

Instruction Sheet

TASB Localized Policy Manual Update 77

District Keller ISD

Code		Action To Be Taken	Note
B	(LEGAL)	Replace table of contents	Revised table of contents
BBD	(LEGAL)	Replace policy	Revised policy
BBD	(LOCAL)	ADD policy	See explanatory note
BBFA	(LEGAL)	Replace policy	Revised policy
BBFA	(EXHIBIT)	Replace exhibit	Revised exhibit
BBFB	(LEGAL)	ADD policy	See explanatory note
BDAF	(LEGAL)	Replace policy	Revised policy
BDF	(LEGAL)	Replace policy	Revised policy
CHE	(LEGAL)	ADD policy	See explanatory note
CNA	(LEGAL)	Replace policy	Revised policy
CNB	(LEGAL)	Replace policy	Revised policy
CPC	(LOCAL)	Replace policy	Revised policy
CRD	(LEGAL)	Replace policy	Revised policy
DAB	(LOCAL)	Replace policy	Revised policy
DBA	(LEGAL)	Replace policy	Revised policy
DBA	(LOCAL)	Replace policy	Revised policy
DBD	(LEGAL)	Replace policy	Revised policy
DBD	(LOCAL)	Replace policy	Revised policy
DBD	(EXHIBIT)	Replace exhibit	Revised exhibit
DFD	(LEGAL)	Replace policy	Revised policy
DFE	(LOCAL)	Replace policy	Revised policy
DGBA	(LEGAL)	Replace policy	Revised policy
DIA	(LEGAL)	Replace policy	Revised policy
E	(LEGAL)	Replace table of contents	Revised table of contents
EEH	(LOCAL)	ADD policy	See explanatory note
EFAA	(LOCAL)	Replace policy	Revised policy
EHAA	(LEGAL)	Replace policy	Revised policy
EHBA	(LEGAL)	Replace policy	Revised policy
EHBAA	(LEGAL)	Replace policy	Revised policy
EHBAB	(LEGAL)	Replace policy	Revised policy
EHBAC	(LEGAL)	Replace policy	Revised policy

Instruction Sheet

TASB Localized Policy Manual Update 77

Code	Action To Be Taken	Note
EHBAD (LEGAL)	Replace policy	Revised policy
EHBAE (LEGAL)	ADD policy	See explanatory note
EHBC (LEGAL)	Replace policy	Revised policy
EI (LEGAL)	Replace policy	Revised policy
EKB (LEGAL)	Replace policy	Revised policy
EL (LEGAL)	Replace policy	Revised policy
F (LEGAL)	Replace table of contents	Revised table of contents
FFA (LEGAL)	Replace policy	Revised policy
FFA (LOCAL)	DELETE policy	See explanatory note
FNAB (LEGAL)	Replace policy	Revised policy
FNCF (LEGAL)	Replace policy	Revised policy
FNG (LEGAL)	Replace policy	Revised policy
FO (LEGAL)	No policy enclosed	See explanatory note
FODA (LEGAL)	Replace policy	Revised policy
FOF (LEGAL)	Replace policy	Revised policy
GF (LEGAL)	Replace policy	Revised policy

Explanatory Notes

TASB Localized Policy Manual Update 77

District: Keller ISD

B (LEGAL) LOCAL DISTRICT GOVERNANCE

BBFA (ETHICS: CONFLICT OF INTEREST) has been split into two codes:

- BBFA: CONFLICT OF INTEREST DISCLOSURES
- BBFB: PROHIBITED PRACTICES

BBD (LEGAL) BOARD MEMBERS
TRAINING AND ORIENTATION

As reflected at SPECIFIC OPEN MEETINGS TRAINING and SPECIFIC OPEN RECORDS TRAINING on page 3, SB 286 from the 79th regular session now requires board members and certain other elected or appointed public officials to complete training on Government Code Chapters 551 and 552, commonly referred to as the Texas Open Meetings Act and the Texas Public Information Act. The attorney general is charged with the responsibility of ensuring that training is made available. The Office of the Attorney General will both provide this training and approve alternative providers. Board members must complete the required training within 90 days of taking the oath of office; however, those who took the oath of office prior to January 1, 2006, have until January 1, 2007, to complete the training.

Under terms of the legislation, these courses will accrue board member training credit as well. The attorney general's office is currently developing video training that will fulfill these requirements; the video training is expected to be released in December 2005. Further information on the requirement and the attorney general's response to various questions regarding the training may be found at <http://www.oag.state.tx.us/agency/sb286info.shtml>.

Please note: Board members may delegate to a public information coordinator the SB 286–required open records training; however, the open meetings training is not delegable.

BBD (LOCAL) BOARD MEMBERS
TRAINING AND ORIENTATION

SB 286, described above, also introduces into statute the term “public information coordinator.” Because the responsibilities of the public information coordinator are administrative in nature and usually fall within the purview of the superintendent, either directly or by delegation, we have developed language identifying the superintendent as the coordinator. The statement goes on to delegate, as permitted by the statute, the Government Code 552 training requirement that would otherwise reside with individual board members.

BBFA (LEGAL) ETHICS
CONFLICT OF INTEREST DISCLOSURES

This policy has been revised structurally as well as substantively.

The increasing complexity of Texas's conflict of interest laws applicable to school districts has prompted the subdivision of this CONFLICT OF INTEREST policy into two separate codes:

- BBFA, focusing more narrowly on required disclosures
- BBFB, addressing specific prohibited practices

BBFA also reflects new provisions of HB 914 from the 79th regular session. That legislation expands the Local Government Code as follows:

Explanatory Notes

TASB Localized Policy Manual Update 77

- Under CONFLICTS DISCLOSURE STATEMENT, on page 3, are various circumstances that would require a local government officer to file with the district's records officer (generally the superintendent) on the form published by the Texas Ethics Commission a new "conflicts disclosure statement" required by the Local Government Code. This is separate and apart from the "substantial interest" affidavit required by Local Government Code Chapter 171 and the "interest in property" affidavit required by Government Code 553.003 (see page 4). Use of this disclosure statement is required as of January 1, 2006.
- A DEFINITION OF LOCAL GOVERNMENT OFFICER, encompassing the superintendent, also appears on page 3.
- At DEFINITION OF RECORDS ADMINISTRATOR is a list of persons who may perform that function: "the director, superintendent, or other person responsible for maintaining the records of the district." A cross-reference to CPC, where records management is addressed, has been added.
- INTERNET POSTING REQUIREMENT recites the obligation of the district to provide Internet access to the newly required conflicts disclosure statements and to vendor disclosure questionnaires that have been filed with the records administrator of the district.

