options for the board to consider. The board may delegate to an administrative official the authority to approve change orders that are allowed by law. In addition, the board may now delegate the authority to determine the project delivery/contract award method to be used for each construction contract to a representative, committee, or other person. Please contact your policy consultant if you wish to see text for either of these options.

#### CVA (LEGAL) FACILITIES CONSTRUCTION COMPETITIVE BIDDING

In addition to reordering existing provisions, we have made changes from HB 628 to this legally referenced policy on competitive bids, including:

- On page 1, a new definition of *competitive bidding* and a new requirement to award the contract to the lowest responsible bidder. Under previous law, the contract was awarded to the bidder offering the best value according to the selection criteria.
- A reference at item 4 on page 1 to the procedural requirement in CV(LEGAL) to contract separately for construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district.
- A requirement for the district to include the construction documents, estimated budget, project scope, estimated project completion date, and other relevant information in the PREPARATION OF A REQUEST.
- An obligation for the district to receive, publicly open, and read aloud the names of the offerors and their bids when OPENING BIDS.

#### CVB (LEGAL) FACILITIES CONSTRUCTION COMPETITIVE SEALED PROPOSALS

In addition to reordering existing provisions, we have made changes from HB 628 to this legally referenced policy on competitive sealed proposals, including:

# Explanatory Notes

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- On page 1, a new definition of *competitive sealed proposals*.
- A reference at item 5 to the procedural requirement in CV(LLEGAL) to contract separately for construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district.
- A requirement to state the weighted value for each criterion and include the estimated project completion date in the REQUEST FOR PROPOSALS.
- Rewording of provisions throughout that were previously included in Chapter 44 of the Education Code but were moved to Chapter 2267 of the Government Code.

### CVC (LEGAL) FACILITIES CONSTRUCTION CONSTRUCTION MANAGER-AGENT

As mentioned above, provisions on construction manager-agent have been moved to CVC from CVD.

In addition to reordering existing provisions, we have made substantive changes from HB 628 to this legally referenced policy on construction manager-agent, including:

- A new definition of *construction manager-agent*.
- A list of activities that a construction manager-agent may not perform.
- A reference at item 5 on page 1 to the procedural requirement in CV(LLEGAL) to contract separately for construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district.
- A requirement that to the extent the construction manager-agent's services meet the definition of the practice of architecture or engineering, they be conducted by an appropriately licensed person. See ARCHITECT/ENGINEER on page 2.
- A requirement for a construction manager-agent to maintain professional liability or errors and omissions INSURANCE in the amount of at least 1 million dollars for each occurrence.
- Rewording of provisions throughout that were previously included in Chapter 44 of the Education Code but were moved to Chapter 2267 of the Government Code.

### CVD (LEGAL) FACILITIES CONSTRUCTION CONSTRUCTION MANAGER-AT-RISK

As mentioned above, provisions on construction manager-at-risk have been moved to CVD from CVE.

In addition to reordering existing provisions, we have made substantive changes from HB 628 to this legally referenced policy on construction manager-at-risk, including:

- A new definition of *construction manager-at-risk method*.
- A provision stating that the contracted price may be a guaranteed maximum price. See page 1.
- A reference at item 5 on page 1 to the procedural requirement in CV(LLEGAL) to contract separately for construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district.

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- Clarification that a district must select or designate an ARCHITECT OR ENGINEER to prepare the construction documents *on or before* the selection of the construction manager-at-risk.
- A requirement for the district to state the weighted value for each criterion in the SELECTION PROCESS. The statute no longer includes the specific list of criteria that may be included.
- A requirement for the district to make the proposal rankings public not later than the seventh day after the date the contract is awarded. See NOTICE OF RANKINGS on page 3.
- Deletion of a requirement for the district to review all trade contractor or subcontractor BIDS OR PROPOSALS. Only the construction manager-at-risk is required to conduct this review but the district may request to see the bids or proposals.
- Rewording of provisions throughout that were previously included in Chapter 44 of the Education Code but were moved to Chapter 2267 of the Government Code.

CVE            (LEGAL)            FACILITIES CONSTRUCTION  
DESIGN-BUILD

As mentioned above, provisions on design build have been moved to CVE from CVC.

In addition to reordering existing provisions, we have made substantive changes from HB 628 to this legally referenced policy on design-build, including:

- A new definition of *design-build*.
- New provisions stating the circumstances when the design-build method may be used. A district must enter into a single contract with a design-build firm.
- A reference at item 5 on page 1 to the procedural requirement in CV(LEGAL) to contract separately for construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district.
- A provision stating that a DESIGN-BUILD FIRM must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor.
- A requirement for the district to state the weighted value for each criterion in the REQUEST FOR QUALIFICATIONS and a prohibition on requiring offerors to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications.
- A list of requirements for the DESIGN CRITERIA PACKAGE.
- A provision allowing a district to request information about *costing methodology* and a definition of that term. See PROPOSALS on page 3.
- A requirement for the district to make the proposal rankings public not later than the seventh day after the date the contract is awarded. See NOTICE OF RANKINGS.
- A requirement for the FINAL CONSTRUCTION DOCUMENTS to note any changes made during construction.
- Rewording of provisions throughout that were previously included in Chapter 44 of the Education Code but were moved to Chapter 2267 of the Government Code.

# Explanatory Notes

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### CVF (LEGAL) FACILITIES CONSTRUCTION JOB ORDER CONTRACTS

In addition to reordering existing provisions, we have made substantive changes from HB 628 to this legally referenced policy on job order contracts, including:

- A new definition of *job order contracting*.
- A reference at item 5 on page 1 to the procedural requirement in CV(LEGAL) to contract separately for construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district.
- New provisions stating the circumstances under which job order contracting may be used.
- A requirement for a district to establish the maximum aggregate contract price when advertising the proposal and for the board to approve each job, task, or purchase order that exceeds \$500,000.
- A new provision allowing a district to use competitive sealed proposals for job order contracts. See ADVERTISING AND OPENING PROPOSALS on page 2.
- A statement at USE OF CONTRACT, on page 3, that a job order contract may only be used to accomplish work for the district unless the contract specifically provides otherwise.
- Rewording of provisions throughout that were previously included in Chapter 44 of the Education Code but were moved to Chapter 2267 of the Government Code.

### D (LEGAL) PERSONNEL

We have revised the D section table of contents to reflect a new code, DGC, Employee Rights and Privileges, Immunity.

### DBA (LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS CREDENTIALS AND RECORDS

Provisions addressing when an employee's Chapter 21 contract is considered void have been deleted as these provisions are already included in DF(LEGAL).

HB 1386 prohibits a district from employing a person as a marriage and family therapist on or after September 1, 2011, unless the person holds the appropriate LICENSE.

At ACCESS TO EMPLOYEE RECORDS on page 9, an employee may choose whether to allow public access to personal information, which now includes emergency contact information in accordance with SB 1638.

