

Vantage Points

A Board Member's Guide to Update 76

**Your
Viewpoint?**

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

PLEASE NOTE: This Update 76 ***Vantage Points*** and the Localized Update 76 packet may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.

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

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The Big Picture

Update 76 is drawn almost exclusively from actions of the **regular session** of the **79th Legislature**. The issues reflected in this update include, among others, election dates and deadlines for board members, bonds, and tax rate ratification; board meeting notice requirements and options; health insurance supplements; and TRS contributions.

Elections

Numerous revisions were made to the election statutes, including those governing board members, bonds, and tax rates. The changes are reflected in **BBB(LEGAL)**, **CCA(LEGAL)**, and **CCG(LEGAL)** and become effective September 1, 2005, unless otherwise noted below:

- **HB 2339:** The May uniform election day has been moved again, this time to the second Saturday of the month.

The deadline for ordering an election was changed only for elections held on the general election day in November of even years—no later than the 70th day before the election. The deadline for May elections is still 62 days.

Notice of an election must be delivered to the county clerk of each county in which a district is located no later than the 60th day preceding the election.

The deadlines for filing for a place on the ballot and for declaring a write-in candidacy for a board member position were changed, but only for elections held on the general election day in November of even years.

Districts are prohibited from using their funds—state, local, or other resources—to campaign for or against a candidate, measure, or political party. This provision has also been added at **CE(LEGAL)**.

For elections after January 1, 2006, the officer presiding over the canvass must prepare and deliver to the secretary of state a report of the precinct results.

- **HB 57:** With the elimination of the February and September uniform election dates, the options are now limited to the May or November general election dates. Since school district trustee elections were already limited to these two dates, the effect is to restrict when special elections and bond elections may be called.

For May elections held after October 1, 2005, canvassing of the returns must be completed by the 11th day following the election. If a district chooses to begin earlier, it may begin on the latest of the following days:

- The third day after the election day.
- The date on which all early voting ballots have been counted.
- The date when all timely received ballots cast outside the country have been counted.

November canvassing deadlines remain unaffected.

- **HB 1580:** Districts are now required to retain a copy of the newspaper notice of an election for at least 22 months, rather than 60 days as before.

- HB 1209: Regular county polling places must now be used for elections held on the November uniform election date of any year in districts other than those in Harris County or the seven adjacent counties.
- SB 427: The county voter registrar must be notified within 30 days of a board's action to change its district boundaries or the boundaries of its single-member districts. This provision has also been added to **AC(LEGAL)**.
- HB 719: The secretary of state is now specifically authorized to determine the information, as well as the form, for the notice of voter's rights.
- HB 1863: Previously, only the ethics board could terminate a campaign treasurer appointment for an inactive candidate or political committee, but as noted at **BBBA(LEGAL)**, that authority has been moved to the school board.

Other Board Issues Meetings

New provisions have been added at **BE(LEGAL)** regarding posting requirements and convening of meetings:

- HB 2381 credits an Internet posting with meeting the "readily accessible to the general public" requirement if:
 - The board makes a "good faith effort to continuously post the notice" for the 72-hour period preceding a meeting, and
 - A hard copy is accessible during normal business hours.
- If a district maintains an Internet Web site, SB 1133 requires that meeting notices be posted on the site. Districts in municipalities with a population of 48,000 or more must also post the agenda if it differs from the meeting notice. The validity of such postings will not be affected by technical problems that are beyond the control of a district.
- In concert with a 1998 attorney general's opinion, SB 690 has granted boards the authority to recess a meeting and reconvene the following business day if done in good faith and not merely to circumvent the requirements of the Texas Open Meetings Act. The meeting convened on the second day, however, may not be recessed and reconvened the following day without additional notice.

The bill also appears to provide relief from posting requirements for a meeting that cannot be convened due to a "catastrophe," as defined by the bill. Although a 72-hour window for convening the meeting is provided, the language, including a reference to the Government Code subsection regarding emergency meetings, is not clear as to whether the district must meet the two-hour posting requirement for an emergency meeting. In the event of a catastrophe that prevents the convening of a meeting, a district should consult local counsel for guidance.

District Improvement Plan

The list of provisions at **BQ(LEGAL)** to be included in the District Improvement Plan has a new requirement from HB 283—a discipline management program providing for prevention of and education concerning unwanted physical or verbal aggression, sexual harassment, and other forms of bullying in schools, on school grounds, and in school vehicles.