BBFA (EXHIBIT) ETHICS
CONFLICT OF INTEREST DISCLOSURES

Both exhibits have been revised for clarity:

- Exhibit A
AFFIDAVIT DISCLOSING SUBSTANTIAL INTEREST IN A BUSINESS ENTITY OR REAL PROPERTY
"Local public officials" are required to file (with "the official board recordkeeper") such an affidavit under Local Government Code 171.002.
- Exhibit B
AFFIDAVIT DISCLOSING INTEREST IN PROPERTY
Government Code 553.002-.003 requires "public servants" to file (with the county clerk) such an affidavit.

Please note: We have added to the cover page a text note referring board members and the superintendent—who are required to file ("with the records administrator" of the district) the conflicts disclosure statement required by Local Government Code 176.003-.004—to the new form promulgated by the Texas Ethics Commission, published on the commission's Web site at <http://www.ethics.state.tx.us>.

BBFB (LEGAL) ETHICS
PROHIBITED PRACTICES

This policy presents material previously found in BBFA(LEGAL) dealing with specific violations of laws pertaining to ethics. These prohibitions were unaffected by the 79th regular session or other changes in the legal context.

BDAF (LEGAL) OFFICERS AND OFFICIALS
SELECTION AND DUTIES OF CHIEF TAX OFFICIALS

HB 898 from the 79th regular session and effective September 1, 2005, affects the tax assessor's duties. At item 2 under ASSESSOR, the text now reflects that the assessor shall "prepare and mail a tax bill to each person **and** [emphasis added] authorized agent, in whose name property is listed on the tax roll." Previously the tax assessor could send the bill to either party.

Explanatory Notes

TASB Localized Policy Manual Update 77

BDF (LEGAL) BOARD INTERNAL ORGANIZATION CITIZEN ADVISORY COMMITTEES

SB 42, from the 79th regular session and effective for the 2006–07 school year, expanded the health-related information that the district was previously required to make available for public inspection and newly requires the district to publish this information in the student handbook and on the district's Web site.

Districts must now adopt and publish policies ensuring that elementary, middle, and junior high school students engage in at least 30 minutes per school day (or 135 minutes per school week) of physical activity. Previous requirements include reporting the number of times during the preceding year that the school health advisory council has met, adopting district policies restricting student access to vending machines, and prescribing penalties for use of tobacco products by students and others on school campuses or at school-related activities.

The post-legislative supplement to the *TASB Model Student Handbook* provides further guidance on fulfilling this requirement.

CHE (LEGAL) PURCHASING AND ACQUISITION VENDOR RELATIONS

This new policy recites key HB 914 provisions regarding potential conflicts of interest between district officials and vendors. While policies BBFA and DBD speak to conflicts of interest involving officers and employees, respectively, CHE has been created to address newly required vendor disclosures. A vendor has seven business days (from the date it enters into contract discussions or negotiations with the district or submits an application, bid, or RFP response, etc.) to file with the district's records administrator the information on the questionnaire promulgated by the Texas Ethics Commission.

The legislation also allows the vendor to file the questionnaire electronically. District obligations include maintaining and making public a list of district officials who are subject to the filing requirement and publishing filed statements on the district's Web site.

CNA (LEGAL) TRANSPORTATION MANAGEMENT STUDENT TRANSPORTATION

At WIRELESS COMMUNICATION DEVICES, on page 4, may be found the SB 1257 ban on a bus driver using a cell phone or like device while driving when minors are on the bus. Exceptions are allowed for emergency communication or when the bus is not in motion.

CNB (LEGAL) TRANSPORTATION MANAGEMENT DISTRICT VEHICLES

On August 10, 2005, the federal highways reauthorization bill passed into law, and it has major implications for school district purchasing or leasing of 15-passenger vans.

Grandly styled the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" or "SAFETEA," the law newly prohibits a district from purchasing or leasing a new 15-passenger van to be used primarily for the transportation of students to or from school or school-related events **unless** the van fulfills federal standards for school buses and multi-functional school activity buses. This requirement is found at NEW VAN PURCHASES OR LEASES and applies to purchases or leases initiated after August 10, 2005. The law does not apply to the purchase of used vehicles in the resale market.

Although not recited here, the law includes civil penalties for violations: a maximum of \$10,000 per vehicle (accumulating to a maximum of \$15 million for a series of violations by a single district).

CPC (LOCAL) OFFICE MANAGEMENT RECORDS MANAGEMENT

Legislative action, beginning in 1989 and continuing through the last regular session, has expanded the vocabulary of records management to include four roles:

Explanatory Notes

TASB Localized Policy Manual Update 77

- Records Management Officer (a Local Government Code provision from the 1989 legislative session)
- Records Administrator (added to the Local Government Code by HB 914 in the 2005 legislative session)
- Officer for Public Information (a Government Code provision arising from the 1993 legislative session)
- Public Information Coordinator (added to the Government Code by SB 286 in the 2005 legislative session)

Each is essentially an administrative function under the supervision of the superintendent. We have developed this listing to assist users of the manual in connecting the “dots” to their statutory context. While the requirement to inform the Texas State Library of the name of the district’s records management officer remains in effect, the need to address it in local policy was tied to the initial implementation of the 1989 legislation. Therefore, we have deleted it from this text.

These four statutory titles may present some confusion if the district has used these or similar titles—such as “Public Information Officer”—for administrative positions whose functions do not encompass those associated with these titles by the above statutes. As a practical matter, we suggest that the district retitle otherwise “name-alike” administrative positions.