### DBD (LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS CONFLICT OF INTEREST

As a result of SB 6 (First Called Session), we have revised provisions on textbook violations to refer to instructional materials and instructional materials funds.

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### DC (LEGAL) EMPLOYMENT PRACTICES

The provision requiring a board to determine acute shortage areas was repealed by SB 1669, which made significant changes to the rules on TRS payments when a retired employee returns to work for a school district.

We have added an existing statutory provision stating that the district's employment policy may include a provision to allow an employee an opportunity to transfer to another school or position. See TRANSFERS on page 2.

### DCA (LEGAL) EMPLOYMENT PRACTICES PROBATIONARY CONTRACTS

As reflected at VOLUNTARY REASSIGNMENT, HB 2380 allows a district to employ an educator under a probationary contract if the educator is reassigned to a new professional capacity that requires a different class of certificate than required by the educator's previous professional capacity and the educator voluntarily accepts the reassignment.

### DECB (LEGAL) LEAVES AND ABSENCES MILITARY LEAVE

Amendments to CHAPTER 431 of the Texas Labor Code by HB 1178 expand the employment protections given to members of the state military forces. A district is prohibited from terminating employment of a member of the state military or a member of another state's military because the employee is ordered to training or duty. The employee is entitled to reemployment rights at the end of the training or duty period, but the employee must give notice of intent to return to employment as soon as practicable.

### DF (LEGAL) TERMINATION OF EMPLOYMENT

HB 1610 imposes new termination standards when an educator is convicted of certain offenses:

- A district must terminate as soon as practicable a person employed under a Chapter 21 contract if the district receives notice from SBEC that the educator's certificate was revoked because the educator was convicted of a Title 5 felony or an offense requiring registration as a sex offender. This is a MANDATORY TERMINATION. See page 2.
- However, it is a DISCRETIONARY TERMINATION if the district becomes aware that a person employed under a Chapter 21 contract has been convicted or received deferred adjudication for a felony offense that does not meet the criteria for a mandatory termination.
- If the district provides NOTICE TO THE EMPLOYEE under either termination procedure, the employee's contract is void. There is NO APPEAL permitted under these provisions.

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At INVALID OR EXPIRED CERTIFICATION, SB 8 (First Called Session) expands the circumstances under which a district may declare an employee's Chapter 21 contract void to include if the educator does not hold a valid certificate or permit or fails to renew or extend a probationary certificate or other permit or certificate. A district may also declare an employee's Chapter 21 contract void if the educator's certificate is suspended or revoked because the employee failed to comply with a criminal history review requirement. Under HB 1334, a certificate or permit is not considered expired if the employee has taken certain actions toward renewal.

Also from SB 8, when a district learns that an employee's contract is void, the DISTRICT'S OPTIONS include termination, suspension, or reassignment. However, a district may not terminate or suspend an employee because the employee lacks or does not have a current certificate if the employee requests an extension from SBEC and, within ten days of the date the contract becomes void, takes measures to renew, extend, or otherwise validate the certificate or permit. See EXCEPTION beginning on page 3.

### DFAA (LEGAL) PROBATIONARY CONTRACTS SUSPENSION/TERMINATION DURING CONTRACT

An employee on a probationary contract can now be suspended without pay for good cause pending discharge. Prior law only permitted SUSPENSION in lieu of discharge. This change is from SB 8 (First Called Session).

HEARING procedures for probationary contracts have also been amended by SB 8. Hearings involving a mid-year termination for good cause continue to go through the independent hearing examiner process. However there is an EXCEPTION for hearings to protest a mid-year termination based on financial exigency. The school board may now decide whether to use the hearing process for term contract nonrenewals or the independent hearing examiner process.

### DFAB (LEGAL) PROBATIONARY CONTRACTS TERMINATION AT END OF YEAR

SB 8 changed the deadline for the district to give NOTICE of a decision to terminate a probationary contract at the end of the school year to the tenth day before the last day of instruction and amended the procedure to give notice. The notice must be delivered by hand to the employee on the campus. If the employee is not present on the campus on the date that hand delivery is attempted, the district must mail the notice by prepaid certified mail or express delivery service to the employee's address of record. Notice is timely if postmarked on or before the tenth day before the last day of instruction.

Other revisions were made to better match statutory language.

### DFBA (LEGAL) TERM CONTRACTS SUSPENSION/TERMINATION DURING CONTRACT

HEARING procedures for term contracts have been amended by SB 8. Hearings about a mid-year termination for good cause continue to go through the independent hearing examiner process. However, there is an exception for hearings to protest a mid-year termination based on FINANCIAL EXIGENCY. The school board may now decide whether to use the hearing process for term contract nonrenewals or the independent hearing examiner process. In addition, the employee now only has ten days to submit an appeal regarding a proposed termination based on financial exigency.

Changes at BACK PAY were made to more closely track statutory language.

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### DFBB (LEGAL) TERM CONTRACTS NONRENEWAL

SB 8 changed the deadline for the district to give NOTICE of proposed nonrenewal to the tenth day before the last day of instruction and amended the procedure to give notice. The notice must be delivered by hand to the employee on the campus. If the employee is not present on the campus on the date that hand delivery is attempted, the district must mail the notice by prepaid certified mail or express delivery service to the employee's address of record. Notice is timely if postmarked on or before the tenth day before the last day of instruction.

As a result of these changes, the REQUEST FOR HEARING runs from the date the employee receives hand delivery or the date the notice is delivered to the address of record.

### DFBB (LOCAL) TERM CONTRACTS NONRENEWAL

Recommended changes in the list of REASONS for nonrenewal serve to emphasize that a reduction in force can either be based on financial exigency (item 9) or a program change (item 10). In fall 2011 at Update 92, TASB Policy Service will be recommending changes to the reduction in force policy, DFF(LOCAL), to address new provisions from SB 8 (First Called Session).

At RECOMMENDATIONS FROM ADMINISTRATION, we have suggested revisions to allow for more flexibility when the administration submits a recommendation for proposed nonrenewal to the superintendent. The new language requires an administrative recommendation to be supported by any relevant documentation. The policy no longer requires the administration to submit copies of the information necessary to the decision at the time of the recommendation.

Another recommended change to the policy at NOTICE OF PROPOSED NONRENEWAL is from SB 8 (First Called Session). As mentioned above, SB 8 changed the deadline for the district to give notice of proposed nonrenewal to the tenth day before the last day of instruction and amended the procedure to give notice to include specific provisions on hand delivery. As a result, the new recommended text requires the superintendent or designee to deliver written notice of proposed nonrenewal in accordance with law after the board has voted to propose nonrenewal.

To ensure that the board complies with notification requirements when an employee fails to request a hearing, we recommend adding a provision at NO HEARING stating that in this circumstance the board will take the appropriate action and notify the employee in writing of that action not later than the 30th day after the day the notice of proposed nonrenewal was sent.

