

Brownsville Independent School District

Tuesday, February 16, 2021



POLICY REVIEW

SECTIONS E & F



TASB RECOMMENDATION

- EIE(LOCAL) The enclosed revisions are recommended to:
- Not retain Kinder and PreKinder students.
 - Delete Code of Federal Regulations from local policy. TASB automatically updates the LEGAL policies to ensure they reflect current law.
- FDB(LOCAL) The enclosed revision recommends that local policy clarify that the district's grievance procedures in reference to student transfers comply with the specific provisions cited in FDB (LEGAL). FDB (LEGAL) requires that a board hearing be scheduled within 30 days if a hearing is requested regarding student transfers.



Texas Association of School Boards • Legal Services
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December 2, 2020

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

Dr. Rene Gutierrez
Superintendent
Brownsville ISD
1900 Price Road
Brownsville, TX 76804-0730

Dear Dr. Gutierrez:

Carolyn Austin has submitted material for legal review as part of the Policy Review Session Local District Update 2020.04 previously mailed under separate cover. The purpose of this legal review is to identify to the board potential legal problems that may arise as a result of the district's local policy choices.

Scope of Review:

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

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

Review of Your Policies:

For this review, TASB Legal Services has examined all the district's locally developed policies. We have the following comments:

EIE(LOCAL): At Standards for Mastery, Kindergarten, this policy states that a principal may retain a student in kindergarten due to developmental reasons, long-term illness, or other unforeseen factors. First, TEA cautions against retaining students in kindergarten because kindergarten students are not subject to compulsory attendance. In other words, a parent could simply withdraw a student who is at risk of retention and re-enroll the student at the beginning of first grade.

Second, this provision appears to give the principal authority to decide whether a kindergarten student with substantial absences will be given credit for the school year. Only an attendance committee may award credit to an elementary student who was not in attendance 90 percent of the days the class is offered. Tex. Educ. Code § 25.092.

Third, the Education Code states that, by the start of the school year, a district must make public the requirements for student advancement. Tex. Educ. Code § 28.021(d). This policy might not provide sufficient notice to parents and students of the standards for retention in kindergarten.

We recommend that the district reconsider retention standards at the kindergarten level. If the district opts to retain kindergarten students, decisions based on attendance should be reserved to the attendance committee. Finally, the policy should either specify or incorporate by reference specific standards for mastery for this grade level.

At Response to Intervention, the district has incorporated language from the Code of Federal Regulations into its LOCAL policy. LEGAL policies are not adopted by the board. Rather, they are restatements of the current law, as it relates to school districts generally. TASB automatically updates the LEGAL policies to ensure that they reflect the current law. Unique LOCAL policy provisions may not be automatically updated when the law changes. Absent diligent administrative review by the district, any change in state or federal law could cause the district's LOCAL policy to be out of date and conflict with governing law. TASB Legal Services recommends that the board remove the LEGAL policy language from the LOCAL policy.

FDB(LOCAL): At Appeal, the policy states that a student may appeal a transfer decision in accordance with FNG(LOCAL). While this appeal process may provide an appropriate framework for an appeal of the denial of an intradistrict transfer, policy FNG(LOCAL) may not, on its own, meet all appeal requirements. Texas Education Code section 25.034 sets out specific requirements for a parent's written petition concerning school assignment or transfer. Among other things, the statute requires that a board hearing be scheduled within 30 days if a hearing is requested. To ensure all requirements for an appeal are completed, TASB Legal Services recommends that the policy clarify that the district's grievance procedures will comply with the specific provisions of Section 25.034, cited in FDB(LEGAL), when a parent appeals a decision made pursuant to FDB(LOCAL).

FFA(LOCAL): Under the Healthy, Hunger-Free Kids Act of 2010, certain elements must be included in student wellness policies. This policy does not include the public notification and records retention elements. These issues related to the district's local policy are addressed in a policy development worksheet published by TASB Policy Service in September 2016. The district's policy consultant can assist with locating and completing this document. TASB Legal Services recommends the district complete the policy development worksheet and amend the policy, as regulations went into effect on August 29, 2016, and require full compliance by June 30, 2017. The worksheet may be found at tasb.org/services/policy-service/resources/student-health-and-wellness.aspx

Because the district adopted these policies in consultation with the district's in-house counsel, TASB Legal Services defers to the more specific advice of the district's school attorney. We wanted to provide the district with this comment, however, in order to complete this policy review in a manner consistent with our service to other school districts.