District and Campus Reports

Adding to previously established publishing and hearing requirements for the AEIS report and the School Report Cards, HB 3297 newly requires districts with Web sites to publish those reports on the Web within the first ten days of classes each school year. Campus rating information must also be included on the first report card of the school year. See **BR(LEGAL)**, **EIA(LEGAL)**, and **GND(LEGAL)**.

Other Business Issues

In addition to the bills noted at **Elections**, above, there were other bills that impacted the tax provisions found at **CCG(LEGAL)**:

Taxes

- SB 1652: This bill clarifies that for school districts Education Code Section 44.004(c)(2)(A)(ii)(b) governs the debt service portion of the tax rate.
- SB 18: Effective June 18, 2005, language is stipulated for each of the stages of tax rate adoption when the proposed tax rate exceeds the effective tax rate. If maintenance and operations exceed the previous year's rate, the actual dollar amount of increase on a \$100,000 home must be indicated in the resolution. In written documents, including Web site postings, the type used for the required statements must be larger than any other type used in the statement.
- HB 2120: Counties are also now authorized to form reinvestment zones.

Financial Ethics

**(LOCAL) POLICY CONSIDERATIONS:
CAA**

Language defining fraud and financial impropriety has been clarified to acknowledge exceptions permitted by law and district policy, as well as additional requirements of law and policy.

Investments

The number of banks available to districts for their investments has been broadened by SB 256, which clarified that only a branch office of the depository institution must be located in Texas. The bill also augmented the types of CDs that may be used as investment instruments. Both provisions have been added to **CDA(LEGAL)**.

Budget

As noted above at **Elections**, the prohibition against using district funds for electioneering has been added to **CE(LEGAL)**. In addition, the prohibition from HB 1826 against using district employees, property, or resources for

the design, construction, or renovation of improvements to real property not owned or leased by the district has been included.

Purchasing

Provided that a district's central administration building is located in a municipality with a population of less than 250,000, HB 664 permits the district to consider the location of the bidder's principal place of business, effective for bids advertised after September 1, 2005. As also noted in **CH(LEGAL)**, however, this provision does not apply to the purchase of telecommunications or information services.

Emergency Plans

A new policy at **CKC(LEGAL)** recites the March 1, 2006, requirements of SB 11 for a security audit of facilities at least every three years and a "multi-hazard emergency operation plan." The plan must include:

- Employee emergency response training—a model plan to serve as the basis for the training is currently being developed by the Texas School Safety Center and will be delivered to districts through the education service centers.
- Drills for students and staff.
- Measures to coordinate efforts with local emergency management agencies, law enforcement, and fire departments.

District Peace Officers

In the event of a complaint against a district peace officer, HB 639 prevents the officer from being indefinitely suspended or terminated based on the complaint unless an investigation reveals evidence to support an allegation of misconduct. See **CKE(LEGAL)**.

Facility Standards

When the Texas School Safety Center releases its criteria this fall, districts using Instructional Facilities Allotment funds must consider the criteria in the design of their facilities. See **CS(LOCAL)**.

Employment Issues

TRS Contributions

CRD(LEGAL) and **DEA(LEGAL)** have been updated to include the following legislative changes regarding employee membership in TRS:

- SB 1691: Effective September 1, 2005, employees become members of TRS upon employment; the state, however, will not begin funding TRS contributions on their behalf for the first 90 days of employment. In the interim, districts are responsible for paying to TRS an amount equal to the state contribution rate for those employees.

If employment begins prior to September 1, the 90-day clock still begins on the first day of employment, but the TRS contributions made by a district do not begin until September 1. Prior to September 1, districts must make

contributions to an alternate retirement program, such as social security or a 401K account.

For retirees who have been rehired and are enrolled in TRS Care, the district must pay the amount that would be due if the employees were not retirees. The district is not required to fund the state portion for a retiree who is enrolled in TRS Active Care or who was reported to TRS by a district as a retiree by January 2005.

The provisions of the following bills are also found at **CRD(LEGAL)**:

- HB 765: Districts that do not participate in TRS Active Care must provide employees and prospective employees with a copy of any plan disclosure statement prepared by the issuer and must retain a copy of the statement signed by each recipient. The disclosure statement requirements will apply to policies issued or renewed after January 1, 2006.
- SB 1448: Effective with the 2005–06 school year, districts that do not participate in TRS Care are subject to the limitations on preexisting conditions found in the Insurance Code.
- HB 407: An employee who is married to another employee in the same district may choose to participate in the district's health care plan as a dependent of the spouse.