A district with an enrollment of at least 5,000 students has a new option to designate an attorney who meets certain criteria to hold a nonrenewal hearing on behalf of the board. Because our records reflect that your district has a student enrollment below 5,000, local policy provisions on this option have not been included in your policy. Please contact your policy consultant if our records are incorrect and your district has 5,000 or more students enrolled.

Your district's current policy indicates that all nonrenewal hearings are held by the board rather than an independent hearing examiner. Please contact your policy consultant for alternative text if this does not reflect the practice in your district.

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### DFD (LEGAL) TERMINATION OF EMPLOYMENT HEARINGS BEFORE HEARING EXAMINER

From SB 8 (First Called Session), the appeal process before an independent hearing examiner does not automatically apply to a decision based on financial exigency to terminate a term or probationary contract in the middle of the contract period or to terminate a continuing contract at any time. Instead, the board will decide whether to use the process for a nonrenewal hearing or the independent hearing examiner process. See APPLICABILITY on page 1.

SB 8 also includes provisions on the board's options in responding to a hearing examiner's recommendations. The law clarifies that a determination by a hearing officer regarding good cause is a conclusion of law and the board or board committee may adopt, reject, or change the determination. Previously a board could change this determination only if it was not supported by substantial evidence. See DECISION on page 4.

### DFE (LEGAL) TERMINATION OF EMPLOYMENT RESIGNATION

HB 1610 requires a superintendent to complete an INVESTIGATION of an employee who has resigned under suspicion of abuse of a student, despite the resignation.

### DG (LEGAL) EMPLOYEE RIGHTS AND PRIVILEGES

Provisions on immunity for employees have been moved, unchanged, to new code DGC(LEGAL).

A new provision at REPORTING CHILD ABUSE OR MALTREATMENT, beginning on page 3, is from SB 471. This new law specifies that a district may not discharge, nonrenew, or suspend an employee for complying with the law regarding prevention of abuse and other maltreatment of children.

An existing statutory provision has also been added on page 4. This provision specifies that a district may not discharge, nonrenew, or suspend an employee for an employee's USE OF PHYSICAL FORCE against a student to the extent justified by Penal Code 9.62. However, a district may enforce a policy relating to corporal punishment.

As a result of SB 6 (First Called Session), we have revised provisions on employee responsibility for textbooks to refer to instructional materials.

HB 1682 prohibits a district from coercing or requiring an employee to make or to refrain from making CHARITABLE CONTRIBUTIONS. This includes requiring employees to attend meetings at which charitable contributions are solicited.

### DGC (LEGAL) EMPLOYEE RIGHTS AND PRIVILEGES IMMUNITY

Provisions on immunity for employees have been moved, unchanged, from DG(LEGAL) to this new code.

A new provision at CHILD ABUSE AND MALTREATMENT on page 3 is from SB 471. This new law clarifies that an employee's actions to comply with the law regarding prevention of abuse and other maltreatment of children are considered to involve an employee's judgment and discretion for purposes of immunity from liability. In general, professional employees are not personally liable for actions within the scope of their duties that involve the exercise of judgment or discretion.



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### DLB (LEGAL) WORK LOAD REQUIRED PLANS AND REPORTS

As a result of SB 6 (First Called Session), we have revised item 5 at RESTRICTIONS ON WRITTEN REPORTS to refer to instructional materials instead of textbooks.

### DMA (LEGAL) PROFESSIONAL DEVELOPMENT REQUIRED STAFF DEVELOPMENT

SB 471 requires a district to train employees regarding child sexual abuse and other maltreatment of children. The training, which will include the listed elements, must be provided to new employees at orientation and may be provided annually to other employees through staff development. A district must maintain records of participation. A district without sufficient resources to conduct the training may partner with a community organization. See CHILD ABUSE AND MALTREATMENT beginning on page 1.

As reflected beginning on page 5, certain district employees who are involved in athletic activities are required to take a training course on CONCUSSIONS at least once every two years as a result of HB 2038. Each listed employee must submit proof of completion to the superintendent or designee. See FM(LEGAL) for other new provisions on concussions.

### DP (LEGAL) PERSONNEL POSITIONS

SB 6 (First Called Session) repealed the requirement for the principal to report a district's maximum attendance to the superintendent for textbook requisition purposes. We have deleted that item from the list of DUTIES.

### E (LEGAL) INSTRUCTION

We have revised the E section table of contents to reflect the new subtitle of EFA, Instructional Materials, and the new title and subtitle of EFAA, Instructional Materials, Selection and Adoption.

### EF (LEGAL) INSTRUCTIONAL RESOURCES

Changes from SB 6 (First Called Session) reflect the change from the term *textbooks* to *instructional materials* throughout.

New language provides that instructional materials purchased with instructional materials allotment (IMA) funds must be provided to students free of charge, except as specified at Texas Education Code section 31.104(d) regarding loss or damage of instructional materials.

### EFAA (LEGAL) INSTRUCTIONAL MATERIALS SELECTION AND ADOPTION

SB 6 (First Called Session) made significant revisions to the law on instructional materials, as reflected in this legally referenced policy, including the following:

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- References to *textbooks* have been changed to *instructional materials* throughout.
- DEFINITIONS of *instructional material and technological equipment* have been added.
- References throughout to the conforming and nonconforming lists have been deleted. The State Board of Education (SBOE) will produce a single list of approved materials that cover at least half of the TEKS in each subject and grade level, rather than a conforming list and a nonconforming list. See SBOE INSTRUCTIONAL MATERIALS LIST.
- The COMMISSIONER INSTRUCTIONAL MATERIALS LIST must address instruction in personal financial literacy for students in kindergarten through grade eight.
- A requirement has been added for a district to notify the SBOE of any LOCAL SELECTION of instructional materials.
- If a board selects supplemental instructional materials, the district must certify to TEA that the supplemental instructional materials, in combination with any other instructional materials or supplemental instructional materials used by the district, cover the essential knowledge and skills for the course. See SUPPLEMENTAL MATERIALS on page 2.
- A new provision permits a district to adopt state-developed open-source instructional material at any time, regardless of the instructional material review and adoption cycle. See OPEN-SOURCE MATERIAL on page 2.
- References to the classroom set of textbooks have been deleted as these are no longer required.

### EFAA (LOCAL) INSTRUCTIONAL MATERIALS SELECTION AND ADOPTION

As mentioned above, SB 6 (First Called Session) made significant revisions to the laws on selection and adoption of instructional materials, resulting in recommended changes to this local policy.

Because SB 6 replaces *textbooks* with the term *instructional materials*, we have changed the *textbook* selection committee to the *instructional materials* selection committee.

The reference to the State Board instructional materials lists has been broadened to refer to the *state* lists to incorporate the instructional materials list adopted by the commissioner.

Your district's current policy does not require board approval of instructional materials committee members. Please contact your policy consultant for alternative text if the practice in your district is for the board to approve committee members.