CRD (LEGAL) INSURANCE AND ANNUITIES MANAGEMENT
HEALTH AND LIFE INSURANCE

An Insurance Code stipulation that districts not participating in TRS Active Care provide employees a “plan disclosure statement” has been deleted. TASB attorneys have determined that this provision does not apply to school districts meeting the “substantive coverage requirement” specified by the Insurance Code and mandated by Education Code 22.004(b), recited at GROUP HEALTH BENEFITS on page 1.

DAB (LOCAL) EMPLOYMENT OBJECTIVES
OBJECTIVE CRITERIA FOR PERSONNEL DECISIONS

Recently, in pursuing a complaint against a district, the U.S. Department of Justice objected to “suitability for the position” previously listed in this policy because, in the view of the department, it was subjective and could be misapplied to result in a discriminatory action prohibited by federal law (based on gender, age, etc.). Consequently, we have deleted this item entirely. In addition, item 5, previously “evaluations,” has been broadened to read “appraisals and other performance evaluations.”

These six criteria are intended to comport with Civil Order 5281, which has required since 1971 that each district have a list of objective criteria, not related to race or ethnicity, by which it will make decisions regarding employee assignment, demotion, reassignment, or dismissal and by which it will judge applicants. The full text of the order may be found at <http://www.tea.state.tx.us/eo/5281.html>.

DBA (LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CREDENTIALS AND RECORDS

For a more complete representation of the legal context within which districts must operate, we have added at PROFESSIONAL PERSONNEL CREDENTIALS a long-standing Education Code requirement for valid certification before an educator can be compensated for work done.

DBA (LOCAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CREDENTIALS AND RECORDS

Guidance offered by TEA’s Division of NCLB Program Coordination suggests that the home campus teacher of a student assigned to a disciplinary alternative education program (DAEP) can be considered the “teacher

Explanatory Notes

TASB Localized Policy Manual Update 77

of record” for purposes of determining if the student is being instructed by a “highly qualified” teacher under the NCLBA. For this to hold true, however, (LOCAL) policy must provide for the following:

- The home campus teacher assigns and evaluates all student coursework;
- The student will receive substantially the same coursework and be subject to the same grading standards as other students on the home campus who are enrolled in the course;
- The home campus teacher has final authority to assign a grade for completed coursework and the final grade for the course;
- The home campus teacher is available on a regular basis to the student and to the DAEP teacher for face-to-face consultation; and
- The DAEP teacher meets all applicable SBEC certification requirements.

The enclosed (LOCAL) policy has been revised to reflect these TEA-defined criteria. If these conditions are met and if the home campus teacher meets NCLB requirements as “highly qualified,” parental notification is not required.

We have retained, at UPDATING CREDENTIALS, an existing policy provision previously applicable only to professional employees but now extended to all employees. This broadened language would, of course, include paraprofessionals required to maintain NCLB “highly qualified” status. We have deleted a previous statement addressing the timeline for teachers employed on emergency permits; this is more appropriately addressed in the employee’s contract. TASB’s Model Employee Contracts, published by TASB Human Resource Services, address this requirement in the “Certification Addendum” for educator contracts. The model contracts are available to HR Services subscribers via MyTASB at https://www.tasb.org/docs-mytasb/gov_svcs/human_rsc_svcs/memlib/memlibfiles/c_models.pdf.cfm.

Other changes are as follows:

- A new CONTRACT PERSONNEL section charges the superintendent with ensuring that a contract employee holds valid credentials before a contract is issued.
- We have deleted a RECORDS statement referencing maintenance of records “in accordance with law and local administrative requirements.” Maintenance and retention of personnel records should be addressed within the district’s records management plan, as required by the Local Government Code. [See CPC]

DBD (LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS CONFLICT OF INTEREST

This policy has been revised structurally as well as substantively to clarify the conflict-of-interest standards applicable to employees and to incorporate the enactment of HB 914 from the 79th regular session. Of note:

- Presented first in the policy are specific violations of Penal Code and Education Code provisions pertaining to ethics. These prohibitions were unaffected by the 79th regular session.
- On page 3 appears the long-standing Texas Constitutional prohibition against a person’s holding more than one civil office of emolument, subject to noted exceptions.
- Also on page 3 appears provisions of Local Government Code 176.005—added by HB 914—that allow the board to extend to all or certain employees a CONFLICTS DISCLOSURE STATEMENT and to take disciplinary action against an employee who violates the requirement. As noted at BBFA(LEGAL), board members and superintendents are required to file such disclosures. At CHE(LEGAL), vendors are required to file questionnaires explaining their relationships with district officials. These disclosure requirements take effect on January 1, 2006.

Explanatory Notes

TASB Localized Policy Manual Update 77

DBD (LOCAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS CONFLICT OF INTEREST

We have revised the section on DISCLOSURE of conflicts of interest listing and differentiating standards to which district employees may be held. The text cross-references provisions applicable to board members [see BBFA] and echoes terminology and definitions for use in the (LOCAL) policy and (EXHIBIT) at this code.

Accordingly, the new text includes:

- A broad GENERAL STANDARD that requires employees to disclose to their supervisors any potential conflict of interest with the proper discharge of responsibility or with the best interest of the district.
- More narrowly defined SPECIFIC DISCLOSURES with a “substantial interest” standard that obligates certain employees with such an interest—as defined by law—in real property or a business entity to file with the superintendent, the board president, or a designee a SUBSTANTIAL INTEREST AFFIDAVIT. This mirrors the Local Government Code requirement long in place for local public officials and applicable to board members.

In addition, for clarity, we have included a section on the AFFIDAVIT DISCLOSING INTEREST IN PROPERTY. According to Government Code 553.002, district “officers”—which includes the superintendent—and board candidates are subject to this requirement.