Compensation Supplement

The confusion surrounding "health reimbursement accounts" was resolved by SB 1691. The administration of the program has moved to TEA, with the amount of the 12 monthly distributions to be determined by the General Appropriations Act. Employees may apply the supplement to the cost of any employment benefit or take it as a compensation supplement. Retirees eligible for TRS Care or a similar state retirement plan will not receive the supplement. See **CRD(LEGAL)** and **DEA(LEGAL)**.

Retirement Incentives

In addition to the provisions noted above, the SB 1691 prohibition against offering incentives to employees to retire from TRS has been added to **DEA(LEGAL)**.

Vacancy Posting

DC(LEGAL) has been reorganized and amended to include SB 387 requirements regarding posting of vacancies for employment positions. Effective with the 2005–06 school year, a vacancy for a position that requires certification or licensing, except for a position that affects the safety and security of students as determined by the board, must be posted in specified locations for at least ten school days prior to filling the position. Current employees must be given a "reasonable opportunity" to apply for the position.

An exception to the full ten-day requirement is permissible for a vacancy that occurs during the school year for a "teacher" (as defined by Education Code 21.201—"a superintendent, principal, supervisor, classroom teacher, counselor, or other full-time professional employee who is required to hold a certificate").

Driver Drug Testing	<p>DHE(LEGAL) has been reorganized and now includes reporting requirements from SB 217 regarding driver drug testing. Districts must report test results when:</p> <ul style="list-style-type: none"> ■ The alcohol concentration is 0.04 or more (or above the amount set by DOT regulations); ■ The employee refuses to provide a specimen; or ■ The specimen is found to be adulterated, diluted, or switched.
Transfer Requests	The SB 387 provision permitting districts to adopt a policy for employment transfer requests has been added to DK(LEGAL) .
Paperwork Complaints	SB 493 authorizes the commissioner of education to impose special accreditation investigations in response to repeated complaints of excessive paperwork requirements on classroom teachers. See DLB(LEGAL) and GND(LEGAL) .
Instruction Issues Coordinated Health Program	The TEA-driven program to address obesity, cardiovascular disease, and Type II diabetes of elementary students, in policy EHAC(LEGAL) , is now extended to middle and junior high school students by SB 42. The deadline for districts to receive training to implement the program in middle and junior high schools—beginning in the 2006–07 school year—is earlier than that already established for elementary schools—by September 1, 2007.
Personal Financial Literacy	Also at this code is the requirement of HB 492 that personal financial literacy be included in any course meeting a requirement for an economics credit. Districts must comply beginning with the 2006–07 school year, and the State Board of Education must adopt TEKS by the 2008–09 school year.
Prekindergarten	EHBG(LEGAL) is a new code specific to prekindergarten. The applicable provisions of FD(LEGAL) have been moved to this code, including Education Code provisions on the Prekindergarten Expansion Grant and the Ready to Read Grant. A new requirement from HB 2048 is participation in the Texas Information and Referral Network, an initiative of the Health and Human Services Commission. Districts' responsibilities will be twofold—a data collection role and a facilitating role for matching eligible recipients with child-care and education services available in the community.
Observation Days	Districts that receive federal funds from any source are required by the federal appropriations act for 2004 to observe U.S. Constitution Day each September 17. In honor of the ratification of the 19th Amendment (women's suffrage), HB 67 requires districts to observe Women's Independence Day. Both provisions have been added to EHBK(LEGAL) .

Student Issues Admissions

HB 283 requires districts to admit nonresident students whose grandparents reside in the district if the grandparents provide a "substantial amount of after-school care." The definition of "substantial" is left to the local school board.

When a student transfers from one district to another, the sending district has previously been required to provide the student's records to the new district within 30 days. HB 25 shortened that time frame to ten working days from the date requested and requires that the sending district notify the parent that he or she may request an unofficial copy to deliver to the new district.

Both requirements can be found at **FD(LEGAL)**. Please note also that we have deleted from this policy the U.S. Immigration's Student and Exchange Visitor Information System (SEVIS) provisions because they do not apply to the public school districts in Texas.

(LOCAL) POLICY CONSIDERATIONS:

FD

The recommended addition to this policy requires that a nonresident parent and the resident grandparent apply to the superintendent if they wish to request admission of a nonresident child based on the amount of after-school care provided by the grandparent. The request and the affirmation of the grandparent's residency must be made in writing by completing the form provided by the district. The superintendent is to base his or her decision on criteria approved by the board. Those criteria do not need to be in policy, but should be clearly expressed to the superintendent so that he or she may fulfill this delegated responsibility.