A procedural provision requiring the superintendent to coordinate the time frame for meetings to ensure compliance with state timelines is recommended for deletion as it is unnecessary to include in board-adopted local policy.

### EHAA (LEGAL) BASIC INSTRUCTIONAL PROGRAM REQUIRED INSTRUCTION (ALL LEVELS)

SB 6 (First Called Session) removes economics from the ENRICHMENT CURRICULUM. Economics is now a subject within social studies in the FOUNDATION CURRICULUM but is not specifically listed there because that section of the Education Code was not amended.

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**EHAC (LEGAL) BASIC INSTRUCTIONAL PROGRAM  
REQUIRED INSTRUCTION (SECONDARY)**

At GRADES 9–12 COURSE OFFERINGS, HB 34 requires an economics course to provide instruction in personal financial literacy, including instruction in completing the federal student aid application. A district may use an existing program that provides students the instruction at no charge. A district must ensure that a district student enrolled in an economics dual credit course receives the financial literacy instruction.

A district must include the financial literacy instruction with students entering ninth grade on or after June 17, 2011. The SBOE materials will be available beginning with the 2013–14 school year.

**EHB (LEGAL) CURRICULUM DESIGN  
SPECIAL PROGRAMS**

At REASSESSMENT, SB 866 prohibits a district from retesting a student for dyslexia for the purpose of reassessing the student's need for accommodations until the district reevaluates information obtained from previous testing.

**EHBAB (LEGAL) SPECIAL EDUCATION  
ARD COMMITTEE AND INDIVIDUALIZED EDUCATION PROGRAM**

At INDIVIDUALIZED EDUCATION PROGRAM (IEP), beginning on page 5, SB 1788 provides that the written statement of the student's IEP may be required to include only the information on the model IEP form that TEA must create by December 1, 2011. A district may use TEA's model form to comply with the federal IEP requirements.

At TEACHER REQUEST TO REVIEW IEP on page 9, HB 1335 requires a district to develop a process for a teacher who instructs a student with a disability in a regular classroom setting to request review of a student's IEP. The process must provide for a timely district response to a teacher's request and provide for notification to the student's parent or guardian of the district response.

**EHBAD (LEGAL) SPECIAL EDUCATION  
TRANSITION SERVICES**

SB 1788 requires that transition planning for students receiving special education services begin by the time a student is 14 years old. See INDIVIDUAL TRANSITION PLANNING.

**EHBK (LEGAL) SPECIAL PROGRAMS  
OTHER INSTRUCTIONAL INITIATIVES**

We have added a new provision from HB 3616, which designates the month of October as PERSONS WITH DISABILITIES HISTORY AND AWARENESS MONTH. Districts may but are not required to observe Persons with Disabilities History and Awareness Month with appropriate activities as determined by the school.

# Explanatory Notes

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On page 3, HB 2909 renames "Education: Go Get It" Week to GENERATION TEXAS WEEK. During this week districts are now required to provide students with information on college readiness standards and expectations.

EHDD (LEGAL) ALTERNATIVE METHODS FOR EARNING CREDIT  
COLLEGE COURSE WORK/DUAL CREDIT

SB 149 amends the district reporting requirements regarding the COLLEGE CREDIT PROGRAM. Districts must annually report to TEA the number of students who participated in the program, not just those who earned credit, and the courses in which students earned high school credit.

EHDE (LEGAL) ALTERNATIVE METHODS FOR EARNING CREDIT  
DISTANCE LEARNING

SB 1 (First Called Session) included several revisions to the Texas Virtual School Network (TxVSN):

- A PROVIDER SCHOOL DISTRICT may now offer electronic courses to students and adults who reside in Texas and students who reside outside Texas who meet eligibility requirements.
- At STUDENT ELIGIBILITY on page 2, a student may enroll in a TxVSN course if the student is younger than 26 on September 1 of a school year and has been admitted by a school district to complete the requirements for a high school diploma. [See FD(LOCAL) in your policy manual.] Previously enrollment was limited to students younger than 21 years of age.
- As reflected on page 3, a district must adopt a POLICY that provides students with the opportunity to enroll in electronic courses through the TxVSN. The policy must be consistent with parental rights under Texas Education Code 26.0031 regarding notice about and an opportunity to seek their child's enrollment in TxVSN courses. Districts that have adopted EHDD and EHDE(LOCAL) in Update 89 already have appropriate policy language on the TxVSN sufficient to meet this policy requirement. Therefore, there are no recommended local policy changes included in this update.
- For purposes of the policy requirement, the determination of whether an electronic course will meet the needs of STUDENTS WITH DISABILITIES will be made by the student's admission, review, and dismissal committee in a manner consistent with federal law. See page 4.

EIA (LEGAL) ACADEMIC ACHIEVEMENT  
GRADING/PROGRESS REPORTS TO PARENTS

An amendment at NOTICE OF STUDENT PERFORMANCE, on page 2, is from SB 6 (First Called Session). When a student fails to perform satisfactorily on a state-mandated assessment, a district must provide the student's parent notice of *educational resources* instead of *online educational resources* and is no longer required to provide information on educational resources described by Education Code 32.252(b)(2).

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### EIE (LEGAL) ACADEMIC ACHIEVEMENT RETENTION AND PROMOTION

Revisions to this legally referenced policy are from HB 2135, which exempts certain students from the administration of a fifth or eighth grade state assessment instrument, as indicated at PROMOTION. Further details are included at EXCEPTION on page 3. A student enrolled in the fifth or eighth grade need not be administered the fifth or eighth grade assessment in a subject if the student is enrolled in a course in that subject that is intended for students above the student's grade level and the student will be administered an assessment instrument for the course, including an end-of-course assessment. If the student does take an assessment the student is not required to take, the district may not deny the student promotion for failure to perform satisfactorily on the assessment.

### EIF (LEGAL) ACADEMIC ACHIEVEMENT GRADUATION

We have added provisions on DIPLOMAS FOR VETERANS on page 1. SB 966 modifies existing statutory provisions, not previously included in the policy manual, that allowed a district to issue a diploma to a person who was scheduled to graduate between 1940 and 1975 and who served in World War II, the Korean War, or the Vietnam War. The new provisions allow a district to issue a diploma to a person who was scheduled to graduate after 1989. It also expands eligible service to include the Persian Gulf War, the Iraq War, the war in Afghanistan, or other listed military engagements.

At STUDENT WITH DISABILITY OR ILLNESS on page 7, HB 692 permits, in accordance with SBOE rules, a student who cannot participate in physical activity because of disability or illness to substitute a credit in English language arts, mathematics, science, or social studies or an academic elective credit for the required physical education credit. The student cannot use the selected course to satisfy another graduation requirement in addition to physical education. The determination regarding a student's ability to participate must be made by the student's ARD committee, Section 504 committee, or, if neither committee applies, a committee of persons with appropriate knowledge regarding the student.