Changes to Your Policies

Ultimately the content of local policy is the board's choice. As the board makes its policy decisions, it should consider the recommendations of district administrators, input from TASB Policy and Legal Services, and the advice of the district's attorney.

If the district wishes to make changes to its policy, call Carolyn Austin at 800-580-7529.

Sincerely,

TASB Legal Services

By: _____
Joe Ball

cc: Mr. Miguel Salinas, Staff Attorney

PROPOSED REVISIONS

Curriculum Mastery

Promotion and course credit shall be based on mastery of the curriculum. Expectations and standards for promotion shall be established for each grade level, content area, and course and shall be coordinated with compensatory, intensive, and/or accelerated services. [See EHBC] The District shall comply with applicable state and federal requirements when determining methods for students with disabilities [see FB] or students who are English language learners [see EHBE and EKBA] to demonstrate mastery of the curriculum.

Students Receiving
Special Education
Services

Any modified promotion standards for a student receiving special education services shall be determined by the student's admission, review, and dismissal (ARD) committee and documented in the student's individualized education program (IEP). [See EHBA series and EKB]

Standards for Mastery

In addition to the factors in law that must be considered for promotion, mastery shall be determined as follows:

1. Course assignments and unit evaluation shall be used to determine student grades in a subject. An average of 70 or higher shall be considered a passing grade.
2. Mastery of the skills necessary for success at the next level shall be validated by assessments that may either be incorporated into unit or final exams or may be administered separately. Mastery of at least 70 percent of the objectives shall be required.

Kindergarten

~~As a general practice, kindergarten students shall not be retained. Principals may retain a student due to developmental reasons, long term illness, or other unforeseen factors. Grade designators in kindergarten shall be "D" for developed and "SD" for still developing.~~

Prekindergarten
and Kindergarten

Prekindergarten and kindergarten students shall not be retained. Student progress shall be measured by mastery of proficiencies identified through state and local curriculum standards.

Grades 1–5

In grades 1–5, promotion to the next grade level shall be based on a yearly average of 70 or above in reading, language arts, mathematics, science, and social studies. The language arts average shall be derived by averaging grades earned in English or ESL, spelling, and writing courses.

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Grades 6–8	To be promoted in grades 6–8, a student must: <ol style="list-style-type: none">1. Pass each required course outlined in the corresponding middle school course listing guide with a 70 percent overall yearly average.2. Pass elective courses with a 70 percent (composite) overall yearly average.
Grades 9–12	Grade-level advancement for students in grades 9–12 shall be earned by course credits. [See EI]
Accelerated Instruction	If a student fails to demonstrate proficiency on a state-mandated assessment, the student shall be provided accelerated instruction in accordance with state law. Additionally, students in grades 5 and 8 shall be subject to all provisions of Grade Advancement Testing, below.
Grade Advancement Testing	Except when a student will be assessed in reading or mathematics above his or her enrolled grade level, students in grades 5 and 8 must meet the passing standard on the applicable state-mandated assessments in reading and mathematics to be promoted to the next grade level, in addition to the District’s local standards for mastery and promotion.
Definition of “Parent”	For purposes of this policy and decisions related to grade advancement requirements, a student’s “parent” shall be defined to include either of the student’s parents or guardians; a person designated by the parent, by means of a power of attorney or an authorization agreement as provided in Chapter 34 of the Family Code, to have responsibility for the student in all school-related matters [see FD]; a surrogate parent acting on behalf of a student with a disability; a person designated by the parent or guardian to serve on the grade placement committee (GPC) for all purposes; or in the event that a parent, guardian, or designee cannot be located, a person designated by the Superintendent or designee to act on behalf of the student. [See EIE(LEGAL)]
No Alternate Assessment Instrument	The District shall use only the statewide assessment instrument for the third testing opportunity.
Standards for Promotion Upon Appeal	If a parent initiates an appeal of his or her child’s retention following the student’s failure to demonstrate proficiency after the third testing opportunity, the GPC shall review all facts and circumstances in accordance with law. The student shall not be promoted unless: <ol style="list-style-type: none">1. All members of the GPC agree that the student is likely to perform on grade level if given additional accelerated instruction

during the following school year in accordance with the educational plan developed by the GPC; and

2. The student has completed required accelerated instruction in the subject area for which the student failed to demonstrate proficiency.

