



# BOARD POLICY

REG No.: 002

## BOARD'S LEGAL STATUS

### I. BACKGROUND and/or LEGAL REFERENCE

#### A. College District Legal Status

The College District derives its legal status from the Constitution of the State of Texas and from the Texas Education Code that authorizes a public junior college and/or district of any one of the following classifications:

1. Independent school district junior college.
2. City junior college.
3. Union junior college.
4. County junior college.
5. Joint-county junior college.
6. Public junior college as a part or division of a regional college district.

*Texas Constitution, Art. VII; Education Code 130.004(a)*

A public junior college shall be defined as an institution of higher education. *Education, Code 61.003(8)*

#### B. Board Legal Status

In discharging its duties the Board shall function in accordance with applicable state and federal statutes, controlling court decisions, and applicable regulations promulgated pursuant to statute by state and federal agencies. Opinions of the Attorney General shall be used for guidance in interpretation of applicable law. The Board shall constitute a body corporate and shall have the exclusive power to manage and govern the College District. *Education Code 1.001(a), 130.082(d), 130.084; ~~Texas Ass'n of Steel Importers, Inc. v. Texas Highway Commission, 372 S.W. 2d 525 (Tex. 1963)~~*

The Board has final authority to determine and interpret the policies that govern the College District and within the limits imposed by other legal authorities, has complete and full control of the College District.

#### C. Board Members Authority

##### 1. Board Actions

Because the Board is a body corporate, members can perform no valid act except as a body at meetings properly convened and conducted. No individual member of the Board may exercise authority with respect to the operation of the College District by virtue of their status as Board members. *Toyah ISD v. Pecos-Barstow ISD, 466 S.W.2d 377 (Tex. Civ. App.-San Antonio, 1971, no writ); Buchele v. Woods, 528 S.W.2d 95 (Tex. Civ. App.-Tyler, 1975, no writ)*

##### 2. Right of Access

Individual Trustees, in their official capacity as public officers entrusted with governing and overseeing the management of the District, have an inherent right of access to records maintained by the District, under Board policies for orderly access. *Atty. Gen. Op. No. JM-119 (1983); ~~Education Code 11.151 [See FL, GAA]~~*

Each Board member shall have the legal responsibility of a fiduciary in the management of funds under the control of colleges subject to the Board's control and management. *Education Code 51.352(e)*

### 3. Protections for Acting on a Legislative Measure

A Board member may not be subject to disciplinary action or a sanction, penalty, disability, or liability for:

- a. An action permitted by law that the officer takes in the officer's official capacity regarding a legislative measure;
- b. Proposing, endorsing, or expressing support for or opposition to a legislative measure or taking any action permitted by law to support or oppose a legislative measure;
- c. The effect of a legislative measure or of a change in law proposed by a legislative measure on any person; or
- d. A breach of duty, in connection with the member's practice of or employment in a licensed or regulated profession or occupation, to disclose to any person information, or to obtain a waiver or consent from any person, regarding the officer's actions relating to a legislative measure; or the substance, effects, or potential effects of a legislative measure.

*Gov't Code 572.059*

### 4. Board Member Immunities

The statutory immunity detailed below is in addition to and does not preempt the common law doctrine of official and governmental immunity. *Education Code 22.051(b)*

### 5. State Law Immunities

A Board member is not personally liable for any act that is incident to or within the scope of the duties of the Board member's position and that involves the exercise of judgment or discretion. *Education Code 22.0511(a)*

### D. Extent of State and Local Control

All authority not vested by the laws of the state in the Coordinating Board or in the Central Education Agency shall be reserved and retained locally in the College District or in the Board as provided in the laws applicable. *Education Code 130.002*

## II. POLICY

- A. The corporate name of this college, as provided by law, is Wharton County Junior College District, herein referred to as "the District."
- B. *Titles.* The official title of the governing body of the District shall be the Board of Trustees of

Wharton County Junior College District, herein referred to as "the Board."

1. In legally referenced policies, Board members are referred to as Trustees or Board members, and the presiding officer is called the President of the Board or the President.
2. In local policy, Board members are referred to as Board members, and the presiding officer is called the Chairman of the Board or the Chairman.
3. These terms in legally referenced policies and local policies are synonymous. Local terminology shall be used throughout this manual for locally generated material.

C. Responsibilities of the Board

The Board, being composed of lay members, shall exercise the traditional and time-honored role as it has evolved in the United States and shall constitute the keystone of the governance structure. In this regard, the Board:

1. Is expected to preserve institutional independence and to defend its right to manage its own affairs through its chosen administrators and employees.
2. Shall enhance the public image of the College District under its governance.
3. Shall interpret the community to the campus and interpret the campus to the community.
4. Shall nurture the College District under its governance to the end that it achieves its full potential within its role and mission.
5. Shall insist on clarity of focus and mission of the College District under its governance.