### EKB (LEGAL) TESTING PROGRAMS STATE ASSESSMENT

HB 2135 creates an EXCEPTION from certain state-mandated testing. A student is not required to take a state-mandated test in grades 3-8 at the student's grade level if the student is enrolled in a course intended for a higher grade level that has a required state-mandated assessment instrument, including an end-of-course (EOC) assessment. See page 4.

Another provision from HB 2135 has been added at STUDENTS ENROLLED BELOW HIGH SCHOOL LEVEL, on page 5. A student who is not yet in high school but who takes a high school course is not prohibited from being administered the EOC assessment for that course. The commissioner must adopt rules to ensure the student's performance is considered in the same manner as that of a high school student's performance. The student's performance will be aggregated with the performance of other students enrolled at the same grade level.

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FBA (LEGAL) EQUAL EDUCATIONAL OPPORTUNITY  
SERVICE ANIMALS

On March 11, 2011, the federal rules on SERVICE DOGS were corrected to clarify that the work or tasks performed by the animal must be directly related to the *individual's* rather than the *handler's* disability. This change was made because the animal handler may not always be the same person as the individual with the disability.

FD (LEGAL) ADMISSIONS

To better reflect the holding of *Plyler v. Doe*, on page 4, we have changed the margin note to IMMIGRATION STATUS.

Changes at AUTHORIZATION AGREEMENT are from SB 482 and expand the list of persons with whom a parent may enter into an authorization agreement. A parent may enter into an agreement with a relative or other person with whom the Department of Family and Protective Services (DFPS) has placed the child during an investigation of abuse or neglect or while DFPS is providing services to the parent. In addition, a new provision explains that only one authorization agreement may be in effect for a child at one time.

As reflected on page 5, SB 653 created the TEXAS JUVENILE JUSTICE DEPARTMENT, effective December 1, 2011, to take over the responsibilities previously held by the Texas Youth Commission, which has been abolished.

HB 742 requires a district to request, on enrollment, FOOD ALLERGY INFORMATION that the parent decides to disclose so that the district can take any necessary precautions regarding the child's safety. A district may disclose the information to teachers, counselors, nurses, and other appropriate personnel consistent with FERPA and the laws on student medical records. See pages 6-7.

FEA (LEGAL) ATTENDANCE  
COMPULSORY ATTENDANCE

As reflected at STUDENT LIABILITY on page 6, SB 1489 limits the application of the offense of failure to attend school to a student who is 12 to 17 years old. Per HB 734, these children may be prosecuted for nonattendance in a constitutional county court of the county in which the child resides or in which the school is located if the county has a population of 1.75 million or more. Previous law required the county to have a population of two million or more.

SB 1489 also changed provisions at CONDUCT IN NEED OF SUPERVISION, on page 7. For purposes of this provision, "child" is defined as a person who is ten years old or older who engaged in the relevant acts before turning 18 and who is required to attend school.

In addition, SB 1489 amended the FILING REQUIREMENTS when there is a court referral for truancy. A referral must be accompanied by a statement that the school applied truancy prevention measures and the measures failed to meaningfully address the attendance issue and must specify whether the student is eligible for or receives special education services.

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FED (LEGAL) ATTENDANCE  
ATTENDANCE ENFORCEMENT

As mentioned at FEA(LEGAL), above, a district must apply truancy prevention measures before referring a student to court for truancy. The powers and duties of ATTENDANCE OFFICERS and PEACE OFFICERS have been updated to include this requirement, as amended by SB 1489. Timelines for referrals have not changed.

The TRUANCY PREVENTION MEASURES must address student conduct related to truancy in the school setting, minimize the need for court referrals, and minimize the filing of complaints in court.

As described in SB 61, a district that employs a JUVENILE CASE MANAGER may pay the salary, benefits, and other expenses of the case manager from the juvenile case manager fund. In addition, a board that employs a juvenile case manager must adopt and implement reasonable rules for case managers that address ethics and training. If the district currently employs a case manager, the rules must be adopted by December 1, 2011.

FFAA (LEGAL) WELLNESS AND HEALTH SERVICES  
PHYSICAL EXAMINATIONS

The PHYSICAL FITNESS ASSESSMENT is now only required for students in grades three or higher who are enrolled in a physical education course. This change is from SB 8 (First Called Session).

SB 226 changes how districts will REPORT to TEA on physical fitness assessments. A district will provide the results of individual student performance rather than summary results. However the results cannot contain teacher names or the names, dates of birth, or social security numbers of students.

FFAF (LEGAL) WELLNESS AND HEALTH SERVICES  
INDIVIDUALIZED HEALTH PLAN

New material at CERTAIN STUDENTS AT RISK FOR ANAPHYLAXIS on page 5 is from SB 27. Under this new law, the commissioner of state health services in consultation with an ad hoc committee must create guidelines by May 1, 2012, to help districts develop a policy for the care of students with a diagnosed food allergy who are at risk for anaphylaxis. The required policy must be in place by August 1, 2012. The commissioner's guidelines may not require a district to purchase prescription anaphylaxis medicine or require the administration of anaphylaxis medication to a student unless the medication is prescribed for that student. After the commissioner releases the guidelines, TASB Policy Service will develop a local policy for your district's consideration.

At the end of this legally referenced policy, we have added a note to direct you to policy FB for application of Section 504 of the Rehabilitation Act to students who qualify for individualized health plans.

FFC (LEGAL) STUDENT WELFARE  
STUDENT SUPPORT SERVICES

HB 826 requires a district to appoint an employee to serve as a liaison for children in the conservatorship of the state who enroll in or transfer to the district. The *TASB 2011-12 Model Student Handbook* post-legislative supplement includes a place for the district to insert the name or position of this liaison.

SB 8 (First Called Session) deleted the requirement for a district to call public hearings to consider the need for and availability of child care before and after school and during school holidays and vacations.

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FFG (EXHIBIT) STUDENT WELFARE  
CHILD ABUSE AND NEGLECT

SB 653 created the Texas Juvenile Justice Department to take over the responsibilities previously held by the Texas Juvenile Probation Commission, which has been abolished. This change is reflected at "To whom do I make a report?"

FFH (LOCAL) STUDENT WELFARE  
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RE-  
TALIATION

The definition and examples of DATING VIOLENCE in this policy have been updated to include changes from the Family Code definition in accordance with SB 116. It is now considered dating violence if a person who dated or is dating a student commits the violent acts listed in the policy against the student's current spouse or dating partner.

Please review the contact information for the district's Title IX and ADA/Section 504 coordinators, as reflected in this policy. If changes are needed, contact your policy consultant.

FL (LEGAL) STUDENT RECORDS

On page 3, new provisions on records that include FOOD ALLERGY INFORMATION are from HB 742. These records must be retained in the student's record, but may not be placed in the student's health record maintained by the district unless a physician provides the documentation. However, a registered nurse may enter appropriate notes about a food allergy in a student's health record, including that the child's student record includes parental notification that the student has a possible food allergy.