Whether the GPC decides to promote or to retain a student in this manner, the committee shall determine an accelerated instruction plan for the student for the following school year, providing for interim reports to the student's parent and opportunities for the parent to consult with the teacher or principal as needed. The principal or designee shall monitor the student's progress during the following school year to ensure that he or she is progressing in accordance with the plan.

Transfer Students

When a student transfers into the District having failed to demonstrate proficiency on applicable assessment instruments after two testing opportunities, a GPC shall convene for that student. The GPC shall review any available records of decisions regarding testing and accelerated instruction from the previous district and determine an accelerated instruction plan for the student.

If a parent initiates an appeal for promotion when a student transfers into the District having failed to demonstrate proficiency after three testing opportunities, the GPC shall review any available records of decisions regarding testing, accelerated instruction, retention, or promotion from the previous district and issue a decision in accordance with the District's standards for promotion.

Assignment of Retained Students

A student not promoted to the next grade level shall remain at the same campus or shall be assigned to a similar campus setting.

Reducing Student Retention

The District shall establish procedures designed to reduce retaining students at a grade level, with the ultimate goal being elimination of the practice of retaining students. [See EHBC]

Response to Intervention

The District shall follow requirements of the law regarding referral of students for evaluation for special education or Section 504 services in accordance with policies EHBAA and FB, including consideration of all general education support services available to all students. This shall include procedures that are part of the District's general education program, a process referred to as response to intervention (RTI). [See EHBC, EHBD, and FFC]

Before referral for an evaluation for dyslexia, Section 504, or special education, students experiencing difficulty in the general classroom shall be considered for all support or supplemental services available to students. If a student continues to experience difficulty in the general classroom after provision of interventions, District

Student Screening	<p>personnel shall refer the student for a full and individual initial evaluation. 20 U.S.C. 1414(a)(1); 34 C.F.R. 300.301; 19 TAC 89.1011</p> <p>The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. 20 U.S.C. 1414(a)(1)(E)</p> <p>The basic components of the RTI process shall include:</p> <ol style="list-style-type: none">1. Scientific, research-based core instruction in reading, mathematics, and behavior. Reading instruction shall address phonemic awareness, phonics, vocabulary development, fluency, and comprehension.2. Screening (universal screener) for all students in kindergarten–grade 12 at least three times per year to identify those who are not making academic progress at the expected rates.3. Research-based interventions matched to a student’s targeted need at increasing levels of intensity for any student who does not make satisfactory progress in his or her levels of performance or in his or her rate of learning in order to meet age or grade-level standards.4. Repeated assessments using curriculum-based monitoring or progress monitoring to determine if interventions are resulting in student progress toward age or grade-level standards.5. A building-based team to establish at-risk criteria (cut scores), review screening data, and make decisions related to student performance and intervention need.6. Written notice to parents when a student is identified, in accordance with the policy, as needing more intensive reading, mathematics, or behavior instruction than the instruction provided to all students in the general education classroom.
District RTI Team <i>Composition</i>	<p>The Superintendent or designee shall establish a District RTI team, which shall be composed, at a minimum, of the following representatives:</p> <ul style="list-style-type: none">• Administrators/directors of curriculum and instruction for elementary and secondary grades;• The director of bilingual education;• The director of special education;• Certified reading, mathematics, and behavior specialists; and

