



Policy Service Vantage Points

A Board Member's Guide to Update 90

May 2010

Update 90 focuses largely on two key topics, the new State of Texas Assessment of Academic Readiness (STAAR) program and various technology issues. Other topics include issues related to intellectual property, disability discrimination and service animals, employee standards of conduct, access to district records, board training requirements, and district financial operations.

State of Texas Assessment of Academic Readiness

Several changes at Update 90 come as a result of the new STAAR program to be implemented in the 2011–12 school year as a replacement for the Texas Assessment of Knowledge and Skills (TAKS). Provisions regarding new end-of-course (EOC) assessments are included at several codes:

- At EKB(LEGAL), new provisions outline the 12 courses in which the new EOC assessments will be given and specify that a student's EOC assessment score must count for 15 percent of the student's final grade for the course. A student must achieve a satisfactory performance based on a cumulative score for each foundation subject and must retake an EOC assessment if he or she fails to achieve a set minimum score. In addition, a student may retake an EOC assessment for any reason at any of the scheduled testing administrations and does not have to retake a course in order to retake the assessment.
- We have updated a provision at EHBC(LEGAL)

- requiring a district to provide accelerated instruction to a student who does not perform satisfactorily on an EOC assessment.
- At EIA(LEGAL), new provisions call for a district to adopt local policy requiring a student's performance on an EOC assessment to count for 15 percent of the student's final grade for the course. A district is not required to use a student's retake score in the final course grade calculation. TASB Policy Service has made local policy development materials regarding the STAAR program available to district administrators on the myTASB Web site.
 - EI(LEGAL) now reflects that a district must include a student's EOC assessment results on the student's transcript.

EI(LOCAL) and FMH(LOCAL) Policy Considerations

In accordance with the new STAAR program, students entering grade 9 in the 2011–12 school year must achieve certain scores on the EOC assessments in order to graduate, while students in grades 10 and above during the 2011–12 school year must still pass exit-level TAKS tests to graduate. To accommodate both graduation requirements, we recommend at EI(LOCAL) and FMH(LOCAL) replacing references to "exit-level" testing requirements with "state" testing requirements.

For districts with provisions on partial credit at EI(LOCAL), we recommend revisions to clarify the text concerning a student who earns a passing grade in only one semester of a two-semester course.

At EIF(LEGAL), Administrative Code rules incorporating the new STAAR program specify that to receive a high school diploma under the Recommended or Advanced/Distinguished Achievement Program, a student receiving special education services must achieve satisfactory performance on the required state assessments. A student receiving special education services who is graduating under the Minimum Program or receiving modified instruction must participate in state assessments, but the student's ARD committee will determine whether the student must achieve satisfactory performance on the required state assessments for graduation.

Technology Issues

With Update 90, Policy and Legal Services reviewed technology issues addressed in the manual and redeveloped several relevant policies. As discussed in more detail below, the restructuring of the technology provisions prompted the creation of two new codes, BBI on board member use of district technology resources, and CY on intellectual property, copyright, and trademarks. Other topics addressed in the technology review include use of district technology resources, use of student-owned electronic devices for instructional purposes, and searches of electronic devices.

Access to Electronic Communications

Provisions from the federal Electronic Communication Privacy Act and the Stored Wire and Electronic Communications and Transactional Records Access Act have been added at CQ(LEGAL) to address district access to electronic communications. Provisions from the Stored Communications Act have also been added at FNF(LEGAL) regarding district searches of student-owned telecommunications and other electronic devices. The Act limits access to electronic communications while they are in electronic storage, which can include some content on a student's device; however, a student can give permission for the district to view an electronic communication.

Digital Signatures

At CQ(LEGAL), we have also added existing statutory text to address requirements for using a digital signature to authenticate a written electronic communication sent to a district.

District Technology Resources

CQ(LOCAL) and FNC(LOCAL) Policy Considerations

Recommended changes at CQ(LOCAL) broaden the scope of the policy to cover all district technology resources, including electronic equipment, available to employees and students, while recommended changes at FNC(LOCAL) reflect corresponding terminology changes.

At CQ(LOCAL), we recommend adding a requirement that filtering devices or software be installed on a district's network systems in addition to the filtering devices federally

required for each district computer with Internet access. A new provision is also recommended to ensure employees understand their obligations to retain electronic records in accordance with the district's records management program.