SB 1106 amends the provisions on release of records to JUVENILE JUSTICE OFFICIALS, on page 8. A district must disclose information from a student's educational record to a juvenile service provider if the student has been taken into custody or referred to a juvenile court for engaging in conduct that was delinquent or indicated a need for supervision.

From HB 1907, a superintendent who receives WRITTEN NOTICE OF ARREST OR REFERRAL of a student must send the information to any district employee who has direct supervisory responsibility over the student. Under previous law, a superintendent could but was not required to send this information. See page 20.

Upon receiving ORAL NOTICE OF CONVICTION OR ADJUDICATION or NOTICE OF TRANSFER OR REENROLLMENT of a student, a superintendent must within 24 hours of receiving the notice or before the next school day, whichever is earlier, notify instructional and support personnel who have regular contact with the student. Under previous law, a superintendent was only required to notify staff within 24 hours of receiving the notice from law enforcement. The CONTENTS OF THE NOTICE are specified by law. These changes are from HB 1907.

FM (LEGAL) STUDENT ACTIVITIES

HB 2038 adds provisions on PREVENTION, TREATMENT, AND OVERSIGHT OF CONCUSSIONS, beginning on page 2, including definitions of "interscholastic athletic activity" and "concussion." Other new provisions include:



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- The board of a district with students who participate in an interscholastic activity must appoint or approve a **CONCUSSION OVERSIGHT TEAM**. The team must include a physician and, to the extent practicable, one or more of the following: an athletic trainer, advanced practice nurse, neuropsychologist, or physician assistant. If the district employs an athletic trainer, the trainer must be on the team. Each member of the team must have training on concussions at the time of appointment and every two years.
- The concussion oversight team must establish a **RETURN-TO-PLAY PROTOCOL**. Before a student can participate in an interscholastic activity, the student and the student's parent must sign a UIL-approved **REQUIRED ANNUAL FORM** acknowledging they received the district information on concussions.
- At **REMOVAL FROM PLAY**, a student must be removed from practice or competition if a coach, physician, licensed health-care professional, or the student's parent believes the student might have sustained a concussion. Detailed procedures on **RETURN TO PLAY** have also been added, including requiring the student to be evaluated and complete the return-to-play protocol and requiring the student and parent to sign a consent form. A coach may not authorize a student to return to play.
- The new law preserves **IMMUNITY** for a district and its employees.

New **FOOTBALL HELMET SAFETY REQUIREMENTS** are from HB 675 and prohibit a district from using a helmet that is 16 years old or older, require helmets that are 10 years old or older to be reconditioned every two years, and require a district to make documentation available to parents about helmets used in the football program. See page 5.

New provisions addressing **PROTECTIVE GEAR FOR BULL RIDING** are from Administrative Code rules, effective August 1, 2011, and require a child to wear a protective vest and helmet to engage in bull riding. See page 6.

FNCG (LEGAL) STUDENT CONDUCT  
WEAPONS

SB 1416 adds a tire deflation device to the list of **OTHER PROHIBITED WEAPONS**. See item 10 on page 3.

FNCH (LEGAL) STUDENT CONDUCT  
ASSAULTS

SB 24 expands the definition of **AGGRAVATED SEXUAL ASSAULT** to include acts or words that place a victim in fear that a person will become the victim of an offense of smuggling persons and acts or words occurring in the presence of the victim that threatens or causes a person to become the victim of the offense of smuggling of persons.

FNCI (LEGAL) STUDENT CONDUCT  
DISRUPTIONS

Under HB 359, a student in grade 6 or below may no longer be charged with a Class C misdemeanor for **DISRUPTION OF CLASSES**.

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### FO (LEGAL) STUDENT DISCIPLINE

The following changes are from HB 359:

- A district peace officer or school resource officer is subject to the same prohibitions on use of seclusion that apply to other district employees, except when the officer is performing LAW ENFORCEMENT DUTIES as defined in the policy. See page 4.
- A district must file electronic RESTRAINT REPORTS with TEA to disclose the use of restraint by a peace officer performing law enforcement duties on school property or during a school activity.
- In districts where the board has adopted a policy permitting the use of CORPORAL PUNISHMENT as a disciplinary method, an educator may not use corporal punishment if the parent provides a signed statement to the board in the manner established by the board prohibiting its use with the parent's child. This statement must be provided annually. A parent may revoke at any time a previously submitted statement prohibiting the use of corporal punishment. The new DEFINITION of corporal punishment includes the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline. It does not include physical pain caused by reasonable physical activities associated with athletic activities or the use of restraint as permitted by law. See page 5.

### FO (LOCAL) STUDENT DISCIPLINE

Text addressing detention has been revised and moved to item 3 at GENERAL GUIDELINES. We recommend deletion of the general provisions that are not specific to detention. These provisions, such as allowing a student an opportunity to explain the conduct, are applicable to all conduct violations and are better suited to the Student Code of Conduct. The remaining text continues to require the district to provide notice to the student's parent before assigning a student under 18 years of age to detention outside regular school hours so that the parent can make transportation arrangements.

New recommended text as a result of HB 359 specifies that CORPORAL PUNISHMENT will not be administered to a student whose parent annually submits to the principal a signed statement prohibiting its use with his or her child. As reflected in the policy, the parent may reinstate permission for the district to use corporal punishment by submitting another signed statement. A new GUIDELINE is also recommended to only allow an employee who is the same sex as the student to administer corporal punishment.

Other recommended changes are editorial in nature.

### FOC (LEGAL) STUDENT DISCIPLINE PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING

HB 968 adds to the acts that require mandatory DAEP placement the felony offense of aggravated robbery that occurs off campus and while the student is not attending a school-sponsored or school-related activity if the student has received deferred prosecution for this conduct, a court or jury finds that the student has engaged in the conduct, or the superintendent or designee has a reasonable belief that the student has engaged in the conduct. See CONDUCT UNRELATED TO SCHOOL on page 2. Because the felony offense of aggravated robbery now requires mandatory DAEP placement along with offenses under Title 5, it has been added as an exception at PERMISSIVE REMOVAL — NON-TITLE 5 FELONY on page 3.

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HB 1907 amends Section 15.27 of the Code of Criminal Procedure to require the superintendent or designee to consider information in the written notification from a law enforcement agency regarding a student's arrest when making a determination as to whether there is a REASONABLE BELIEF that the student engaged in conduct defined as a felony offense by the Penal Code.

FOCA (LEGAL) PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING  
DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM OPERATIONS

SB 49 requires a district to provide parents of a student removed to a DAEP with written notice of the district's obligation to provide the student an OPPORTUNITY TO COMPLETE A COURSE required for graduation. The notice must include the methods available for completing the coursework and state that the methods are available at no charge.