TASB has created templates for an administrative regulation and an application form, **FD(REGULATION)** and **FD(EXHIBIT)**, respectively. Both documents can be found in the **TASB Regulations Resource Manual**, available to policy administrators through MyTASB.

Transfers Intradistrict

FDB(LEGAL) is reorganized with new provisions from HB 283 addressing transfer requests from victims of bullying. For a transfer request to be approved, an investigation by the board or its designee must determine that bullying actually occurred. If the transfer is approved, the district is not required to provide transportation.

(LOCAL) POLICY CONSIDERATIONS:

FDB

For districts that do not have intradistrict transfer provisions, the new, recommended text authorizes:

- The principal to investigate and approve transfers from one classroom to another on the same campus;
- The superintendent—for districts that have more than one campus at a grade level—to investigate and approve transfers from one campus to another.

School Safety

At **FDD(LEGAL)** and **FOC(LEGAL)**, the transfer requirements of HB 308 have been added. A student who is the victim of a sexual assault by another student who attends the same campus must be offered the opportunity to transfer to another campus; however, the victim may request instead that the assailant be transferred to another campus.

If there is only one campus at that grade level, the victim's parents may request a transfer to another district. If the victim does not want to transfer, however, the assailant must be transferred to the district's disciplinary alternative education program (DAEP) or the juvenile justice alternative education program. Within the limits of federal privacy laws, the victim's parent must be notified of the location of the assailant's new campus. The district is not responsible for providing transportation for either student.

Although similar to transfers under the No Child Left Behind Act, which includes as a basis for transfer assaults that occur at the school the victim attends, the new state law addresses assaults without regard to where they occur, but only if both students were assigned to the same campus at the time of the assault.

(LOCAL) POLICY CONSIDERATIONS:

FDD

The No Child Left Behind Act requires districts receiving ESEA funds to notify students of the right to transfer from a campus identified as "persistently dangerous" or from a campus at which they have been the victims of violent crime. Districts that have only one campus at a grade level have been urged by TEA to work with other districts to arrange interdistrict transfers to comply with the School Safety Choice Option. To that end, we have issued to all districts a policy that has been reorganized to avoid redundancy, deleting the provision to provide transportation and adding language to:

- Authorize the superintendent or designee to receive and expedite school safety transfer requests.
- Echo TEA's time lines for:
 - Notification of transfer rights.
 - Approval of transfer requests.
 - Retention of relevant records for five years.
- Require the district to explore transfer options, including an agreement with another school district if appropriate.

Attendance

HB 1575 prompted two additions to **FEA(LEGAL)**:

- The new language clarifies how excused absences factor into the defense of compulsory attendance prosecution.
- The affirmative defense of prosecution of a student for nonattendance now includes involuntary absences, as well as those excused by a district or a court. Such a defense would only apply if excusing the absences would reduce the number below that required for prosecution.
- Following ten or more absences, a district must take action within seven school days of the student's last absence, or the court may dismiss the complaint or referral on that basis.

Health

The reauthorization of the Individuals with Disabilities Education Act now prohibits a district employee from requiring a student to obtain a prescription for a controlled substance as a condition of attending school or being evaluated for or receiving special education services. See **FFAC(LEGAL)**.

A new policy code, **FFAF**, has been created to accommodate the increasing attention, laws, and statutes regarding chronic health conditions. From HB 984, the responsibilities of schools and of parents of students with diabetes are spelled out at **FFAF(LEGAL)** as follows:

- A diabetes management and treatment plan (DMTP) must be developed by the parent and the physician treating the student. The plan must, in

part, assess the services that a district may provide and the student's ability to self manage treatment.

- An individualized health plan (IHP) must be developed by the school in collaboration with the parent, the physician if possible, and at least one of the student's teachers.
- Appropriate campus procedures and resources, including a school nurse or unlicensed diabetes care assistant (UDCA), must be developed to provide care to diabetic students.

Reports of Abuse and Neglect

HB 1970 prompted clarifications to the reporting requirements in **FFG(LEGAL)** in regard to alleged or suspected abuse or neglect of a child. Reports must always be made to the Texas Department of Family and Protective Services (DFPS):

- If the abuse or neglect involves a person responsible for the care, custody, or welfare of the child, and
- Unless the report
 - Is made to the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred.
 - involves a juvenile justice program or facility.