HB 914 complicates this picture by introducing an additional disclosure—applicable to the superintendent and the board but which the board might require of other employees as well. As described at BBFA(LEGAL) and DBD(LEGAL), this new standard mandates filing with the district’s records administrator a conflicts disclosure statement (on a form developed by the Texas Ethics Commission) if a vendor with whom the district is doing business or considering doing business:

- has an employment relationship—or other business relationship—with the district employee or a member of his or her family;
- has provided the district employee or family member taxable income; or
- has provided the district employee or family member one or more gifts—apart from food, lodging, transportation, or entertainment—having a 12-month aggregate value of more than \$250.

If your district desires to extend the HB 914 standard to employees other than the superintendent, it may do so for specific employees or for all employees. Please contact your Policy Consultant/Analyst for appropriate policy language.

Please note: Your locally developed provisions at ACCEPTANCE OF GIFTS have been lightly edited. Also, at ENDORSEMENTS, we have retained, unaltered, the district’s locally developed text in the first sentence that prohibits an employee from recommending, endorsing, or requiring other employees to purchase products, materials, or services.

DBD (EXHIBIT) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS CONFLICT OF INTEREST

We recommend the addition of these conflict of interest affidavits to your localized policy manual so that they are readily accessible to employees who are obligated by DBD(LOCAL) to file such affidavits.

- Exhibit A

AFFIDAVIT DISCLOSING SUBSTANTIAL INTEREST IN A BUSINESS ENTITY OR REAL PROPERTY

Your district’s DBD(LOCAL) extends to certain employees the Local Government Code 171.002 requirement that “local public officials” file such a disclosure statement. The completed form should be timely filed with the superintendent, board president, or designee. [The form for board member use is at BBFA(EXHIBIT).]

Explanatory Notes

TASB Localized Policy Manual Update 77

- Exhibit B

AFFIDAVIT DISCLOSING INTEREST IN PROPERTY

Government Code 553.002–.003 requires “public servants” to timely file—with the county clerk(s)—such a disclosure. This form is specifically for the superintendent’s use. [The form for board member use is at BBFA(EXHIBIT).]

On the cover page to these exhibits, we have appended a note referring employees required to file the “conflicts disclosure statement” to the Texas Ethics Commission’s Web site: <http://www.ethics.state.tx.us>. As explained at DBD(LEGAL), Local Government Code 176.003–.004 requires the superintendent and board members to file such disclosures and permits the board, by local policy, to extend this particular requirement to other employees as well.

Please note: Your locally developed employee affidavit addressing the review of the district’s conflict of interest policies and procedures has been lightly edited for clarity and is now Exhibit C.

DFD (LEGAL) TERMINATION OF CONTRACT HEARINGS BEFORE HEARING EXAMINER

At RECORD OF PROCEEDINGS, on page 4, appears an excerpt from TEA rules adopted in July 2004 and addressing what constitutes a “record” for a Chapter 21 appeal before an independent hearing examiner (IHE), a subcommittee of the board, or the board.

The record upon which the commissioner of education shall decide an appeal must include:

- transcripts of local proceedings
- all evidence admitted
- all offers of proof
- all written pleadings, motions, and intermediate rulings
- a description of matters officially noticed
- the recommendation of the IHE, if applicable
- the transcript of the oral argument before the board or board subcommittee
- the decision rendered by the board or board subcommittee
- the board or board subcommittee’s written reasons for changing the IHE’s recommendation, if applicable

These rules replaced previous hearing rules, adopted in 1993, when hearings were *de novo*. The rules were updated in July 2004 to reflect the fact that appeals are now conducted on the basis of a review of the substantial evidence as presented by the record.

DFE (LOCAL) TERMINATION OF CONTRACT RESIGNATION

We have extensively revised this policy to clarify who has authority to accept resignations and in what circumstances.

At AT–WILL EMPLOYEES we have added text clarifying that the superintendent or designee has authority to accept such resignations at any time.

At CONTRACT EMPLOYEES, new text establishes that:

- Before the school year starts, the superintendent or designee may accept a contract employee’s resignation, but if the resignation is submitted after the penalty-free resignation date established by Education Code 21.105(a) and 21.210(a), the acceptance is contingent on finding a suitable replacement.

Explanatory Notes

TASB Localized Policy Manual Update 77

- After the school year starts, the superintendent or designee may accept the resignation or refer it to the board to pursue SBEC sanctions. If the superintendent accepts the resignation, the board loses the option to pursue sanctions. If the board wishes to require all mid-year resignations to be brought before the board, please contact your Policy Consultant/Analyst.
- Effective at the end of the school year, the superintendent or designee is authorized to accept the resignation.
- The resignation of a contract employee may not be withdrawn without the consent of the board.

DGBA (LEGAL) PERSONNEL-MANAGEMENT RELATIONS EMPLOYEE COMPLAINTS/GRIEVANCES

RECORD OF PROCEEDINGS, on page 3, has been amended to include an excerpt from TEA rules adopted in July 2004 and addressing what constitutes a “record” for appeals brought under Education Code 7.057.

The record upon which the commissioner of education decides an appeal must include:

- acceptable tape recordings or transcripts of the local hearing
- all evidence admitted
- all offers of proof
- all written pleadings, motions, and intermediate rulings
- a description of matters officially noticed
- the recommendation of the independent hearing examiner, if applicable
- the tape or transcript of the oral argument before the board
- the decision rendered by the board

These rules replaced previous hearing rules, adopted in 1993, when hearings were *de novo*. The rules were updated in July 2004 to reflect the fact that appeals are now conducted on the basis of a review of the substantial evidence as presented by the record.

DIA (LEGAL) EMPLOYEE WELFARE FREEDOM FROM HARASSMENT

The section HARASSMENT OF EMPLOYEES newly includes two standards of current law. The first is drawn from federal regulations and states, “Harassment on the basis of a protected characteristic is a violation of the federal anti-discrimination laws”; the second is drawn from case law and states, “Harassment violates Title VII if it is sufficiently severe and pervasive to alter the conditions of employment.”

E (LEGAL) INSTRUCTION

We have revised the E Section table of contents as follows:

- EEH—a new policy code for HOMEBOUND INSTRUCTION.
- EHBAD—redesignated to address SPECIAL EDUCATION: TRANSITION SERVICES.
- EHBAE—a new policy code for SPECIAL EDUCATION: PROCEDURAL REQUIREMENTS (previously addressed at EHBAD).