For districts that did not previously have such provisions at CQ(LOCAL), we recommend adding language that allows employees and students limited personal use of the district's technology resources subject to the guidelines listed in the policy, as well as language regarding use by members of the public. New recommended text provides that members of the public who use the district's technology resources are subject to monitoring by district staff to ensure appropriate use.

Provisions on student and employee intellectual property rights have been moved from CQ to the new code on that topic, CY.

BBI(LOCAL) Policy Considerations

This new local policy is recommended in response to requests from districts for guidance on board member use of district technology resources. As defined by the policy, "technology resources" includes both electronic equipment and use of the electronic communications system. As with employee and student use at CQ(LOCAL), this policy allows board members limited personal use of district technology resources and requires board members to sign a user agreement and be subject to monitoring by the superintendent or designee to ensure appropriate use.

The new policy also includes a standard disclaimer of liability and provisions on a board member's responsibility regarding retention of electronic records.

Student-Owned Electronic Devices

FNCE(LOCAL) Policy Considerations

In the subtitle to this policy and throughout the text, recommended changes clarify that this code refers to "personal" telecommunications devices rather than district-owned devices, which are addressed

at CQ.

We have added new margin notes to distinguish existing provisions addressing personal use from new provisions on instructional use. We recommend new provisions requiring a student to obtain prior approval before using his or her own electronic device for on-campus instructional purposes, and to comply with applicable regulations and sign a user agreement.

Recommended text also clarifies that only "authorized" employees may confiscate a telecommunications device, and a reference to policy FNF has been added to point to provisions on searches of student-owned devices.

Intellectual Property

The legally referenced policy at new code CY houses existing statutory material on intellectual property, including copyright, trademarks, and patents, along with copyright provisions formerly at EFE(LEGAL), which is no longer an active code.

CY(LOCAL) Policy Considerations

This new local policy on intellectual property, copyright, and trademarks includes updates to existing local policy provisions moved from CQ and EFE and new provisions on trademarks. The text has been updated throughout to refer to the district's "technology resources" to match update changes at CQ.

Recommended provisions regarding intellectual property clarify that an employee owns work created on the employee's own time with personal equipment and materials and provide that an employee must obtain permission to use district materials or equipment for the employee's creative projects. New provisions also address the district's ability to enter into a works-for-hire agreement with an independent contractor. Upon termination of any person's association with the district, all intellectual property belonging to the district must be returned to the district.

Recommended provisions on copyright state that an employee or student is responsible for obtaining permission before using copyrighted material for instructional, curricular, or

extracurricular purposes, unless the material falls under the "fair use" exception. A license or permission must be obtained before using motion pictures or other audiovisual materials in the classroom, unless the materials are used in the course of face-to-face teaching activities as defined by law. A new provision also clarifies that the policy does not apply to work considered to be in the public domain.

A new recommended provision states that district trademarks, including district and campus names, logos, mascots, and symbols, are protected from unauthorized use, although students, student and parent organizations, and other district-affiliated school-support or booster organizations are permitted to use district trademarks to promote school-related business or activities without obtaining written approval. The policy gives the superintendent the authority to revoke permission if the use is improper or does not conform to administrative regulations. Other entities or groups must obtain permission from the superintendent before using the district's trademarks.

Disability Discrimination

At FB(LEGAL), we have added existing provisions from the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act addressing student disability discrimination, including provisions prohibiting a district from excluding a qualified individual with a disability from participating in the services, programs, or activities of the district and provisions requiring a district to make reasonable modifications to avoid disability discrimination, unless the modification would fundamentally alter the nature of the service, program, or activity. New provisions also state that a district does not have to allow an individual to participate in the district's services, programs, or activities if the individual poses a direct threat to the health or safety of others.

Service Animals

As a result of Department of Justice amendments to the regulations implementing the ADA, we have created a new legally referenced policy, FBA(LEGAL), addressing service animals. The policy includes a definition of "service animal" as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability, though the rules permit the use of a

trained miniature horse as an alternative, subject to certain limitations. Other provisions in this new policy include the following:

- An individual with a disability must be allowed to take his or her service animal in all areas of a district's facilities that members of the public are allowed to go, except when the service animal is out of control or not house-broken.
- A district is limited in the types of inquiries it can make about service animals.
- A district must modify its policies, practices, or procedures to permit the use of service animals unless the district can show that the modification would fundamentally alter the nature of a service, program, or activity.