FOD (LEGAL) STUDENT DISCIPLINE  
EXPULSION

At FEDERAL FIREARM PROVISION, on page 2, we have added existing statutory language from the Gun-Free Schools Act to clarify that the one-year expulsion required by federal law for bringing a firearm to school does not apply if the firearm is lawfully stored inside a locked vehicle on school property.

HB 1224 adds the offense of BREACH OF COMPUTER SECURITY under the Penal Code as a permissive expellable offense if a student accesses without consent a district's computers, computer system, or computer network and knowingly alters, damages, or deletes district property or information. See page 4.

If a district is located in Smith County, which now is exempt from providing a JJAEP even though the county population is 125,000 or more, the district must provide services to an expelled student. However, the district can count the student in ADA. These provisions were added by SB 1 (First Called Session). See CERTAIN DISTRICTS on page 8.

FODA (LEGAL) EXPULSION  
JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM

SB 653 created the Texas Juvenile Justice Department, effective December 1, 2011, to take over the responsibilities previously held by the Texas Juvenile Probation Commission, which has been abolished. This change is reflected throughout this legally referenced policy.

FOE (LEGAL) STUDENT DISCIPLINE  
EMERGENCY AND ALTERNATIVE PLACEMENT

HB 968 adds aggravated robbery to the acts that can result in an optional expulsion to a DAEP or a JJAEP after an opportunity for a hearing. See TITLE 5 FELONY OR AGGRAVATED ROBBERY beginning on page 1.

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### FOF (LEGAL) STUDENT DISCIPLINE STUDENTS WITH DISABILITIES

HB 359 provides that district peace officers and school resource officers are subject to the same limitations on use of confinement, seclusion, restraint, and time-out that apply to other district employees. See BEHAVIOR MANAGEMENT TECHNIQUES beginning on page 6. In addition, a district must submit a report to TEA any time a peace officer who is performing law enforcement duties uses restraint on school property or during a school-sponsored or school-related activity. Commissioner rules will provide additional requirements on this DOCUMENTATION requirement, beginning on page 8.

### FP (LEGAL) STUDENT FEES, FINES, AND CHARGES

A new provision at AUTHORIZED FEES, item 16, from SB 1 (First Called Session) allows a district to require payment of a reasonable fee for transportation of a student to and from the school the student attends if the district does not receive transportation allotment funds and does not participate in a county transportation system for which a transportation allotment is provided.

In accordance with terminology changes from SB 6 (First Called Session) references to *textbooks* and *books* have been changed to *instructional materials* and *materials* at PROHIBITED FEES.

### G (LEGAL) COMMUNITY AND GOVERNMENTAL RELATIONS

We have revised the G section table of contents to reflect a subtitle change at GRA to State and Local Governmental Authorities. Two new codes are at GRAA and GRAC, subtitled Law Enforcement Agencies and Juvenile Service Providers, respectively.

### GBA (LEGAL) PUBLIC INFORMATION PROGRAM ACCESS TO PUBLIC INFORMATION

SB 602 reworded the provision in the first paragraph at INFORMATION THAT MUST BE DISCLOSED, on page 1, to state that the listed categories of information are public information and not excepted from required disclosure unless made confidential under Government Code Chapter 522 or other law. Previously the attorney general had opined that Chapter 522 did not make information confidential, only other law could make information confidential. The new provision clarifies that Chapter 522 can make information confidential in addition to other law. At this same margin note, we have deleted a provision that addressed when a court could order a district to withhold information, since this is not a district responsibility.

A current or former employee or board member or a peace officer or security officer may choose whether to allow public access to PERSONAL INFORMATION, which now includes emergency contact information in accordance with SB 1638. See page 2. This change is also reflected in the list of information excepted from public disclosure, beginning on page 5. Rewording at NOTICE TO REQUESTOR, on page 3, is to better match statutory language.

Beginning on page 3, SB 602 authorizes a district to redact CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS without first seeking a determination from the attorney general.

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Except for certain information, such as social security numbers, INFORMATION EXCEPTED FROM PUBLIC DISCLOSURE, beginning on page 5, is no longer excepted from disclosure after the 75th anniversary of the date the district created or received the information.

Several different bills affect the categories of information that are excepted from disclosure to the public, including the following:

- On page 9, item 24, SB 602 authorizes a district to redact certain driver's license or motor vehicle record information without first seeking a determination from the attorney general. SB 1638 expands the information covered by this provision to include driver's license or motor vehicle record information from another state or country.
- On page 11, item 29, SB 1638 expands the confidential information relating to network security to include a copy of an identification badge issued to an official or employee of a district.
- On page 12, item 32, HB 2460 adds records of a TRS member or of another retirement system, if the records are in the custody of a district acting in cooperation with or on behalf of the retirement system.
- SB 1 (First Called Session) deleted the category of investment information from the list of information that is excepted from disclosure. However, a district may still consider Government Code 552.0225 if a request for investment information is received.

#### GBAA      (LEGAL)      INFORMATION ACCESS REQUESTS FOR INFORMATION

HB 2866 and SB 602 provide information on CALCULATING TIMELINES, on page 8, under the Public Information Act (PIA):

- SB 602 clarifies that if a district cannot establish an actual date of receipt for a mailed request, the request is considered to have been received on the third business day after the postmark date.
- HB 2866 provides that if the PIA requires a request, notice, or other document to be submitted or otherwise given to the attorney general within a specified period, the submission will be considered timely if it is submitted through the attorney general's designated electronic filing system within that period. A district may continue to submit information to the attorney general by mail, interagency mail, or contract carrier. Similarly, the attorney general may electronically transmit a notice, decision, or other document under the PIA. The transmission will be considered timely if the document is electronically transmitted by the attorney general within the period specified by statute.

On page 14, if a requestor modifies a request in response to a requirement to pay a deposit or bond, the MODIFIED REQUEST is considered a separate request and is considered to be received on the date the district receives the modified request. This change is from SB 602.

At UNPAID AMOUNTS, on page 14, SB 8 (First Called Session) provides that if a district receives a request from a requestor who, within the preceding 180 days, has accepted but failed to pay a written itemized statement of estimated charges, the district may require the requestor to pay the estimated charges for the request before fulfilling the request.

#### GKA      (LEGAL)      COMMUNITY RELATIONS CONDUCT ON SCHOOL PREMISES

Under HB 359, a student in grade 6 or below may no longer be charged with a Class C misdemeanor for DISRUPTION OF CLASSES.

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Other revisions are to better reflect current statutory wording.

GKG (LEGAL) COMMUNITY RELATIONS  
SCHOOL VOLUNTEER PROGRAM

We have added an existing statutory provision addressing immunity when a volunteer health-care practitioner conducts a PHYSICAL EXAMINATION or other medical screening to assess the physical health and fitness of a student for participation in extracurricular activities. Under these circumstances, a health-care practitioner has immunity provided certain conditions are met, as listed.