EEH (LOCAL) INSTRUCTIONAL ARRANGEMENTS HOMEBOUND INSTRUCTION

TEA’s 2005–2006 Student Attendance Accounting Handbook states that to qualify for funding for homebound instruction, “the school district must have a policy and procedures approved by the local school board for

Explanatory Notes

TASB Localized Policy Manual Update 77

implementation of general education homebound instruction.” Further information about homebound instruction requirements may be found on pages 26–34 of the handbook, which is available at <http://www.tea.state.tx.us/peims/handbook/0506hand.doc>.

We have drafted the enclosed language to fulfill that policy requirement.

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

This policy—required by the Texas Administrative Code [19 TAC 66.104(a)]—has been lightly edited to remove an unnecessarily limiting provision regarding the number of professional staff members serving on the local textbook review/selection committee and to remove the redundant April 1 deadline. This deadline (for the district to transmit to TEA a listing of instructional materials selected for use in the district) is prescribed by 19 TAC 66.104(g) and is recited in EFAA(LEGAL).

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

Under ENRICHMENT CURRICULUM, on page 1, item 2b has been adjusted to reflect the language of SB 42 from the 79th regular session: the health component of the enrichment curriculum has been restated to include “emphasis on the importance of proper nutrition and exercise.”

At STEROID NOTICE AND EDUCATION, on page 4, provisions of Education Code 38.008 (enacted in 1995) and Education Code 38.0081(b) (from the 79th regular legislative session) are added to this policy. The former provision requires posting of notices in gyms and classes where secondary physical education is conducted; the specific language of the notice is found at FNCF(EXHIBIT) in localized policy manuals. The latter provision is the result of HB 3563, which ordered the State Board of Education to identify grade levels where students participating in extracurricular activities are to be provided TEA-developed information regarding steroid use and health risks.

Please note: The State Board has not yet specified which grade levels are implicated. TEA and the Texas Department of State Health Services have developed the required information, available at <http://www.tea.state.tx.us/taa/comm042605.pdf>; in the transmittal letter for the information, Commissioner of Education Shirley Neeley and Commissioner of Health Eduardo Sanchez encouraged districts to share this information with students, parents, and staff.

Not reflected in EHAA(LEGAL) is a further HB 3563 requirement: the University Interscholastic League is ordered to adopt rules prohibiting a student from participating in an athletic competition sponsored or sanctioned by the League unless the student agrees not to use steroids and the parent acknowledges in writing the statements that are found in the FNCF(EXHIBIT).

UIL is also required to:

- develop an education program—before September 1, 2005—for students participating in UIL athletic activities and for their parents and coaches regarding the health effects of steroid use.
- make the program available to districts.
- work with public or private entities to study the effectiveness of the program.

During the 2005–06 school year, UIL must measure the extent of illegal steroid use by high school students and the number of districts that test high school students for illegal steroids. UIL is further charged with the responsibility of developing a plan for testing students engaged in UIL athletic activities for illegal steroids.

Finally, UIL must file a written report with the Legislature—not later than December 1, 2006—regarding the use survey, the effectiveness study of educational programs, and the testing plan. The bill directly states that,

Explanatory Notes

TASB Localized Policy Manual Update 77

if the Legislature is not satisfied that the educational program has significantly reduced student use of illegal steroids, it may require UIL to implement the testing plan (and authorizes UIL to raise membership fees to pay for the testing).

EHBA (LEGAL) SPECIAL PROGRAMS
SPECIAL EDUCATION

On December 3, 2004, President Bush signed into law the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). These changes became effective July 1, 2005, with compliance staged or dependent on state action and final regulations still in progress. Key provisions of the new federal legislation are as follows:

- Teacher qualifications [addressed at DBD(LEGAL) in Update 75]
 - A special education teacher who teaches any of the core academic subjects—English, reading, language arts, mathematics, science, foreign language, civics and government, economics, arts, history, or geography—at the elementary level is “highly qualified” if he or she has special education certification in addition to meeting the general requirements for being “highly qualified.”
 - Additional requirements apply to special education teachers who teach “alternative achievement standards” or who teach two or more core academic subjects exclusively to special education students. New special education teachers must be “highly qualified” in at least one of the following core academic subjects when hired—math, language arts, or science—and will be permitted two years to become “highly qualified” in any other core academic subjects taught.
- Due process [addressed at EHBAB in this update]
 - Complainants must now give notice of all issues prior to a hearing or the complainant risks not having the issues addressed during the hearing.
 - Parents must bring complaints to the district’s attention and attempt resolution before a due process hearing is conducted. A meeting to attempt to resolve the complaint must occur with the complainant within 15 days before a due process hearing.
 - State-funded mediation by a qualified and impartial mediator is permitted.
 - Due process decisions are now to be based on provisions of FAPE (Free Appropriate Public Education), not procedure.
 - A two-year statute of limitations is imposed for complaints.
- Individualized education programs (IEPs) and paperwork reduction [addressed at EHBAB in this update]
 - Fifteen (as yet unnamed) states will pilot a demonstration program identifying ways to reduce paperwork and other administrative duties (including the option to develop multi-year IEPs up to three years).
 - Any IEP team member may be excused from attending a team meeting if agreed upon by both the parent and a district official.
 - Changes to an IEP after the annual IEP meeting may be made without reconvening the team, provided the parent and district official agree and develop a written document to amend or modify the IEP.
- Student discipline [addressed at FOF in this update]
 - A district may now, on a case-by-case basis, determine if the student should be removed from class for misconduct and placed in an alternative setting, pending the manifestation determination.

Explanatory Notes

TASB Localized Policy Manual Update 77

- During an appeal, a student may remain in the alternative placement pending an expedited hearing. The burden of proof no longer rests solely with the district.

These significant changes prompted TASB attorneys to re-evaluate the scope and level of detail of the (LEGAL) policies in the EHBA series—where programmatic aspects are presented—and at FOF—where discipline of students with disabilities is addressed. The result of that initiative is a substantial redevelopment of each of these policies.