The DFPS must now give the superintendent a written report of an investigation involving a student and a district employee.

Student Records

FL(LEGAL) reflects the clarifications in SB 256 reconciling "public information" under state statute to "directory information" under federal statute. New requirements for the form and content of parental notices include specific language—boldface, in at least 14 point type—and specific content in a check-off form.

(LOCAL) POLICY CONSIDERATIONS:

FL

In order to comply with the SB 256 requirements, new recommended text lists categories of information that the district designates as "directory information" to be provided to third parties without parental consent. The new text also allows the parent to object to the release of one or more of the categories.

Discipline

At **FNC(LEGAL)** the new discipline management program requirements of HB 283 include prevention of, and education concerning, unwanted physical or verbal aggression, sexual harassment, and other forms of bullying in school, on school grounds, and in school vehicles.

Student Code of Conduct

HB 603 made additions to the factors that a district might take into consideration for determining the consequences for offenses that would ordinarily result in suspension, removal to a DAEP, or expulsion. Those

factors—intent or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, and a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the conduct—have been added to **FO(LEGAL)**. Of these factors, the ones that the district will consider must be indicated in the student code of conduct.

Also in **FO(LEGAL)**, from HB 603, is clarification that districts are not required to specify minimum terms of DAEP placement or expulsion unless specifically provided by statute. HB 283 adds two new requirements for the student code of conduct:

- A prohibition of bullying, harassment, and making "hit lists" and ensuring that district employees enforce the prohibitions.
- Providing methods appropriate for each grade level for managing and disciplining students and preventing and intervening in student discipline problems, including bullying, harassment, and making "hit lists."

Removal from Classroom

FOA(LEGAL) includes the HB 603 exception to the authority of a placement review committee to return a student to the classroom: when the student has committed assault, sexual assault, or attempted murder against the teacher.

Personnel Notification

At **FOC(LEGAL)** are the new personnel notification requirements of HB 603 that are triggered by an offense for which DAEP placement is mandatory or for which the district has chosen DAEP placement. Parallel language at **FOD(LEGAL)** addresses students who have been expelled. The principal or designee must notify each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has been placed in a DAEP. An educator who intentionally fails to maintain confidentiality with persons not entitled to the information risks having his or her certificate suspended or revoked.

If the student enrolls at another district before the expiration of the placement, the original district must supply the new district with a copy of the placement order. The new district is then subject to the same notification requirements.

Note: The personnel notification requirements at **GRA(LEGAL)**, related to arrest, conviction, or deferred adjudication of a student, are directed to the superintendent and are unaffected by the new reporting requirements at **FOC(LEGAL)**.

Legislation enacted in the 78th regular session has also been added to **FOC(LEGAL)** to address conduct that occurs during a DAEP placement. If the conduct would ordinarily prompt placement in a DAEP or expulsion, the district is authorized to enter an additional order.

Title 5 Felony

At **FOC(EXHIBIT)** the felony offense listed in Title 5 of the Penal Code, Offenses Against the Person, at Section 22.11 has been expanded to include intentional harassment of a public servant and to specify intent to expose the public servant to bodily fluid while he or she is performing an official duty.

Community Issues
Public Information
Access

At **GBA(LEGAL)** two generalized provisions of SB 121 have been added to indicate that some investments are public information that must be disclosed, and some are not public information and therefore not subject to disclosure. The specific list of disclosable information is expected to be codified in the near future.

From SB 1485, Social Security numbers have been added to the policy as information that may be redacted from disclosures to the public.

Requests

SB 727 revised some of the provisions for requesting public information. They can be found at **GBAA(LEGAL)** and include the following:

- The Texas Building and Procurement Division's responsibility regarding public records has been transferred to the attorney general's office.
- If a requestor does not complete the examination of the materials within ten days and does not request an extension of time, the request is now to be considered withdrawn.
- When a request requires programming or manipulation of data, the requestor now has 30 days after receiving a cost and time estimate to respond. If the requestor does not respond during that time period, the request is to be considered withdrawn.
- When a district submits a request to the attorney general and provides a statement of the reasons why the statutory exceptions apply, it must now send a copy to the requestor. Any comments that disclose the substance of the information in question, however, must be redacted from the copy.

When the district requires a deposit or bond to pay for copies or to request an attorney general's opinion, the request is considered to be received by the district on the day that payment is made or the bond is posted. SB 623 gives the requestor ten days after receiving notice of the requirement to make payment or post bond. After that time, the request is to be considered withdrawn.