In addition to the provisions from federal regulations regarding service animals, we have also added to this new policy existing state law provisions addressing assistance animals. To assist districts in complying with the new rules on service animals, TASB Policy Service has created a sample administrative regulation on student use of service and assistance animals, available on the myTASB Web site to district administrators.

Employee Issues

Standards of Conduct

We have added at DH(LEGAL) Administrative Code provisions requiring a report to the State Board for Educator Certification (SBEC) regarding educator misconduct to describe in detail the factual circumstances prompting the report and to include specific information to identify the subject of the report.

At DH(EXHIBIT), we have incorporated SBEC's recent amendments to the Code of Ethics and Standard Practices for Texas Educators, which include new standards on electronic communications with students.

Termination of Employment

At DF(LEGAL), regarding termination of employment, we have revised the definition of "abuse" to reflect amended Administrative Code rules and have moved several provisions to more appropriate codes.

We have added at DFE(LEGAL) Administrative Code provisions on determining the deadline for a board to file a complaint with SBEC asserting an educator's abandonment of contract, including provisions on determining an employee's

resignation date if he or she does not submit a written resignation.

Access to Records

At BBE(LEGAL), we have added a provision from a 2004 attorney general opinion detailing board member access to records when there are confidentiality or security concerns. New provisions have also been added explaining that a board member may access student records only when acting in his or her official capacity with a legitimate educational interest, and outlining a board member's obligations to maintain the integrity of public records.

Several existing statutory provisions regarding student records have been added at FL(LEGAL), including provisions requiring a district to furnish records to a new school district within ten working days after the date the district receives a request and to notify a parent or other person with legal control who makes a request for a student's records that he or she may pick up an unofficial copy of the records to deliver to the new school.

Board Training

At BBD(LEGAL), we have added details about Open Meetings Act training and Public Information Act training and have deleted some provisions included at other codes. Provisions on training required by the State Board of Education (SBOE) have been grouped together and provisions have been added from new SBOE rules requiring the board president to annually distribute the SBOE's framework for governance to other board members and the superintendent and to announce at the last regular board meeting of the calendar year whether each board member has satisfied training requirements, rather than at the meeting calling for board member elections, as before. The latter provision is also reflected at BR(LEGAL).

BBD(LOCAL) Policy Considerations

We have added a cross-reference to GBAA regarding the public information coordinator and recommend for deletion the provisions listing the various board member training methods for districts that included these provisions in policy.

Board Meetings

At BED(LEGAL), we have added the holding of *Fairchild v. Liberty Independent School District*, which clarified that a board can create a limited public forum for the purpose of hearing public comments as long as the board does not engage in viewpoint discrimination, imposes only restrictions that are reasonable in light of the purpose served by the forum, and provides alternative paths for the public to express speech that is excluded from the forum.

District Financial Operations

Several changes were made at Update 90 regarding district financial operations:

- For all but the nine districts still subject to Civil Order 5281, we have deleted text at CDB(LEGAL) requiring districts to notify the Commissioner when real property is sold, leased, or otherwise conveyed.
- At CFA(LEGAL), we have incorporated changes to the Administrative Code regarding requirements for a district's annual financial management report. New language clarifies that the purpose of disclosing the superintendent's contract or other written documentation of employment is to report all compensation and benefits paid to the superintendent. Changes also clarify that the summary schedule for the fiscal year includes expenditures paid on behalf of the superintendent and board members in addition to reimbursements they received.
- At CFC(LEGAL), we have added new Administrative Code rules regarding TEA's financial solvency review process for school districts. The rules define financial solvency, list the data reviewed by TEA and the information TEA will request from districts, and describe the methodology used in the analysis and the activities required if a projected deficit is identified, as well as address which documents will be subject to open records requests during the financial solvency review process.

More Information

For further information on these policy changes, refer to the policy-by-policy Explanatory Notes—customized for each district's policies—and the policies themselves, found in your localized update packet.

Vantage Points is an executive summary, prepared

specifically for board members, of the TASB Localized Update. The topic-by-topic outline and the thumbnail descriptions focus attention on key issues to assist local officials in understanding changes found in the policies. The description of policy changes in *Vantage Points* is highly summarized and should not substitute for careful attention to the significantly more detailed, district-specific Explanatory Notes and the policies within the localized update packet.

PLEASE NOTE: This Update 90 *Vantage Points* and the Localized Update 90 packet may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.

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

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