EHBA(LEGAL) remains the gateway policy and addresses the rights of students with disabilities to a Free Appropriate Public Education. The controlling concept of this policy is to provide an overview of the essential foundations of special education: nondiscrimination, provision of special education, least restrictive environment, and the concept of and entitlement to a Free Appropriate Public Education. While much material previously at this policy has been recoded elsewhere in the EHBA series, PLACEMENT OPTIONS, found on page 2, is newly included from state regulations last revised in September 2000.

Please note: The U.S. Department of Education is currently reviewing new and old statute, regulations, and policy letters as well as public input, to identify areas of IDEA 2004 that need to be addressed by new regulations. Until those regulations are enacted, regulations implementing IDEA 1997 remain in force (to the extent that they are consistent with IDEA 2004). Further information on IDEA 2004 is available at <http://www.ed.gov/policy/speced/guid/idea/idea2004.html>.

EHBAA (LEGAL) SPECIAL EDUCATION IDENTIFICATION, EVALUATION, AND ELIGIBILITY

EHBAA(LEGAL) has been reorganized to present a more logical flow of information, and additional provisions have been incorporated from federal statute and regulations where appropriate. In addition, the language has been refined to more closely track statute, and detail unnecessary for local governance and management purposes has been deleted.

Of note:

- At CHILD FIND, “children who are wards of the state” has been added from the law.
- The section regarding PRIVATE SCHOOL STUDENTS is also new statutory text.
- Changes in the federal law are reflected in the second and third paragraphs at INITIAL EVALUATION, on page 2.
- New statutory language has also been incorporated at CONSENT FOR INITIAL EVALUATION (page 2), DETERMINATION (on page 3), and REEVALUATIONS (on page 4).
- Provisions at PRESCRIPTION MEDICATION, on page 5, were enacted by the IDEA reauthorization.

EHBAB (LEGAL) SPECIAL EDUCATION INDIVIDUALIZED EDUCATION PROGRAM (IEP) AND ARDS

As with EHBAA(LEGAL), this policy has been reorganized and redeveloped for readability, appropriate level of detail, inclusion of new statutory material, and consistency with statutory language.

Key changes include:

- The multi-page initial section, titled ADMISSION, REVIEW, AND DISMISSAL COMMITTEE, has been extensively revised to include from State Board rules provisions relating to the structure, responsibilities, and processes of the ARD committee.
- TRANSFER STUDENTS, on page 4, incorporates new statutory text that supersedes commissioner’s rules last revised in 2003.

Explanatory Notes

TASB Localized Policy Manual Update 77

- At INDIVIDUALIZED EDUCATION PROGRAM is a prescription for the written statement that is drawn from current law and the IDEA reauthorization.

EHBAC (LEGAL) SPECIAL EDUCATION STUDENTS IN NONDISTRICT PLACEMENT

Redevelopment continues with EHBAC(LEGAL): the policy has been revamped to clarify its focus around “related services” (transportation, assistive technology devices, and extended school year services) and non-district placement (private schools, dual enrollment, charter schools, residential facilities, etc.).

Key changes include:

- The federal law’s definition of ASSISTIVE TECHNOLOGY DEVICES now specifically excludes surgically implanted medical devices.
- DUAL ENROLLMENT specifications, beginning on page 3, were to expire on June 30, 2004. Commissioner’s rules, effective on June 7, 2004, deleted the expiration language and extended the provisions to students who were not yet eligible to attend kindergarten in a public school.

EHBAD (LEGAL) SPECIAL EDUCATION TRANSITION SERVICES

The scope—and title—of EHBAD has been revamped to address transition services.

Key changes regarding such services include the following:

- At TRANSITION SERVICES DEFINED is the revised definition found within IDEA 2004.
- At GRADUATION is new statutory language specifying that a district is not required to conduct an evaluation conference before terminating the service eligibility of a graduating student or of a student who ages out of eligibility.

Also in this section is a new statutory requirement that the district provide a student whose eligibility has expired a summary of the student’s “academic achievement and functional performance” and recommendations on how the student may be assisted in meeting his or her postsecondary goals.

EHBAE (LEGAL) SPECIAL EDUCATION PROCEDURAL REQUIREMENTS

The redirection of policy code EHBAD prompts the creation of a new code—EHBAE—to address special education procedural requirements (previously found at EHBAD).

As with other codes in this series, the provisions of the policy have been redeveloped for clarity, to more closely track statutory language, for appropriate level of detail, and to include new statutory provisions.

Of note:

- At CONTENTS OF NOTICE, on page 2, a new item 5—requiring an opportunity to present and resolve complaints—has been added from IDEA 2004.
- At TIME LIMIT, on page 3, commissioner’s rules regarding timely hearing requests have been added.

EHBC (LEGAL) SPECIAL PROGRAMS COMPENSATORY/ACCELERATED SERVICES

TEA’s recently adopted rules implementing the optional flexible year program—styled by TEA as “OFYP”—have been excerpted beginning on page 7. Effective October 18, 2005, the rules address four key aspects:

Explanatory Notes

TASB Localized Policy Manual Update 77

- **Eligibility:** the student did not or is not likely to pass a state assessment and/or is not eligible for promotion to the next grade level.
- **Program criteria:**
 - The instructional days during the regular school year for ineligible students may not drop below 170 days.
 - Eligible students must be provided at least 180 days of instruction.
 - No more than five days of instruction may be waived for staff development or teacher preparation.
 - District transportation as well as free and reduced-price meals—if provided during the regular year—must also be provided during the OFYP.
 - The district may require educational support personnel to provide necessary services.
 - Educators on 10-month contracts must fulfill the minimum days of service required by the Education Code.
- **Approval process:**
 - The district must submit to TEA a letter describing the proposed modification to the instructional calendar (approved by the board) and the OFYP to be provided.
 - TEA approval of any modification to the instructional calendar is limited to one year but extensions may be granted upon reapplication.
 - The commissioner may require, as a condition of approval, a district to document the success of its approach.
- **Funding:** the calculation of ADA is modified to reflect the actual number of instructional days within the approved calendar. The divisor for students on a reduced calendar may not be less than 170 days; for eligible students served through OFYP, not less than 180 days.