- Other individuals the Superintendent or designee deems appropriate.
- Responsibilities* It shall be the responsibility of the District RTI team to develop, review, and amend, as necessary, RTI procedures that include the following components:
1. The criteria for determining the appropriate levels of intervention, including the frequency of assessment and the assessment tools to be used;
 2. The types, intensity, and range of interventions provided to students at each tier and the number of tiers of intervention prior to referral for disability issues through Section 504 or special education;
 3. The amount and nature of student performance data to be collected;
 4. The manner and frequency of curriculum-based monitoring (CBM)/progress monitoring; and
 5. The data necessary for campus personnel through the RTI team to request a referral to Section 504 or special education for disability issues.
- Training Program* The Superintendent, in consultation with the District Leadership Team and the District RTI Team, shall develop and implement a training program for all teachers assigned to provide students with scientific research-based reading and mathematics interventions on the specific intervention techniques and fidelity of implementation, as well as assessment (universal screening and CBM/progress monitoring), data collection, and charting of performance data as required in accordance with the policy and established procedures.
- Campus RTI Teams* The Superintendent or designee shall require all campuses within the District to establish campus RTI teams.
- In accordance with the procedures established by the District RTI team, the campus RTI teams shall use an RTI model to conduct the following tasks:
1. Collect, review, and analyze data pursuant to this policy;
 2. Identify those students who require instruction at a more or less intensive level;
 3. Notify the parents of a student receiving RTI intervention that the student is involved in the RTI process and the techniques, strategies, or programs to be used;

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4. Review the appropriateness of the interventions used and the grouping of students to maximize effectiveness;
5. Recommend changes in students' instructional programs based upon the analysis of the data; and
6. Request a referral to dyslexia, Section 504, or special education where appropriate.

Request for Special
Education Services

All student referrals shall be considered on a case-by-case basis. A parent shall be permitted to request an evaluation for special education services at any time. The District shall decide if the special education evaluation is needed within ten school days of the date the District receives a request. *34 C.F.R. 300.503; TAC 89.1015*

If a special education evaluation is needed, the parent shall be notified and shall be asked to provide informed written consent for the evaluation. The District shall complete the evaluation and the report within 45 calendar days of the date the District receives the written consent. This excludes weekends, holidays, and summer. The District shall give a copy of the report to the parent. In addition, the District shall conduct an ARD meeting within 30 days of the completion of the evaluation report.

If the District determines that a special education evaluation is not needed at the time of the parent request, the District shall provide the parent with prior written notice explaining why the student is not being evaluated and providing the information used as the basis for this decision. *34 C.F.R. 300.503 (a) and (b)*

Additionally, the prior written notice shall include, for the parent, a copy of the Notice of Procedural Safeguards – Rights of Parents of Students with Disabilities. This document advises the parents of their rights if they disagree with the District's decision.

[See EHBA and FB]

ADMISSIONS
INTRADISTRICT TRANSFERS AND CLASSROOM ASSIGNMENTS

FDB
(LOCAL)

3. Student's school identification number or state I.D. number; and
4. Home campus clearance form for a new or prekindergarten student from the student's zoned school.

Only one intradistrict transfer per student per school year shall be approved. A student already on an approved transfer shall not be eligible to apply for an additional transfer until the following school year.

Revocation

An approved transfer shall be revoked at the end of a semester for the following reasons:

1. If the campus and respective grade level become overcrowded; or
2. If a student fails to abide by the school standards for academic progress, attendance, discipline, and cooperation with school staff.

Suspension of Transfers

The Superintendent may suspend transfers to or from a particular school at any time he or she determines that transfers have a negative effect on the enrollment or programs of that school. The suspension of transfers for a particular school shall be announced at a Board meeting.

Transportation

Parents shall be responsible for the transportation of intradistrict transfer students.

UIL Eligibility

A student allowed to transfer shall be subject to UIL eligibility rules for participation in UIL activities. It shall be the responsibility of the student to determine the effect of his or her transfer on UIL eligibility status.

Appeal

A student may appeal a transfer decision in accordance with **FDB(LEGAL) or FNG(LOCAL), as appropriate. ~~The appeal~~An appeal under FNG(LOCAL)** shall begin at Level Two with the assistant superintendent for the requested school.

Note: For the transfer of a student who is the victim of bullying or who engaged in bullying, see FDB(LEGAL). For the transfer of a student who attends a persistently dangerous school, becomes a victim of a violent criminal offense, or becomes a victim of sexual assault, see FDE.