A licensed health-care professional who volunteers for the concussion oversight team must have had training on concussions at the time of appointment to the team. In addition, the professional must take an approved course on concussions at least once every two years and must submit proof of completion of the course to the superintendent. If the professional fails to meet these requirements, he or she may not serve on the concussion oversight team. These new provisions at VOLUNTEER TRAINING – CONCUSSION OVERSIGHT TEAM are from HB 2038.

GRA (LEGAL) RELATIONS WITH GOVERNMENTAL ENTITIES  
STATE AND LOCAL GOVERNMENTAL AUTHORITIES

We have reorganized the GRA policy series, which previously focused generally on other local governmental authorities. With this update, we have shifted the emphasis of this legally referenced policy to focus on CPS investigations and taking students into custody. Provisions on other topics, such as notices to and from law enforcement agencies and sharing information with juvenile service providers, were moved to GRAA(LEGAL) and GRAC(LEGAL), respectively. See the explanatory notes for those codes, below.

At this code, text at STUDENTS TAKEN INTO CUSTODY and STUDENTS IN CUSTODY was revised to better reflect statutory structure and wording.

GRA (EXHIBIT) RELATIONS WITH GOVERNMENTAL ENTITIES  
STATE AND LOCAL GOVERNMENTAL AUTHORITIES

To conform with the reorganization of the GRA policy series, this exhibit addressing student offenses that principals must report to local law enforcement authorities has been moved to GRAA(EXHIBIT). GRAA now addresses notices to and from law enforcement agencies.

GRAA (LEGAL) STATE AND LOCAL GOVERNMENTAL AUTHORITIES  
LAW ENFORCEMENT AGENCIES

This new legally referenced policy focuses on notices to and from law enforcement agencies and dissemination of notices from law enforcement agencies to district employees. Much of the material was moved from GRA(LEGAL) and was revised to better reflect current statutory wording.

At NOTICES TO LAW ENFORCEMENT AGENCIES, moved from GRA(LEGAL), we simplified the text in the first paragraph to require the principal or designee to notify local law enforcement of relevant acts of misconduct and moved the detailed information about to whom the principal reports below the list of misconduct. We also added an existing statutory provision requiring the principal or designee to notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.

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At NOTICES FROM LAW ENFORCEMENT AGENCIES, we have provided a general outline of the circumstances when law enforcement agencies are required to give notice to a district.

HB 1907 added detail on the CONTENTS OF THE NOTICE, which must include details of the offense or conduct.

An existing statutory provision explains that a juvenile justice system representative may provide ELECTRONIC NOTICE instead of oral notice. If so, written notice is not required.

HB 1907 amended provisions requiring notice of a student's ARREST or referral to the juvenile board, beginning on page 3:

- The ORAL NOTICE must come from the *head of the agency or designee* instead of the *agency*.
- The oral notice must be made within 24 hours or *before* rather than *on* the next school day, whichever is earlier.
- The WRITTEN NOTICE must include the facts in the oral notice, the name of the person notified, and the date and time of the oral notice.
- The superintendent *shall*, rather than *may*, consider information in the notice from law enforcement in determining whether there is a reasonable belief that the student committed a felony.
- A superintendent or principal who learns that the law enforcement agency failed to give notice to the district as required must report the failure to the Commission on Law Enforcement Officer Standards and Education. See FAILURE TO PROVIDE NOTICE TO DISTRICT.
- A superintendent who receives notice must *immediately*, rather than *promptly*, notify relevant district personnel. A superintendent no longer has discretion to notify relevant employees; the superintendent must send notice to relevant staff. A superintendent can delegate this notice requirement. See NOTICE TO EMPLOYEES.
- If a board learns that the superintendent or principal fails to provide notice of the arrest to employees as required, the board must report the failure to the State Board for Educator Certification (SBEC). See FAILURE TO PROVIDE NOTICE TO EMPLOYEES.

HB 1907 also amended provisions requiring notice of a student's CONVICTION OR ADJUDICATION, on page 4:

- The prosecuting attorney must give ORAL NOTICE to the superintendent or designee within 24 hours or *before* rather than *on* the next school day, whichever is earlier.
- Within seven days of giving oral notice, the prosecuting attorney must mail to the district WRITTEN NOTICE, which must include information about the offense.
- A superintendent must notify relevant staff within 24 hours of receiving notice *or before the next school day, whichever is earlier*. See NOTICE TO EMPLOYEES.
- If a board learns that the superintendent or principal failed to provide notice of the conviction or adjudication to employees as required, the board must report the failure to SBEC. See FAILURE TO PROVIDE NOTICE TO EMPLOYEES.

At TRANSFER STUDENTS on page 5, we have added existing statutory provisions that require a juvenile justice agency to notify the superintendent or designee of a district to which a student who was arrested, referred, convicted, or adjudicated transfers. A superintendent must provide a NOTICE TO EMPLOYEES in this circumstance.

# Explanatory Notes

## TASB Localized Policy Manual Update 91

GRAA (EXHIBIT) STATE AND LOCAL GOVERNMENTAL AUTHORITIES  
LAW ENFORCEMENT AGENCIES

To conform with the reorganization of the GRA policy series, this exhibit addressing student offenses that principals must report to local law enforcement authorities has been moved unaltered from GRA(EXHIBIT).

GRAC (LEGAL) STATE AND LOCAL GOVERNMENTAL AUTHORITIES  
JUVENILE SERVICE PROVIDERS

This new legally referenced policy focuses on information sharing between juvenile service providers. To ensure that districts are aware of their obligations under FERPA, we have repeated from FL the relevant FERPA PROVISIONS that allow a district to disclose information to juvenile justice authorities under a law adopted after 1974 that concerns the ability of the juvenile justice system to serve, prior to adjudication, the student whose records are released.

SB 1106 requires a district to disclose a student's educational records to a JUVENILE SERVICE PROVIDER, as defined beginning on page 1, as required by the Family Code. Under previous law, sharing of records was discretionary. As reflected on page 2, DISCLOSURE OF EDUCATIONAL RECORDS is only required if the student has been taken into custody or referred to a juvenile court for engaging in conduct that was delinquent or indicated a need for supervision. A district must keep the disclosed information for seven years.

SB 1106 requires a CERTIFICATION FROM THE REQUESTOR that the information will not be disclosed except as allowed by law and that the information will be used only to verify the identity of a student and to provide delinquency prevention or treatment services to the student. Student information released to a service provider remains confidential. See CONFIDENTIALITY OF INFORMATION on page 3.

To reduce the administrative burden of the information sharing requirements, a district is authorized to create an INTERNAL PROTOCOL OR MEMORANDUM OF UNDERSTANDING with another juvenile service provider. See pages 2 and 3.

A juvenile service provider that requests student records must pay a FEE to the district in accordance with the Public Information Act fee provisions, unless one of the exceptions to the fee provision in the Family Code is met.