The text of the rules may be found at <http://www.tea.state.tx.us/rules/commissioner/adopted/0905/61-1017n-ltradopt.html>.

EI (LEGAL) ACADEMIC ACHIEVEMENT

Changes, nonlegislative in nature, are as follows:

- **ACADEMIC ACHIEVEMENT RECORD:** a new second paragraph, drawn from State Board of Education rule, has been added to address transfer of the record. The rule, adopted in 1996 and last revised in 2001, provides that copies of the record must be made available to transferees and may also be provided to the receiving district. The rule further instructs districts to “respond promptly to all requests for student records from receiving districts.”
- **EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM:** Education Code 28.025(g), previously recited under this heading, expired on January 1, 2004. In its place appears a parallel provision, found in the Higher Education Section of the Education Code. This provision contains no expiration date.

EKB (LEGAL) TESTING PROGRAMS STATE ASSESSMENT

The policy has undergone some restructuring and text changes for clarification.

Substantive changes are as follows:

Explanatory Notes

TASB Localized Policy Manual Update 77

- At SPECIAL EDUCATION STUDENTS, on page 3, the implementation during the 2004–05 school year of an alternative assessment for grades 9–10 is reflected. The transitional language has been deleted.
- EXIT–LEVEL TEST: STUDENTS FROM OTHER STATES, on page 9, tracks HB 25 from the 79th legislative session. Effective May 27, 2005, the legislation requires the commissioner to adopt a norm-referenced, exit-level test for students who enroll in a Texas public school after January 1 of their senior year. This testing requirement applies to first-time enrollees as well as students who have been out of a Texas public school for four or more years.

EL (LEGAL) CHARTER CAMPUS OR PROGRAM

TEACHER RETIREMENT SYSTEM, on page 4, has been revised to reflect SB 1691 from the 79th regular session. Effective September 1, 2005, the legislation clarified that a district employee’s TRS eligibility is unaffected by the fact that the employee works within a district charter campus or program.

F (LEGAL) STUDENTS

We have extended the scope of FFA to include not only policies specific to health services and requirements but also to encompass “wellness.” (See the explanatory note at FFA, below.)

Note as well that we have created a new policy code—FLA—to accommodate policies pertaining to confidentiality of student health information.

FFA (LEGAL) STUDENT WELFARE WELLNESS AND HEALTH SERVICES

The new federal “wellness policy” mandate has been added to this policy. The mandate, contained within Public Law 108–265 signed into law on June 30, 2004, requires each school district participating in a meal program under the National School Lunch Act or Child Nutrition Act to establish a “local wellness policy” prior to the beginning of the 2006–07 school year.

This policy must:

- express goals for nutrition education, physical activity, and other school-based activities designed to promote student wellness
- include local nutrition guidelines to promote student health and reduce childhood obesity
- ensure that guidelines for reimbursable school meals are no less restrictive than USDA regulations and guidance
- plan for measuring implementation of the policy—including designation of at least one person at each school responsible for ensuring fulfillment of the policy

The legislation further requires that development of the policy be broad-based, involving not only the board but parents, students, school food service personnel, school administrators, and the public. More information on the federal requirement may be found at USDA’s “Team Nutrition” site: <http://www.fns.usda.gov/TN/healthy-schools.html>. As the site shows, there are a wide range of resources from which districts may draw when implementing a local wellness program.

In Texas, the growing body of state law and regulation—from the Texas Public School Nutrition Policy promulgated by the Texas Commissioner of Agriculture to the various health and wellness requirements found elsewhere within this update—form a policy context that is more specific than in many other states. The particular

Explanatory Notes

TASB Localized Policy Manual Update 77

challenge for Texas districts is weaving these statutory and regulatory threads into programs and activities that promote student health generally.

To assist districts with that task, Policy Service recently published a **Starting Points** policy development tool kit on the subject. Available via MyTASB to superintendents and policy administrators, the **Starting Points** can be found at https://www.tasb.org/docs-mytab/gov_svcs/policy_svc/wellness_sp/index.shtml.cfm.

FFA (LOCAL) STUDENT WELFARE WELLNESS AND HEALTH SERVICES

The new federal “wellness policy” (described above) renders your current (LOCAL) policy no longer adequate and we therefore recommend its deletion. The mandated wellness policy must explicitly encompass nutrition education, physical activity, and school-based activities designed to promote student wellness. We recommend that you establish the collaborative framework required by federal law and use the new **Starting Points** policy development tool kit to recreate a (LOCAL) policy at this code.

FNAB (LEGAL) STUDENT EXPRESSION USE OF SCHOOL FACILITIES FOR NONSCHOOL PURPOSES

To assist districts in addressing the requirements of the Equal Access Act, TASB attorneys have added from federal statute three definitions under LIMITED OPEN FORUM IN SECONDARY SCHOOLS: “secondary school,” “meeting,” and, on page 2, “sponsorship.”

The 1984 Equal Access Act provides that a public secondary school establishes a “limited open forum” whenever it grants a noncurriculum-related student group access to meet on school premises during noninstructional time. In doing so, the school limits its ability to deny access to student groups based solely on their viewpoint or the content of their speech. The absence or presence of a limited open forum has been central to legal challenges brought against an increasing number of school districts.

The choice of whether or not to permit a limited open forum and the implications of that choice for distribution of nonschool literature by students and for nonschool use of school facilities by students are complex. To assist districts in developing or refining FNAA(LOCAL) and FNAB(LOCAL) policies that tease out these knots, Policy Service has issued a **Starting Points** policy development tool kit. Available via MyTASB to superintendents and policy administrators, the **Starting Points** can be found at http://www.tasb.org/docs-mytab/gov_svcs/policy_svc/amendment_sp/overview.shtml.cfm.