*Education Code 51.352(a)*

D. Powers and Duties of the Board

All authority not vested by the laws of the state in the Coordinating Board or in the Central Education Agency shall be reserved and retained locally in the College District or in the Board as provided in the laws applicable. *Education Code 130.002*

The Board shall have specific powers and duties imposed by statutes of the state. The Board has the legal power and duty to:

1. Be governed in the establishment, management, and control of the College District by the general laws governing the establishment, management, and control of independent school districts insofar as the general law is applicable. *Education Code 130.084*
2. ~~Have the exclusive power to govern and oversee the management of the College District. *Education Code 11.151(b)3.*~~ Set and collect any amount of tuition, rentals, rates, charges, or fees the Board considers necessary for the efficient operation of the College District, except that a tuition rate set under this subsection must satisfy the requirements of Section 54.051(n) of the Texas Education Code. The Board may set a different tuition rate for each program, course, or course level offered by the College District, including a program, course, or course level to which a provision of Section 54.051 applies, as the Board considers appropriate to reflect course costs or to promote efficiency or another rational purpose. *Education Code 130.084*
43. Provide policy direction for the College District and adopt such rules, regulations, and

bylaws as the Board deems advisable. *Education Code 51.352(b), 130.082(d)*

- ~~54.~~ Establish goals consistent with the College District's role and mission. *Education Code 51.352(d)*
- ~~65.~~ Levy and collect taxes and issue bonds. *Education Code 130.121(a), 130.122(a)*
- ~~76.~~ Approve an itemized current operating budget on or before September 1 of each year. *19 TAC 13.42*
- ~~87.~~ Have the accounts audited in accordance with the approved financial reporting system. *Education Code 61.065*
- ~~98.~~ Submit the required annual reports to the governor and comptroller. *Gov't Code 403.013*
- ~~109.~~ Receive bequests and donations or other monies or funds coming legally into their hands. *Education Code 11.151(a)*
- ~~110.~~ Establish an endowment fund outside the state treasury in a depository selected by the Board. *Education Code 130.007*
- ~~1211.~~ Select a depository for College District funds. *Education Code Ch. 45, Subch. G*
- ~~1312.~~ Order elections as required by law. *Education Code 130.082(f), 130.122(b)*
- ~~1413.~~ Exercise the right of eminent domain to acquire ~~property~~ fee simple title to real property on which to construct school buildings or for any other public use necessary for the College District. *Education Code ~~11.155, 130.084~~ 11.155.130.084; Atty. Gen. Op. M-700 (1970)*
- ~~1514.~~ Appoint the College President, evaluate the President, and assist the President in the achievement of performance goals. *Education Code 51.352(d)*
- ~~1615.~~ Appoint or employ agents, employees, and officials as deemed necessary or advisable to carry out any power, duty, or function of the Board; employ a dean, or other administrative officer; upon the College President's recommendation, employ faculty and other employees of the College District. *Education Code 130.082(d)*
- ~~1716.~~ Proceed by and through resolutions or orders adopted or passed by the Board. The affirmative vote of a majority of all Board members shall be required to adopt or pass a resolution or order. *Education Code 130.082(d)*
- ~~1817.~~ Be authorized to fix and collect rentals, rates, charges, or fees from students and others for the occupancy, use, or availability of all or any of its property, buildings, structures, activities, operations, or facilities, in such amounts and in such manner as may be determined by the Board. *Education Code 130.123(c)*

- ~~19~~18. May acquire and hold real ~~and personal~~ property or an improvement to real property. *Education Code 11.151(a), 130.084; Local Gov't Code 271.004*
- ~~20~~19. Hold all rights and titles to the school property of the College District, whether real or personal. *Education Code 11.151(c), 130.084*
- ~~21~~20. Execute, perform, and make payments under contracts, which may include leases, lease with option(s) to purchase, or installment purchase, with any person for the use, acquisition, or purchase of any personal property, or the financing thereof. The contracts shall be on terms and conditions that are deemed appropriate by the Board in accordance with state law. *Local Gov't Code 271.005*
21. By resolution, authorize the sale of any property, other than minerals, held in trust for College District purposes. The president of the Board shall execute a deed to the purchaser of the property reciting the resolution of the board of trustees authorizing the sale. *Education Code 11.154(a), (b).*
22. Employ, retain, contract with, or compensate a licensed real estate broker or salesperson for assistance in the acquisition or sale of real property. *Education Code 11.154(c), 130.084*
23. Sue and be sued. *Education Code 11.151(a); 130.084*
24. Ensure that its formal position on matters of importance to the College District is made clear to the Coordinating Board when such matters are under consideration by the Coordinating Board. *Education Code 51.352(d)*
25. Set campus admission standards consistent with the role and mission of the College District and considering the admission standards of similar institutions nationwide having a similar role and mission, as determined by the Coordinating Board. *Education Code 51.352(d)*
26. Act as a fiduciary in the management of funds under the control of institutions subject to the Board's control and management. *Education Code 51.352(e)*
27. Grant degrees and certificates to those students recommended by the faculty and the administration.

(POLICY APPROVAL: 5-30-86, 10-23-07Board of Trustees, amended 10-23-07, amended 6-24-14)

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