FNCF (LEGAL) STUDENT CONDUCT ALCOHOL AND DRUG USE

Recitations of Education Code 37.006 and 37.007—specifying disciplinary consequences for possession or use of alcohol, marijuana or a “controlled substance,” or a dangerous drug—have been deleted. These provisions are found at FOC (PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM) and FOD (EXPULSION).

In its place are direct statements regarding the alcohol and drug criminal offenses:

- At CRIMINAL OFFENSE, language from Education Code 37.122 has been added, defining as a Class C misdemeanor possession or use of an intoxicating beverage on school grounds or at an athletic event involving a school.
- At DRUG–FREE ZONES appears text from Health and Safety Code 481.134 enhancing the criminal penalties for a person who knowingly or intentionally possesses a controlled substance on a school bus or within 1,000 feet of a district property.

Explanatory Notes

TASB Localized Policy Manual Update 77

FNG (LEGAL) STUDENT RIGHTS AND RESPONSIBILITIES STUDENT AND PARENT COMPLAINTS/GRIEVANCES

As at DGBA(LEGAL), RECORD OF PROCEEDINGS, on page 4, has been amended to include an excerpt from TEA rules adopted in July 2004 and addressing what constitutes a “record” for appeals brought under Education Code 7.057.

The record upon which the commissioner of education decides an appeal must include:

- acceptable tape recordings or transcripts of the local hearing
- all evidence admitted
- all offers of proof
- all written pleadings, motions, and intermediate rulings
- a description of matters officially noticed
- the recommendation of the independent hearing examiner, if applicable
- a tape or transcript of the oral argument before the board
- the decision rendered by the board

These rules replaced previous hearing rules, adopted in 1993, when hearings were *de novo*. The rules were updated in July 2004 to reflect the fact that appeals are now conducted on the basis of a review of the substantial evidence as presented by the record.

FO (LEGAL) STUDENT DISCIPLINE

On November 7, 2005, Attorney General Greg Abbott ruled that HB 383—a Family Code amendment from the 79th regular session—did NOT impair the ability of a professional employee of a school district to administer corporal punishment.

The ruling (published at <http://www.oag.state.tx.us/opinions/ga/ga0374.pdf>) responds to a July 27 request from Commissioner of Education Shirley Neeley after the passage of HB 383 that stated, in part:

“Only the following persons may use corporal punishment for the reasonable discipline of a child:

- the parent or grandparent of the child;
- a stepparent of the child who has the duty of control and reasonable discipline of the child; and
- an individual who is a guardian of the child and who has the duty of control and reasonable discipline of the child.”

The commissioner queried whether the legislation applied to corporal punishment administered within a school setting and went on to inquire whether corporal punishment may be administered without parental consent. The attorney general concluded that the new law:

“does not prohibit the use of corporal punishment by school districts. Therefore a professional school district employee may utilize corporal punishment to the extent permitted by other state law and school district policies. Additionally, a school district may adopt a policy authorizing corporal punishment without the permission of persons [listed in the cited passage].”

The attorney general’s analysis is consistent with that of TASB attorneys this summer: the intent of the language was to clearly empower grandparents, stepparents, and guardians to use corporal punishment without fear of a *de facto* claim of child abuse. Moreover, the legislature left intact existing authority permitting districts to administer corporal punishment. Believing that sufficient legal authority existed for school personnel to

Explanatory Notes

TASB Localized Policy Manual Update 77

administer corporal punishment, TASB Legal Services did not include the HB 383 provisions in FO(LLEGAL) policy at Update 76, the first of the post-legislative updates, nor is it included at Update 77.

FODA (LEGAL) EXPULSION
JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM

At FEES, on page 4, has been added a provision from HB 1687 prohibiting a juvenile justice alternative education program from charging fees “except as otherwise provided by law.” This legislation, from the 79th regular session, became effective June 18, 2005.

FOF (LEGAL) STUDENT DISCIPLINE
STUDENTS WITH DISABILITIES

As indicated in notes accompanying the EHBA series policies in this update, the incorporation of changes arising from the IDEA reauthorization and recent commissioner’s rules prompted TASB attorneys to closely reevaluate policies pertaining to disabled students. This policy, pertaining to the discipline of students with disabilities, was similarly redeveloped and incorporates legislative changes as well.

Changes of note:

- On page 1, SPECIAL EDUCATION STUDENTS now includes language from HB 283 from the 79th regular session. Effective June 18, 2005, the legislation requires the Student Code of Conduct to withhold discipline of a special education student for “bullying, harassment, or making hit lists” until the ARD committee has reviewed the conduct.
- At INTERIM ALTERNATIVE EDUCATIONAL SETTING, on page 4, is a new statutory provision that permits a district to remove a student to an interim alternative placement (such as a DAEP) for up to 45 days if the student has inflicted serious bodily injury upon another person on school premises or at a school function under the jurisdiction of the state or a district, regardless of whether the conduct was a manifestation of the student’s disability. A definition of SERIOUS BODILY INJURY, on page 5, has been added from the federal law as well.
- PLACEMENT DURING APPEALS, on page 6, has been revised to reflect the fact that a district may now require a student to remain in a DAEP pending an appeal, but the district must arrange an expedited hearing.

GF (LEGAL) PUBLIC COMPLAINTS

As with DGBA(LLEGAL) and FNG(LLEGAL), RECORD OF PROCEEDINGS has been amended to include an excerpt from TEA rules adopted in July 2004 and addressing what constitutes a “record” for appeals brought under Education Code 7.057.

The record upon which the commissioner of education decides an appeal must include:

- acceptable tape recordings or transcripts of the local hearing
- all evidence admitted
- all offers of proof
- all written pleadings, motions, and intermediate rulings
- a description of matters officially noticed
- the recommendation of the independent hearing examiner, if applicable

Explanatory Notes

TASB Localized Policy Manual Update 77

- a tape or transcript of the oral argument before the board
- the decision rendered by the board

These rules replaced previous hearing rules, adopted in 1993, when hearings were *de novo*. The rules were updated in July 2004 to reflect the fact that appeals are now conducted on the basis of a review of the substantial evidence as presented by the record.